In the Matter of:  

In removal proceedings  

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INDEX TO DOCUMENTATION OF COUNTRY CONDITIONS REGARDING PERSECUTION OF LGBTQ INDIVIDUALS IN MYANMAR [BURMA]

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<td><strong>MYANMAR STATUTORY SOURCES</strong></td>
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<td>1. Excerpt of Myanmar Penal Code, Penal Code 1860, S. 377</td>
<td>“Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”</td>
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<td><strong>GOVERNMENTAL SOURCES</strong></td>
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<td>2. Bureau of Democracy, Human Rights and Labor, U.S. Dep’t of State, 2019 Country Reports on Human Rights Practices: Burma (Mar. 11, 2020), available at <a href="https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/burma/">https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/burma/</a></td>
<td>“Consensual same-sex sexual activity remains illegal under the penal code, which contains a provision against ‘unnatural offenses’ with a penalty of a maximum of 10 years’ imprisonment and a fine. Laws against ‘unnatural offenses’ apply equally to both men and women, but were rarely enforced. Lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons reported that police used the threat of prosecution to extort bribes.” (p. 36-37)</td>
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### SUMMARY

- “While the penal code was used more for coercion or bribery, LGBTI persons, particularly transgender women, were most frequently charged under so-called shadow and disguise laws. These laws use the justification that a person dressed or acting in a way that is perceived as not being in line with their biological gender is in ‘disguise.’ According to a local NGO, transgender women reported higher levels of police abuse and discrimination than other members of the LGBTI community.” (p. 37)

- “In March 2018 authorities in Rangoon used the ‘unnatural offenses’ law to charge an openly gay restaurant owner for allegedly sexually assaulting a male member of his staff. As of November the case continued.” (p. 37)

- “Laws that criminalize behaviors linked to an increased risk of acquiring HIV/AIDS remain in place, directly fueling stigma and discrimination against persons engaged in these behaviors and impeding their access to HIV prevention, treatment, and care services.” (p. 37)

- “High levels of social stigma and discrimination against female sex workers and transgender women hindered their access to HIV prevention, treatment, and social protection services.” (p. 37)

- “…discrimination, stigma, and a lack of acceptance among the general population persisted. There were reports of discrimination based on sexual orientation and gender identity in employment. LGBTI persons reported facing discrimination from medical-care providers.” (p. 37)

- “There were reports of discrimination based on sexual orientation and gender identity in employment, including the denial of promotions and firing of LGBTI persons. Activists reported job opportunities for many openly gay and lesbian persons were limited and noted a general lack of support from society as a whole.” (p. 43)


- “Anti-LGBTI laws place some LGBTI individuals at higher risk of extortion and psychological coercion by law enforcement. Discriminatory hiring practices complicate access to formal sector employment for LGBTI individuals and persons diagnosed with HIV/AIDS, forcing some to seek opportunities in unregulated sectors known for trafficking vulnerabilities—particularly among transgender persons in commercial sex.” (p. 131)


- “Consensual same-sex sexual activity is illegal under the Burmese penal code, which has provisions against ‘sexually abnormal’ behavior and entails punishments up to life imprisonment. Laws against ‘unnatural offenses’ apply equally to men and women, but are rarely enforced. LGBTI persons have reported that police used the threat of prosecution to extort bribes. LGBTI activists have also reported allegations of rape by
security forces in some cases, arbitrary arrest (for example for loitering), detention, and broad societal and familial discrimination.” (p. 5)

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<td>• “There are credible and recent reports of police harassment, extortion, physical and sexual abuse of LGBTI people. Section 35 (c) of the Police Act (1945) and Section 30 (c) and (d) of the Rangoon Police Act (1902) (known as the ‘Shadow and Disguise Acts’) are also used to intimidate and arrest LGBTI individuals. These provisions allow the police to detain a person located on the street between sunset and sunrise, with a covered face or being otherwise disguised, and unable to give a satisfactory account of oneself. LGBTI people are increasingly being detained at patrol sites, rather than being taken to police stations, and forced to pay fines of around MMK 50,000 (approximately AUD 45) for release. As police officers are frequently the perpetrators of harassment, a victim’s ability to seek legal recourse is limited. When victims do file cases at police stations, officers are frequently uncooperative in gathering evidence and identifying perpetrators. Furthermore, the majority of documented cases cannot proceed to court due to an insufficient number of qualified lawyers being equipped and willing to advise in cases involving LGBTI individuals.” (p. 42)</td>
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<td>• “…credible sources told DFAT that parents often use corporal punishment to ‘correct’ behaviour in young children that does not align with traditional gender roles or heterosexual norms. Some parents are also reported to support teachers to discriminate against their LGBTI children at school. In school, LGBTI individuals are bullied by both peers and teachers, and there are high rates of school drop-out in the LGBTI community. There are restrictions on dress for transgender men in some universities.” (p. 42)</td>
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<td>• “LGBTI people, particularly transgender, routinely experience discrimination in accessing health services. LGBTI people typically prefer to seek medical treatment in clinics operated by NGOs, especially in rural areas, due to experiences of discrimination on the basis of their sexual orientation and gender identity in government hospitals, including compulsory HIV/AIDS testing of transgender patients.” (p. 43)</td>
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<td>• “LGBTI people, particularly transgender, have limited employment prospects, including in large cities. Gay men are not permitted to take up senior positions in the police force or Tatmadaw. Employment in the beauty and entertainment industries is generally socially accepted for gay men and transgender women, but is often seasonal and poorly paid. Outside of these industries, most transgender women are required to dress as men in their workplace. Transgender men often work in low-paid manual jobs, including as construction workers or rickshaw drivers. Research by LGBTI rights groups indicate that there are gay and lesbian individuals working in government and the private sector, but they choose not to disclose their sexual orientation in the workplace for fear of discrimination.” (p. 42)</td>
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<td>“In March, authorities in Rangoon used the ’unnatural offenses’ law to charge an openly gay restaurant owner for allegedly sexually assaulting a male member of his staff. The case was pending at year’s end.” (p. 43)</td>
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**SUMMARY**

- NGO, transgender women reported higher levels of police abuse and discrimination than other members of the LGBTI community.” (p. 44)

- “There were reports of discrimination based on sexual orientation and gender identity in employment. LGBTI persons reported facing discrimination from medical-care providers.” (p. 44)

- “Laws that criminalize behaviors linked to an increased risk of acquiring HIV/AIDS remain in place, directly fueling stigma and discrimination against persons engaged in these behaviors and impeding their access to HIV prevention, treatment, and care services.” (p. 44)

- “Law enforcement practices contributed to high levels of stigma and discrimination against female sex workers and transgender women that in turn hindered their access to HIV prevention, treatment, and social protection services.” (p. 45)

- “Labor laws and regulations do not specifically prohibit employment discrimination based on . . . sexual orientation or gender identity, . . . HIV-positive status or other communicable diseases . . . .” (p. 50-51)

- “There were reports of discrimination based on sexual orientation and gender identity in employment, including the denial of promotions and firing of LGBTI persons. Activists reported job opportunities for many openly gay and lesbian persons were limited, and they noted a general lack of support from society as a whole.” (p. 51)

- “…discrimination, stigma and a lack of acceptance among the general population persisted.” (p. 44)

**INTER-GOVERNMENTAL SOURCES**


- “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. 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.” (p. 43)

- “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 survivor 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.’’ (p. 43)

- “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. 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 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.” (p. 43-44)

- “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.’” (p. 44)

- “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.” (p. 44)

- “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.” (p. 44)

- “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.” (p. 44)

- “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. One survivor stated that she was a woman in a man’s body. 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.’” (p. 43)

- “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 . . . . 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
### SUMMARY

- High levels of social discrimination and pressure to conform to expectations and to heteronormative marriages.” (p. 36)

- “The Constitution of Myanmar guarantees equality before the law and freedom from discrimination on the grounds of gender. 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. In 2013, Aung San Suu Kyi, as leader of the political opposition and before becoming State Counsellor, called for the decriminalization of homosexuality. Four years later, oppressive laws are yet to be changed, even though the State Counsellor’s National League for Democracy controls the Parliament.” (p. 36-37)

- “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.” (p. 37)

- “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.” (p. 36)

### NON-GOVERNMENTAL SOURCES

   https://freedomhouse.org/country/myanmar/freedom-world/2020

   - “A number of laws create a hostile environment for LGBT+ residents. Same-sex sexual conduct is criminalized under the penal code, and police subject LGBT+ people to harassment, extortion, and physical and sexual abuse. In June 2019, a gay librarian committed suicide following harassment from university colleagues, bringing renewed attention to societal discrimination against LGBT+ individuals.” (p. 16)

    https://www.avert.org/professionals/hiv-around-world/asia-pacific/myanmar

   - “Same-sex sexual activity is also illegal, punishable with up to 14 years in prison. In addition, a host of other laws are used to persecute people for their sexual orientation, gender identity or expression, helping to create a hostile environment for men who have sex with men and other LGBT people. Many LGBT people are further isolated by physical, verbal and sexual assault they experience at the hands of police, health workers and others in authority, as well as members of the general public, which keeps them away from essential HIV prevention, testing and treatment services.” (p. 12)

   - “...existing laws criminalise same-sex behaviour and keep many people hidden from the reach of healthcare providers. Moreover, a lack of legal gender-identity recognition
in the country often results in transgender people being wrongly categorised as men who have sex with men and provided with inappropriate HIV services.” (p. 3)

- “A 2016 study carried out to test the acceptability of PrEP [pre-exposure prophylaxis] among men who have sex with men in Myanmar found 39% of participants would be willing to use it, with the cost of PrEP a key barrier to access. The study also suggested that, because sex between men is illegal in Myanmar, it is unlikely that men who have sex with men would access PrEP from government-run clinics.” (p. 8)


- “According to activists, LGBT people, especially transgender people, are targeted under Section 35c of the Police Act, also known as the ‘Darkness Law’, which allows authorities to detain someone whose face is covered or otherwise ‘disguised’.” (p. 134)


- “A number of laws create a hostile environment for LGBT (lesbian, gay, bisexual, and transgender) people. Same-sex sexual conduct is criminalized under the penal code, and police subject LGBT people to harassment, extortion, and physical and sexual abuse.” (p. 16)


- “Many respondents recounted being physically, sexually and/or verbally assaulted by law enforcement officers. Twenty respondents reported that they had been physically hurt by police officers and considered that the police had harmed them because they either knew or suspected that they were LGBTQ people. Physical assaults were committed in a variety of ways. For example, respondents reported being kicked, slapped, beaten with a stick, tasered, spat on and burned with cigarettes. Numerous respondents complained of being sexually assaulted, for example, by being groped and even raped by police officers. Respondents also complained about being threatened with sexual assault. Forty respondents said that they had personally experienced verbal abuse from the police because the police either knew or suspected that they were LGBTQ individuals. The reported verbal abuse included name-calling, being cursed at, and denigrated as being criminal or sexually deviant.” (p. 39-40)

- “In November 2016 during the cool season, they were traveling by motorbike to a client, to do make up for a night-time Buddhist ritual, when they were stopped at a police checkpoint. Alinkar recounted her experience: ‘The police asked us where we were going, but before we could answer, they were hitting us. They forced us to kneel with our hands behind our heads. They falsely accused us of dealing drugs and mocked us for being transgender. An officer derisively asked whether my friends and I are men or women. When we said that we are transgender, the police kicked us brutally. A police officer asked me if parts of my body were fake. When I said my body is real, the officer kicked me again and demanded oral sex.’ When Alinkar refused, she was subjected to
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<td>further abuse. The women were released only after their make up client arrived to help them. Due to their well-founded fear of retaliation, Alinkar and her friends never complained to the authorities about this incident. Memories of this traumatic evening still haunt Alinkar. She noted, “to this day, I feel scared.” (p. 6)</td>
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<td>“In 2017, police arrested Myat Thiri when she was sitting outside at night with her friend at a popular hangout. Myat Thiri and her friend both identify as transgender women. According to Myat Thiri: ‘The police pulled my hair, slapped my face, and beat me with their rubber baton. I felt so embarrassed, and I was so very scared because I did nothing wrong. I asked what is my offence— why am I being arrested? They said I had no right to respond and no right to ask questions. They beat my leg again. I hurt so bad that I contemplated suicide. A large truck crossed the road and I wanted to throw myself under it to kill myself. Sadly, or luckily, one of the police officers grabbed my arms before I could do that, and then they beat me again. They then handcuffed me and put me in their car with my transgender friend. When we arrived at the police station, the police forced us to change our clothes into men’s shirts that were very dirty and smelly. Before they sent us to the cell, the police made us jump like frogs. While my friend was changing her clothes, the police touched her breast and butt, and asked if they were real. They also tried to touch my breasts. I said if you try to touch me, I will commit suicide. It was so embarrassing. I was forced to stay in a tiny police station cell for 15 days with my friend without knowing anything at all. We had no ability to communicate with our family members. On the fifteenth day, we were transferred to a holding area at the court. By coincidence, my friend saw her sister at the court. Her sister happens to be a lawyer and, thankfully, she successfully negotiated our release.’” (p. 45)</td>
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<td>“Khin Maung Htun identifies as a cisgender gay man. In 2018, he happened to be using his phone outside at night. He did not realize that several young men had got into a fight not far from him. The police arrived to arrest the men who were fighting; among the police officers attending at the scene there was one officer who happened to know that Khin Maung Htun was gay because they had mutual acquaintances. According to Khin Maung Htun: ‘…that officer pointed at me and said “he is gay, so arrest him too.” They said I was arrested under the Shadow Law. When we arrived at the police station, the police made all of us kneel and they kicked us one by one, but I was also singled out for being gay. The police asked me in front of everyone why I am gay. I responded that “I am gay just because I am,” and then the officer slapped me. All the other men were permitted to communicate with their family and make a bail payment (a payment of a personal bond at the police station), but the police said I was not allowed to do the same because I am gay. It was not until much later that the police finally let me call my family.’” (p. 46)</td>
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|     | “San San was found outdoors by police at around 7pm in June 2016. She had been cross-dressing and sat on a bench with a group of young people in front of a hospital in a public area in Mandalay, at around 7 in the evening. She noticed a car that drove past and stopped in front of them. Five police men in plainclothes emerged from the car and arrested San San. She asked the police why she was being arrested, and was merely informed that she was being detained under Section 377 and the Shadow Law. No further explanation was given. She recounted how she was held in police custody where police officers subjected her to repeated slapping, beatings, and verbal abuse. ‘When I arrived at the police station, they asked me what my name was, and I said “my name is San San”. Then, they slapped my face, and told me to say what my real name was, and I repeated
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<td>my name was San San, and they continued slapping my face”, she recalled. San San then said they had asked her why she dressed as a woman, and why she had a wig. The policemen then made her remove her clothing and her wig.” (p. 32)</td>
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<td>“Myat Thiri, War and Min Da Tha shared their separate experiences of being arrested by the police at a specific ‘hot spot’ called Aye Thar Yar Gate, in Shan State. War told her story of being transgender and crossing the Aye Thar Yar Gate, a route she uses when she travels to meet her clients as a makeup artist. On a particular occasion on which she was crossing the bridge, a policeman requested sexual favours from her, and when she refused, the police officer slapped her and told her ‘you want a lesson from me!’ She was then arrested and placed in a small cell. Police officers taunted her, teased her and told her she would be freed in exchange for sexual acts. She then was coerced into having sex with two policemen after several hours of being harassed.” (p. 33)</td>
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<td>“Police officers also sometimes accuse people of violating Section 377, regardless of whether they have any evidence to support their accusations. For example, a respondent named Lin Lin reported that in June 2016, in a small district in the Sagaing region, police officers followed her home from a tea house to arrest her. According to Lin Lin, the police said, ‘we know you are transgender, so you need to follow us.’ After arriving at the police station, the police told Lin Lin she was under arrest under Section 377. Lin Lin explained that the police did not have any evidence of sexual activity. Instead, the arresting officer, displaying stereotypical and prejudicial views, stated: ‘all transwomen engage in anal sex and are bottoms [i.e., the ones who are penetrated during penetrative anal sex]’, and are therefore in violation of Section 377.86 After arresting Lin Lin and other transgender women, a police officer slapped some of the transgender women and beat them in the head. He also threatened them by saying, ‘you are very active in sex, I will get all the inmates to have sex with you.’ At that time, Lin Lin recognized an officer in the group who had previously raped her, and she said, ‘please arrest that police officer, sir, he has raped me before.’ Eventually the police released the group of transgender women from custody. According to Lin Lin, the police did not follow up to investigate her rape accusation and provide redress.” (p. 39)</td>
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<td>“Police officers have invoked Section 377 to enter LGBTQ people’s homes; accuse them of ‘unnatural sex’; take them into police custody; and to subject them to abuse. LGBTQ human rights defenders fear that arrests and charges based on Section 377 are on the rise. One LGBTQ human rights defender in Mandalay told the research team that, by September of 2018, he had already heard about 17 arrests in 2018, which, by then, already exceeded the number of known arrests for the same period in previous years. An LGBTQ rights organization based in Yangon has voiced similar concerns.” (p. 26)</td>
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<td>“Yet, the oppressive impact of Section 377 extends far beyond documented cases of arrest and charges. Law enforcement officers often threaten to press charges under Section 377 in order to extort money or coerce LGBTQ individuals into performing sexual acts.” (p. 27)</td>
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<td>“Section 377 also functions as a powerful tool that socially isolates LGBTQ people. It lends false legitimacy to harmful stereotypes depicting LGBTQ people as morally corrupt. Section 377 has given rise to widespread stigma prevalent across the country against LGBTQ individuals, and to a common perception of them as potential ‘criminals’</td>
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and sexual deviants. As a result, generally speaking, the LGBTQ persons live segregated from mainstream society.” (p. 27)

- “Certain colonial era laws in Myanmar, which provide for a wide ambit of police powers for the ‘prevention and detection of crime’, known collectively among the LGBTQ community as the ‘Shadow Laws’ or ‘Darkness Laws’, are a primary example of criminal laws that breed mistreatment based in whole or in part on [sexual orientation and gender identity/expression] grounds. These laws exist both at the union level and state level, as codified in Section 35 of the Police Act 1945, and Section 30 of the Rangoon Police Act 1899. Some of their provisions are vague and overbroad (e.g., failing to specify what counts as a ‘satisfactory account’ for ‘being found in a public place between sunset and sunrise’) and are therefore open to serious abuse. Law enforcement agents too easily invoke these provisions to harass, arrest and even bring spurious charges against LGBTQ people. . . . In addition, several other criminal provisions have been used to harass, intimidate and detain LGBTQ persons. They include the crime of ‘Public Nuisance’, under Section 268 of the Penal Code, and Section 320 of the Penal Code criminalizing the act of ‘emasculature’.” (p. 8-9)

- “LGBTQ people have been particularly easy targets for arrest under the Shadow Laws. For example, transgender women often find work as hair and makeup stylists because it is one of the few occupations available to them. However, transgender women have been apprehended simply because the police have deemed the scissors they carry for work a ‘dangerous or offensive instrument’ under subsection (a) of the Shadow Laws. LGBTQ people are also stereotyped as criminals and sometimes presumed to be a ‘reputed thief’ under subsection (b) without any evidence warranting such presumption. Meanwhile, transgender women have been accused of violating the Shadow Laws because their makeup is deemed to be a ‘disguise’ according to subsection (c). Simply sitting outside one’s house can prompt the arrest of an LGBTQ person based on subsection (d).” (p. 31)

- “Furthermore, the vague Shadow Laws are enforced arbitrarily against LGBTQ people, with the practical consequence of criminalizing what would be considered normal, everyday behaviour for cisgender heterosexual people, including the basic act of going to and from work. For example, Chu a transgender woman, was arrested in 2017 in the early morning while she was on her way to a wholesale market to purchase flowers for her retail business.” (p. 31)

- “Other respondents have also reported being arrested under Shadow Laws for strolling on a date as a gay couple or visiting a park in the evening. Indeed, the Shadow Laws have the effect of deterring LGBTQ people from going places after sunset and, therefore, impinge upon LGBT people’s right to freedom of movement, among other human rights.” (p. 32)

- “Transparent investigations and prosecutions of acts involving human rights violations allegedly perpetrated by law enforcement agents rarely occur within Myanmar’s criminal justice system, especially in relation to crimes perpetrated against LGBTQ persons.” (p. 36)

- “Respondents have been told that they violated a Shadow Law simply by being gay or transgender and outside at night. As one respondent explained, the police stereotype LGBTQ people as criminals: ‘A police officer told me that the crime rate is high because of transwomen and gays [and] LGBTQ people.”’ (p. 38)
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<td>“Transgender respondents also reported being verbally abused, for instance, through derogatory questions about their gender and their bodies. Forty respondents said that they had personally experienced verbal abuse from the police because the police either knew or suspected them of being LGBTQ. The reported verbal abuse included name-calling, being cursed at, and denigrated as being criminal or sexually deviant.” (p. 41)</td>
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<td>“There were also numerous complaints that law enforcement officers had forced transgender women to perform certain acts to make them disavow their gender identity/expression. For example, a transgender woman reported being forced to repeatedly shout out loud, ‘I am a male! I am a male!’ Transgender women also reported that the police had forced them to cut their hair or held them in detention cells destined to hold male inmates, as well as being made to change out of what police officers thought was women’s clothing into what they considered to be men’s wear, and ‘biologically appropriate’. ” (p. 42)</td>
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<td>“A number of respondents reported that law enforcement officers demanded that they perform humiliating tasks as a way of punishing or degrading them because of their sexual orientation or gender identity/expression. For example, one respondent, a gay man, was required to sing and dance on command; at least two transgender women and one gay cross-dresser complaining that they were made to remove their clothing; and at least three respondents were made to do frog jumps or squats by the police. In addition, at least two transgender women were made to crawl around the police station on their knees; and three transgender women respondents were made to do cleaning or perform other tasks at the police station under duress. Two transgender women also said the police confiscated their personal property and, without justification, refused to return it.” (p. 43)</td>
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<td>“Fears of reprisals are not unfounded. One respondent reported that a police officer warned her not to report what he had done to her to anyone, saying that the police would seek revenge. Another respondent, a transgender woman, said that after she posted a Facebook video complaining about her friends and herself being mistreated by the police, the police arrested her and broadcast her arrest via Facebook Live. The police explicitly told her that she ‘deserved’ to have her face shown on Facebook Live because she had previously used Facebook to shame the police.” (p. 47)</td>
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<td>“Many LGBTQ individuals reported that, in their experience, the attitude of judges and court staff toward them is profoundly affected by negative biases against, and stereotypical perceptions of, them. Deeply entrenched homophobia, transphobia and the harmful perpetuation of gender stereotypes pervade the court system. Prejudices manifest in various ways, ranging from judges’ derogatory comments about homosexuality to their refusals to address transgender litigants using language that comport with the litigants’ gender identity or expression. Lawyers too reported that judges discriminate against LGBTQ individuals.” (p. 11)</td>
</tr>
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|     | “Beyond insults and derision, reports of discriminatory treatment were also common among respondents. One transgender woman reported that when she was accused of committing a crime, she sought to have another transgender woman called to give evidence as a witness on her behalf. However, a policeman told her bluntly that LGBTQ people could not stand as witnesses. According to the community member working on
the case: ‘The courts don’t consider us as credible witnesses; if we want to stand as a witness, the court won’t accept us.’” (p. 50)

- “Several respondents stated that either they, or another LGBTQ person they knew, had been unduly induced by the police to confess to alleged crimes in court, even though they were innocent. According to these testimonies, the police told the defendants that they would receive lighter sentences if they confessed to their crimes before a judge. Once in court charged with committing a criminal offence, LGBTQ defendants did not receive any directions from judges discouraging them from admitting to crimes they had not committed. Nor did they have access to a lawyer who might have explained their rights to them.” (p. 49)

- “Several respondents said that they have witnessed judges or court staff openly treat LGBTQ people with disdain. Hnin, a staff member of an LGBTQ organization, told researchers: ‘I’ve seen a lot of judges bullying accused LGBTQ persons. The judge will say “you guys are just criminal people.” This is very common.’ Hnin said that, in addition to judges, courtroom staff would mock LGBTQ persons. Other respondents corroborated Hnin Hnin’s observations. For example, one transgender woman reported that the judge presiding over her case and the courtroom staff both derided her. She said, ‘they blamed me [and said] a man should behave as a man.’ Another transgender woman said of the courtroom staff, ‘they jeered me for dressing as a woman; they saw me as a joke.’” (p. 49-50)


- “Burma’s national penal code criminalizes consensual same-sex behavior between adult men. In recent years police have arrested gay men and transgender women assembling in public places, and politicians have called for the ‘education’ of gay people.” (p. 154)

**MEDIA SOURCES**


- “Kyaw Zin Win, a librarian in his 20s, took his own life on Sunday after sharing accounts on Facebook about colleagues mocking his sexuality and forcing him to publicly admit that he was gay.” (p. 1)

- “Gay sex is punishable by up to 10 years in jail in the Southeast Asian country, under British colonial era legislation.” (p. 1)

- “‘LGBT discrimination in the workplace is unfortunately a common practice in Myanmar,’ said Juan Miguel Sanchez Marin, deputy director from the Myanmar’s LGBT+ rights group, Equality Myanmar.” (p. 2)

- “‘Young Myanmar LGBT (people) are specially vulnerable and often left to the tough decision of leading a life of secrecy or face discrimination and violence,’ he added.” (p. 2)

**16. Rik Glauert, Myanmar Is Arresting People for Being Gay Under Colonial-Era Sodomy Law, Gay Star News (Nov. 8, 2018), available at**
<table>
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<tr>
<td></td>
<td>• “At least two recent arrests of LGBTI Myanmar citizens using the country’s anti-gay law has shaken the community.” (p. 1)</td>
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<td>• “Police have reportedly charged a local restaurant owner and a make-up artist, who both reportedly identify as gay, in the last few months.” (p. 1)</td>
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<td>• “Myanmar’s LGBTI community face widespread stigma discrimination. Many people, therefore, live in the closet.” (p. 2)</td>
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<td>• “The LGBTI community has also criticized local media for widely publishing Chen’s accusers’ account of events before the trial concludes.” (p. 3)</td>
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<td>• “Reports have been one-sided and biased against Chen due to his sexuality and his HIV status, they say. Yaya Aye Myat said they supported freedom of expression, but that this reporting may come ‘at the cost of the dignity of the [LGBTI] community’.” (p. 3)</td>
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<td>• “The accused, Aung Myo Htut, aka Addy Chen, is an outspoken LGBTI rights advocates and commonly known to be HIV-positive. . . . Chen was arrested on the same day the man who accused him of sexual assault filed a case against him at a local police station. Chen was charged under Section 377 of the national penal code, which makes same-sex sexual acts illegal, regardless if they were consensual or not. Chen faces of a sentence of between 10 years to life in prison if convicted.” (p. 1)</td>
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<td>• “The media’s portrayal of LGBTI people in Myanmar is unfavorable, adding to deeply rooted social stigma and stereotypes against sexual minorities and people living with HIV/AIDS. LGBTI rights advocates in the country say the portrayal of Chen’s case in the mainstream media is biased against the accused and is very damaging to the LGBTI population as a whole.” (p. 2)</td>
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<td>• “Chen’s family deactivated his Facebook page within a week of his arrest because of an overwhelming number of hate messages, derogatory comments and even death threats that he received.” (p. 2)</td>
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<td>• “Although the mainstream media reports unanimously describe Chen as guilty, the recent court testimony suggests the opposite.” (p. 2)</td>
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<td>• “Media reports also did not report the fact the restaurant manager and witnesses who testified owed a significant amount of money to Chen. They are now postponing payment of these debts due to the trial.” (p. 2)</td>
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<td>• “Chen’s family says his health is now deteriorating in prison. They say he only has limited access to medicine and medical facilities that people with HIV need.” (p. 3)</td>
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<td><strong>Lae Phyu Pyar Myo Myint &amp; Nyein Ei Ei Htwe,</strong> <em>Prejudice and Progress: A Snapshot of LGBT Rights in Myanmar,</em> Myanmar Times (June 1, 2017), <em>available at</em></td>
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- “If a teenage boy acts in a feminine way due to their gender preference, they will be bullied and beaten by people at school. If they report this to the teacher, the same thing may happen,” she said.” (p. 3)  
- “U Aung Myo Min said from his time at Equality Myanmar, he found that members of the lesbian community often have the most negative experiences. ‘He said he had seen cases where lesbians were sexually assaulted in an effort to ‘cure them of their homosexuality’. One lesbian woman that Weekend spoke to on the condition of anonymity said she faced severe workplace discrimination because of her sexual orientation.” (p. 3) |
- “But one of Shin Thant’s most disturbing episodes came at the hands of the Mandalay police. One night in 2012 she was arrested under Section 35c of the Police Act. ‘The police officer set my boyfriend free but detained me,’ she recalled. Shin Thant described an episode of police violence -- which Weekend could not independently verify -- that she called ‘the most shameful of my life.’ ‘I thought to myself, why me? I felt like it was because I am transgender, the officer thinks I deserve to be treated like a criminal.’” (p. 3)  
- “‘My parents beat me when they found out I was dressing like a girl,’ she said. ‘Sometimes my parents threatened to pour acid on me if I wore girl’s clothes but that couldn’t make me stop.’” (p. 3)  
- “As a transgender woman growing up in Mandalay to a traditional Buddhist family, Shin Thant has faced innumerable challenges and discrimination, not the least of which being that her identity card still registers her as male. Throughout her adolescence, Shin Thant hid her gender identity from friends and family.” (p. 2)  
- “‘There are no people who stand for LGBT people. Most people don’t pay attention to the violence we face, like when I was arrested,’ she continued.” (p. 3) |
- “Official discrimination against the LGBTI community, particularly visible LGBTI people such as transgender women, is most visible in targeted police harassments, extortion, and arrests. In 2013, the LGBT community in Myanmar was outraged by a case where a group of gay and transgender people were assaulted by police, arbitrarily arrested, and tortured while in police custody.” (p. 1)  
- “When questioned about the incidence in a parliamentary session in Mandalay, the Border and Security Affairs Minister for Mandalay region, Dr. Myint Kyu, answered: ‘The existence of gay men who assume they are women is unacceptable and therefore we
are constantly taking action to have the gays detained at police stations, educate them, then hand them back to their parents…. [W]e will be including in our operations the area as a special case.’” (p. 2)

- “Hla Myat, the Program Director of Colors Rainbow, observed that there has not been much improvement in how the police treat the LGBTI community quoting that, ‘the government changed but people on the ground, such as the police, never changed’. The legal provisions that have been used over years to justify the arrest of the LGBTI people have also not changed.” (p. 2)

- “Having represented LGBTI clients in court, Zar Li Aye noted that discrimination by authorities is not limited to the police as nuanced prejudice is also visible in the court process where the presumption of innocence does not seem to apply to the LGBTI defendants.” (p. 2)

- “She pointed Heinrich Boell Foundation to an incident in 2016 where Win Htein, a senior aide to Aung San Suu Kyi, told Colors Rainbow, ‘I am not interested (in LGBTI issues). We cannot give priority to that particular issue. We have thousands and thousands of problems, and that gender issue is not important.’” (p. 3)


- “When police in Myanmar’s biggest city Yangon arrested Chew Su Khin, a young transgender woman, for the third time in a year, they removed her hair extensions and set them on fire, stripped her naked and took pictures for their amusement. ‘They made me remove all my clothes and perform sexual acts with other prisoners while they filmed it on their phones with the threat of more violence,’ the slight 20-year-old told the Thomson Reuters Foundation in Yangon’s Bahan township. She had to pay a fine of 35,000 kyat ($27) to be released the next day.” (p. 1)

- “Before that, Chew Su Khin was detained under the so-called ‘shadow law’, which allows police to arrest after sunset anyone they believe is acting suspiciously. She was kept in a male jail cell where she was raped by fellow prisoners as guards looked on.” (p. 1-2)

- “In many cases, LGBT people are sexually assaulted, or beaten up by a group of police, he said. ‘Some of them were even raped by police officers in the police compound, at the back of the police station building under the banana trees,’ he told the Thomson Reuters Foundation.” (p. 3)

- “Campaigners say lesbian, gay, bisexual and transgender (LGBT) people routinely face abuse, violence, intimidation and harassment from police officers who extort money and sexual favours from them in a country where homosexuality is banned.” (p. 2)

- “Leading local LGBT rights group, Colours Rainbow, estimates that police intimidation led to 65 cases of wrongful arrests of LGBT people in three of Myanmar’s 325 townships last year. But the real figure is likely to be much higher because many victims do not report police mistreatment, fearing further arrests, the group’s programme coordinator, Hla Myat Tun, said.” (p. 3)
• “Despite the scale of abuse, justice is seldom pursued, campaigners say.” (p. 4)
TAB 1
# MYANMAR

## THE PENAL CODE

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Using as true a certificate known to be false.

False statement made in declaration which is by law receivable as evidence.

Using as true such declaration knowing it to be false.

Causing disappearance of evidence of offence, or giving false information, to screen offender-
if a capital offence:
if punishable with transportation;
if punishable with less than ten years’ imprisonment.

Intentional omission to give information of offence by person bound to inform.

Giving false information respecting an offence committed.

Destruction of document to prevent its production as evidence.

False personation for purpose of act or proceeding in suit or prosecution.

Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution.

Fraudulent claim to property to prevent its seizure as forfeited or in execution.

Fraudulently suffering decree for sum not due.

Dishonestly making false claim in Court.

Fraudulently obtaining decree for sum not due.

False charge or offence made with intent to injure.

Harbouring offender-
If a capital offence;
If punishable with transportation for life, or with imprisonment.

Taking gift, etc., to screen an offender from punishment- if a capital offence;
If punishable with transportation for life, or with imprisonment.

Offering gift or restoration of property in consideration of screening offender-
If a capital offence;
If punishable with transportation for life, or with imprisonment.

Taking gift to help to recover stolen property, etc.

Harbouring offender who has escaped from custody or whose apprehension has been ordered-
If a capital offence;
If punishable with transportation for life, or with imprisonment.

Penalty for harbouring robbers or dacoits.
Public servant disobeying direction of law with intent to save from punishment or property from forfeiture.

Public servant flaming incorrect record or writing with intent to save person from punishment or property from forfeiture.

Public servant in judicial proceeding corruptly making report, etc., contrary to law.

Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.

Intentional omission to apprehend on the part of public servant bound to apprehend.

Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed.

Escape from confinement or custody negligently suffered by public servant.

Resistance or obstruction by a person to his lawful apprehension.

Resistance or obstruction to lawful apprehension of another person.

Omission to apprehend, or sufferance of escape, on part of public servant, In cases not otherwise provided for.

Resistance or obstruction to lawful apprehension, or escape or rescue, in cases not otherwise provided for.

Unlawful return from transportation.

Violation of condition of remission of punishment.

Intentional insult or interruption to public servant sitting in judicial proceeding.

Personation of a juror or assessor.

CHAPTER XII

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

"Coin" defined.

Coin of the Union.

Counterfeiting coin.

Counterfeiting coin of the Union.

Making or selling instrument for counterfeiting coin.

Making or selling instrument for counterfeiting coin of the Union.

Possession of instrument or material for the purpose of using the same for counterfeiting coin; if coin of the Union.

Abetting in the Union of Burma the counterfeiting out of the Union of Burma of coin.

Import or export of counterfeit coin.

Import or export of counterfeits of the coin of the Union.

Delivery of coin, possessed with knowledge that it is counterfeit.

Delivery of coin of the Union, possessed with knowledge that it is counterfeit.

Delivery of coin as genuine, which, when first possessed, the deliver did not know to be counterfeit.'
242. Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof.
243. Possession of coin of the Union by person who knew it to be counterfeit when he became possessed thereof.
244. Person employed in mint causing coin to be of different weight or composition from that fixed by law.
245. Unlawfully taking coining instrument from mint.
246. Fraudulently or dishonestly diminishing weight or altering composition of coin.
247. Fraudulently or dishonestly diminishing weight or altering composition of coin of the Union.
248. Altering appearance of coin with intent that it shall pass as coin of different description.
249. Altering appearance of coin of the Union with intent that it shall pass as coin of different description.
250. Delivery of coin, possessed with knowledge that it is altered.
251. Delivery of coin of the Union, possessed with knowledge that it is altered.
252. Possession of coin by person who knew it to be altered when he became possessed thereof.
253. Possession of coin of the Union by person who knew it to be altered when he became possessed thereof.
254. Delivery of coin as genuine which, when first possessed, the deliverer did not know to be altered.
255. Counterfeiting Government stamp.
256. Having possession of instrument or material for counterfeiting Government stamp.
257. Making or selling instrument for counterfeiting Government stamp.
258. Sale of counterfeit Government stamp.
259. Having possession of counterfeit Government stamp.
260. Using as genuine a Government stamp known to be counterfeit.
261. Effacing writing from substance bearing Government stamp, or removing from document a stamp used for it, with intent to cause loss to Government.
262. Using Government stamp known to have been before used.
263. Erasure of mark denoting that stamp has been used.
263A. Prohibition of fictitious stamps.

CHAPTER XIII

OF OFFENCES RELATING TO WEIGHTS AND MEASURES

264. Fraudulent use of false instrument for weighing.
265. Fraudulent use of false weight or measure.
266. Being in possession of false weight or measure.
267. Making or selling false weight or measure.
CHAPTER XIV

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS

268. Public nuisance.

269. Negligent act likely to spread infection of disease dangerous to life.

270. Malignant act likely to spread infection of disease dangerous to life.

271. Disobedience to quarantine rule.

272. Adulteration of food or drink intended for sale.

273. Sale of noxious food drink.

274. Adulteration of drugs.

275. Sale of adulterated drugs.

276. Sale of drug as a different drug of preparation.

277. Fouling water of public spring or reservoir.

278. Making atmosphere noxious to health.

279. Rash driving or riding on a public way.

279A. Throwing dangerous article on moving vehicle.

280. Rash navigation of vessel.

281. Exhibition of false light, mark or buoy.

282. Conveying person by water for hire in unsafe or overloaded vessel.

283. Danger or obstruction in public way or line of navigation.

284. Negligent conduct with respect to poisonous substance.

285. Negligent conduct with respect to fire or combustible matter.

286. Negligent conduct with respect to explosive substance.

287. Negligent conduct with respect to machinery.

288. Negligent conduct with respect to pulling down or repairing buildings.

289. Negligent conduct with respect to animal.

290. Punishment for public nuisance in cases not otherwise provided for.

291. Continuance of nuisance after injunction to discontinue.

292. Sale, etc., of obscene books, etc.

293. Sale, etc., of obscene objects to young person.

294. Obscene acts and songs.
294A. Keeping lottery office.

CHAPTER XV

OF OFFENCES RELATING TO RELIGION

295. Injuring or defiling place of worship, with intent to insult the religion of any class.

295A. Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.

296. Disturbing religious assembly.

297. Trespassing on burial - places, etc.

298. Uttering words, etc; with deliberate intent to wound religious feelings.

CHAPTER XVI

OF OFFENCES AFFECTING THE HUMAN BODY

Of Offences affecting Life

299. Culpable homicide.

300. Murder.

300A. Explanations of culpable homicide.

301. Culpable homicide by causing death of person other than person whose death was intended.

302. Punishment for murder.

303. * * * *

304. Punishment for culpable homicide not amounting to murder.

304A. Causing death by negligence.

305. Abetment of suicide of child or insane person.

306. Abetment of suicide.

307. Attempt to murder.

308. Attempt to commit culpable homicide.

309. Attempt to commit suicide.

310. Thug.

311. Punishment.

Of the causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births

312. Causing miscarriage

312A. Sterilization of a woman by Surgery.

312B. Sterilization of a man by Surgery.

312C. Allowing one Self to be Sterilized by Surgery.
312D. Death caused by Sterilization by Surgery.
313. Causing miscarriage without woman’s consent.
314. Death caused by act done with intent to cause miscarriage. If act done without woman’s consent.
315. Act done with intent to prevent child being born alive or to cause it to die after birth.
316. Causing death of quick unborn child by doing act likely to cause death of pregnant woman.
317. Exposure and abandonment of child under twelve years by parent or person having care of it.
318. Concealment of birth by secret disposal of dead body.

Of Hurt

319. Hurt.
320. Grievous hurt.
321. Voluntarily causing hurt.
322. Voluntarily causing grievous hurt.
323. Punishment for voluntarily causing hurt.
324. Voluntarily causing hurt by dangerous weapons or means.
325. Punishment for voluntarily causing grievous hurt.
326. Voluntarily causing grievous hurt by dangerous weapons or means.
327. Voluntarily causing hurt to extort property, or to constrain to illegal act.
328. Causing hurt by means of poison etc., with intent to commit an offence.
329. Voluntarily causing grievous hurt to extort property, or to compel restoration of property.
330. Voluntarily causing hurt to extort confession, or to compel restoration of property.
331. Voluntarily causing grievous hurt to extort confession, or to compel restoration of property.
332. Voluntarily causing hurt to deter public servant from his duty.
333. Voluntarily causing grievous hurt to deter public servant from his duty.
334. Voluntarily causing hurt on provocation.
335. Voluntarily causing grievous hurt on provocation.
336. Act endangering life or personal safety of others.
337. Causing hurt by act endangering life or personal safety of others.
338. Causing grievous hurt by act endangering life or personal safety others.

Of Wrongful Restraint and Wrongful Confinement

339. Wrongful restraint.
340. Wrongful confinement.
341. Punishment for wrongful restraint.
342. Punishment for wrongful confinement.
343. Wrongful confinement for three or more days.
344. Wrongful confinement for ten or more days.
345. Wrongful confinement of person for whose liberation writ has been issued.
347. Wrongful confinement to extort property, or constrain to illegal act.
348. Wrongful confinement to extort confession, or compel restoration of property.

Of Criminal Force and Assault

349. Force.
350. Criminal force.
351. Assault.
352. Punishment for assault or criminal force otherwise than on grave provocation.
353. Assault or criminal force to deter public servant from discharge of his duty.
354. Assault or criminal force to woman with intent to outrage her modesty.
355. Assault or criminal force with intent to dishonour person, otherwise than on grave provocation.
356. Assault or criminal force in attempt to commit theft of property. carried by a person.
357. Assault or criminal force in attempt wrongfully to confine a person.
358. Assault or criminal force on grave provocation.

Of Kidnapping, Abduction, Slavery and Forced Labour

359. Kidnapping.
360. Kidnapping from the Union of Burma.
361. Kidnapping from lawful guardianship.
362. Abduction.
363. Punishment for kidnapping.
364. Kidnapping or abducting in order to murder.
365. Kidnapping or abduction with intent secretly and wrongfully to confine person.
366. Kidnapping, abducting or inducing woman to compel her marriage, etc.
366A. Procuration of minor girl.
366B. Importation of girl from foreign country.
367. Kidnapping or abducting in order to subject person to grievous hurt slavery, etc.
368. Wrongfully concealing or keeping in confinement kidnapped or abducted person.
369. Kidnapping or abducting child under ten years with intent to steal from its person.
370. Buying or disposing of any person as a slave.
371. Habitual dealing in slaves.
372. Selling minor for purposes of prostitution, etc.
373. Buying minor for purposes of prostitution, etc.
374. Unlawful compulsory labour.

Of Rape

375. Rape.
376. Punishment for rape.

Of Unnatural Offences

377. Unnatural offences.

CHAPTER XVII

OF OFFENCE AGAINST PROPERTY

Of Theft

378. Theft.
379. Punishment for theft.
380. Theft in dwelling - house, etc.
381. Theft by clerk or servant of property in possession of master.
382. Theft after preparation made for causing death, hurt or restraint, in order to the committing of the theft.

Of Extortion

383. Extortion.
384. Punishment for extortion.
385. Putting person in fear of injury in order to commit extortion.
386. Extortion by putting a person in fear of death or grievous hurt.
387. Putting person in fear of death or of grievous hurt, in order to commit extortion.
Explanation 2.-- "Illicit intercourse" has the same meaning as in section 372.

374. Whoever unlawfully compels any person to labour against the will of that person shall be punished with imprisonment, of either description for a term which may extend to one year, or with fine, or with both.

Of Rape

375. A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions

First.-- Against her will.

Secondly.-- Without her consent.

Thirdly-- With her consent, when her consent has been obtained by putting her in fear of death or of hurt.

Fourthly. -- With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. -- —With or without her consent, when she is under fourteen years.

Explanation.-- Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.-- Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape.

376. Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Of Unnatural Offences

377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. (Back)
BURMA 2019 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Burma has a quasi-parliamentary system of government in which the national parliament selects the president and constitutional provisions grant one-quarter of parliamentary seats to active-duty military appointees. The military also has the authority to appoint the ministers of defense, home affairs, and border affairs and one of two vice presidents, as well as to assume power over all branches of the government should the president declare a national state of emergency. In 2015 the country held nationwide parliamentary elections that the public widely accepted as a credible reflection of the will of the people. The National League for Democracy (NLD) party leader Aung San Suu Kyi was the civilian government’s de facto leader and, due to constitutional provisions preventing her from becoming president, remained in the position of state counsellor.

The Myanmar Police Force (MPF), under the Ministry of Home Affairs (led by an active-duty general), is responsible for internal security. The Border Guard Police is administratively part of the MPF but operationally distinct. The armed forces under the Ministry of Defense are responsible for external security but are also engaged extensively in internal security, including combat against ethnic armed groups. Under the constitution civilian authorities have no authority over the security forces; the armed forces commander in chief, Senior General Min Aung Hlaing, maintained effective control over the security forces.

Extreme repression of and discrimination against the minority Rohingya population, who are predominantly Muslim, continued in Rakhine State. Intense fighting between the military and the ethnic-Rakhine Arakan Army (AA) that escalated in January displaced thousands more civilians, further disrupted humanitarian access to vulnerable populations, and resulted in serious abuses of civilian populations. Fighting between the military and ethnic armed groups in northern Shan State, as well as fighting there among ethnic armed groups, temporarily displaced thousands of persons and resulted in abuses, including reports of civilian deaths and forced recruitment by the ethnic armed groups.

Significant human rights issues included: reports of extrajudicial and arbitrary killings by security forces; enforced disappearance by security forces; torture and rape and other forms of sexual violence by security forces; arbitrary detention by the government; harsh and sometimes life-threatening prison conditions; political prisoners; arbitrary or unlawful interference with privacy; significant problems
with the independence of the judiciary; severe restrictions on free expression including arbitrary arrest and prosecution of journalists, and criminal libel laws; substantial interference with the rights of peaceful assembly and freedom of association, including arrests of peaceful protesters and restrictions on civil society activity; severe restrictions on religious freedom; significant restrictions on freedom of movement, in particular for Rohingya; significant acts of corruption by some officials; some unlawful recruitment and use of child soldiers; trafficking in persons; crimes involving violence or threats targeting members of national, ethnic, and religious minorities; laws criminalizing consensual same-sex sexual conduct between adults, although those laws were rarely enforced; and the use of forced and child labor.

There continued to be almost complete impunity for past and continuing abuses by the military. In a few cases the government took limited actions to prosecute or punish officials responsible for abuses, although in ways that were not commensurate with the seriousness of the crime.

Some armed ethnic groups committed human rights abuses, including killings, unlawful use of child soldiers, forced labor of adults and children, and failure to protect civilians in conflict zones. These abuses rarely resulted in investigations or prosecutions.

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

There were many reports security forces committed arbitrary or unlawful killings (see also section 1.g.).

Security forces used excessive and sometimes lethal force against civilians. On May 2, soldiers shot and killed eight of 200 villagers detained for suspected ties to the AA in northern Rakhine State’s Rathedaung Township.

There were reports of suspects in custody dying as a result of police mistreatment. On June 2, Tun Myint Win was arrested by police for allegedly participating in a protest against the building of a cement factory. He was sent to Oboe Prison in Mandalay and died on June 5; his family attributed his death to police abuse during his detention. On June 13, Tun Myint Win’s mother was also charged with
protesting, and as of November her case continued. Through October, 15 persons died in military detention in Rakhine State.

The trial of four individuals charged in the death of Ko Ni, a prominent Muslim lawyer and adviser to Aung San Suu Kyi who was assassinated outside Rangoon’s international airport in 2017, concluded on February 15 with the conviction of four men. As of October the ostensible organizer was yet to be found. Civil society groups and religious groups noted Ko Ni’s death had a chilling effect on lawyers working for constitutional reform and accountability for military abuses, as well as on Muslims fighting for improved treatment.

On May 6, seven soldiers convicted of the murder of 10 Rohingya men and boys in Inn Dinn during the 2017 military crackdown were released after serving less than a year of their 10-year prison sentence.

Arbitrary and unlawful killings related to internal conflict also occurred (see section 1.g.).

b. Disappearance

There were reports of disappearances by security forces.

Amnesty International documented the military’s enforced disappearance of six men--one ethnic Mro and five ethnic Rakhine--in mid-February.

Disappearances related to internal conflict also occurred (see section 1.g.).

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits torture; however, members of security forces reportedly tortured and otherwise abused prisoners, detainees, and other citizens and stateless persons in incidents not related to armed conflict. Such incidents occurred, for example, in Rakhine. Authorities generally took no action to investigate incidents or punish alleged perpetrators.

The government did not launch any investigation into reports of sexual violence by the military from this or prior years.
Two soldiers raped and tortured an ethnic Ta’ang woman on May 10 in Namhsan Township, Shan State. On March 18, approximately 150 soldiers entered a village near Mrauk U in Rakhine State and rounded up young men hiding in the monastery with other villagers. The men were separated out, stripped naked, and forced to do jumping exercises and were beaten, while being asked about the AA.

Security forces reportedly subjected detainees to harsh interrogation techniques designed to intimidate and disorient, including severe beatings and deprivation of food, water, and sleep. Human rights groups reported incidents of torture by security forces and some ethnic armed groups in ethnic minority areas.

From August 8 to 21, a young man accused of being an AA member was held incommunicado and subjected to electric shocks by soldiers, forcing him to confess to having ties with the AA, according to the United Nations.

**Prison and Detention Center Conditions**

There were continued reports that conditions in prisons, labor camps, and military detention facilities were harsh and sometimes life threatening due to overcrowding, degrading treatment, and inadequate access to medical care and basic needs, including food, shelter, and hygiene. Observers noted some minor improvement in more centrally located prisons.

The Ministry of Home Affairs Department of Corrections operates the prison and labor camp system and continued to significantly restrict access by international organizations--other than the International Committee of the Red Cross (ICRC)--to prison and detention facilities generally.

The military did not permit access to its detention facilities.

**Physical Conditions:** There were an estimated 47 prisons and 48 labor camps, the latter referred to by the government as “agriculture and livestock breeding career training centers” and “manufacturing centers.” More than 20,000 inmates were serving their sentences in these labor camps across the country. Authorities reportedly sent prisoners whose sentences did not include “hard labor” to labor camps in contravention of the law and rented out prisoners as labor to private companies. In spite of reforms in recent years, conditions at the camps remained life threatening for some, especially at 18 camps where prisoners worked as miners.
A prominent human rights group estimated there were approximately 100,000 prisoners. Women and men were held separately. Overcrowding was reportedly a serious problem in many prisons and labor camps; a human rights group reported that occupancy at the country’s largest prison was more than double capacity. Some prisons held pretrial detainees together with convicted prisoners. Authorities held some political prisoners separately from common criminals, but political prisoners arrested in land rights disputes were generally held together with common criminals.

Bedding was often inadequate and sometimes consisted of a single mat, wooden platform, or laminated plastic sheet on a concrete floor. Prisoners did not always have access to potable water. In many cases family members had to supplement prisoners’ official rations, medicine, and basic necessities. Inmates reportedly paid wardens for necessities, including clean water, prison uniforms, plates, cups, and utensils.

Medical care was inadequate and reportedly contributed to deaths in custody. Prisoners suffered from health problems, including malaria, heart disease, high blood pressure, tuberculosis, skin diseases, and stomach problems, caused or exacerbated by unhygienic conditions and spoiled food. Former prisoners also complained of poorly maintained physical structures that provided no protection from the elements and had rodent, snake, and mold infestation.

Prison conditions in Rakhine State were reportedly among the worst, with hundreds of Rohingya and ethnic-Rakhine subjected to torture and abuse by state prison and security officials.

Administration: Some prisons prevented full adherence to religious codes for prisoners, ostensibly due to space restrictions and security concerns. For example, imprisoned monks reported authorities denied them permission to observe Buddhist holy days, wear robes, shave their heads, or eat on a schedule compatible with the monastic code. Some authorities continued to cite security considerations to deny permission for Muslim prisoners to pray together as a group, as is the practice for Friday prayers and during Ramadan.

Prisoners and detainees could sometimes submit complaints to judicial authorities without censorship or negative repercussions.

Independent Monitoring: The ICRC had conditional access to all prisons and labor camps; it did not have access to military detention sites. With prior approval from
the Prison Department, it could visit all prison and labor camps twice monthly but could not meet privately with prisoners. The ICRC reported its findings through a strictly confidential bilateral dialogue with prison authorities. These reports were neither public nor shared with any other party.

**Improvements:** The UN Office on Drugs and Crime ran a program aimed at strengthening prison health systems. It included implementing the Standard Operating Procedures on Healthcare in Prisons, launched in 2018, to provide training to medical staff working on drug treatment and mental health assistance. The program continued to provide comprehensive support to prisons in Rangoon, Mandalay, Myitkyina, and Lashio.

d. Arbitrary Arrest or Detention

The law does not prohibit arbitrary arrest, and the government continued to arrest persons, often from ethnic and religious minorities, and notably in Rakhine State, on an arbitrary basis.

Amnesty International documented seven cases of arbitrary arrest in Rakhine State in the first half of the year. The arrests were exclusively of men, usually ethnic Rakhine men of fighting age, and were often accompanied by torture and other mistreatment aimed at obtaining information about the AA.

The law allows the government to extend sentences after prisoners complete their original sentence. The Minister of Home Affairs may extend a prison sentence unilaterally by two months on six separate occasions, for a total extension of one year.

The law allows authorities to order detention without charge or trial of anyone they believe is performing or might perform any act that endangers the sovereignty and security of the state or public peace and tranquility. The civilian government and the military continued to interpret these laws broadly and used them arbitrarily to detain activists, student leaders, farmers, journalists, political staff, and human rights defenders.

Legal mechanisms exist to investigate abuses by security forces but were seldom used and generally perceived to be ineffective.

**Arrest Procedures and Treatment of Detainees**
Personnel from the Office of the Chief of Military Security Affairs and police commonly conducted searches and made arrests at will, despite the law generally requiring warrants.

By law authorities may hold suspects in pretrial detention for two weeks (with a possible two-week extension) before bringing them before a judge or informing them of the charges against them. Lawyers noted police regularly detained suspects for the legally mandated period, failed to file a charge, then detained them for a series of two-week periods with trips to the judge in between.

The law does grant detainees the right to consult an attorney, but in some cases authorities refused to allow suspects to meet with a lawyer. In May 2018 the government amended the law to provide access to fair and equal legal aid based on international standards and to ensure legal aid workers could operate independently and with legal protection. Through October the legal aid program handled 132 cases, mostly in Shan and Mon States.

There is a functioning bail system, but bribery was a common substitute for bail. Bail is commonly offered in criminal cases, but defendants were often required to attend numerous pretrial hearings before bail was granted. In some cases the government held detainees incommunicado. There were reports of authorities not informing family members of the arrests of persons in a timely manner, not telling them of their whereabouts, and often denying them the right to see prisoners in a timely manner.

Arbitrary Arrest: There were reports of arbitrary arrests, including detention by the military in conflict areas. Amnesty International further documented seven cases of arbitrary arrest in Rakhine State in the first half of year. These arrests were exclusively of men, usually ethnic Rakhine men of fighting age, and were often accompanied by torture and other mistreatment aimed at obtaining information about the AA.

Pretrial Detention: Judges and police sometimes colluded to extend detentions. According to lawyers, arbitrary and lengthy pretrial detentions resulted from lengthy legal procedures, large numbers of detainees, judicial inefficiency, widespread corruption, and staff shortages. Periods of detention prior to and during trials sometimes equaled or exceeded the sentence that would result from a guilty conviction.
Detainee’s Ability to Challenge Lawfulness before a Court: Security forces often arrested and detained individuals without following proper procedures, in violation of national law. Arbitrary arrest or detention was sometimes used to suppress political dissent.

e. Denial of Fair Public Trial

The law calls for an independent judiciary, although the government manipulated the courts for political ends and sometimes deprived citizens of due process and the right to a fair trial, particularly in freedom of expression cases.

The criminal justice system was overburdened by a high number of cases lodged against small-time drug users, who constituted an estimated 50 percent of caseloads in the courts. Corruption remained a significant problem. According to civil society organizations, officials at all levels received illegal payments at all stages of the legal process for purposes ranging from influencing routine matters, such as access to a detainee in police custody, to substantive decisions, such as fixing the outcome of a case.

The military and the government directly and indirectly exerted influence over the outcome of cases, often through overly broad or arbitrary application of legislation on speech or association. On September 20, a former army captain, U Nay Myo Zin, was sentenced to one year in prison for his critical public remarks in April about the military leadership and in support of constitutional reform.

Trial Procedures

The law provides for the right to a fair and public trial, but also grants broad exceptions, effectively allowing the government to violate these rights at will. In ordinary criminal cases, the government allowed courts to operate independently, and courts generally respected some basic due process rights such as allowing a defense and appeal. In practice defendants do not enjoy a presumption of innocence or the rights to be informed promptly and in detail of the charges against them; to be present at their trial; to free interpretation; or, except in capital cases, to consult an attorney of their choice or have one provided at government expense. There is no right to adequate time and facilities to prepare a defense; defense attorneys in criminal cases generally had 15 days to prepare for trial. In May 2018 the Union Attorney General’s Office adopted a fair trial standards manual, but because of the low standard of legal education, prosecutors, defense attorneys, and judges were often unfamiliar with precedent, case law, and basic legal procedures.
While no legal provision allows for coerced testimony or confessions of defendants to be used in court, authorities have reportedly engaged in both practices. There were reports of official coercion to plead guilty despite a lack of evidence, with promises of reduced sentences to defendants who did so. There were reports of coercion to plead guilty despite a lack of evidence with promises of reduced sentences to defendants who did so.

Although the law provides that ordinary criminal cases should be open to the public, in practice members of the public with no direct involvement in a case were denied entry to courts. There is no right to confront witnesses and present evidence, although defense attorneys could sometimes call witnesses and conduct cross-examinations. Prodemocracy activists generally were able to retain counsel, but other defendants’ access to counsel was inadequate.

Local civil society groups noted the public was largely unaware of its legal rights, and there were too few lawyers to meet public needs.

**Political Prisoners and Detainees**

The government continued to detain and arrest journalists, activists, and critics of the government and the military. According to civil society groups that use a definition of political prisoners that includes those who may have engaged in acts of violence and excludes some charges related to freedom of expression and religion, there were 50 convicted political prisoners as of October. Another 580 individuals were facing trial for their political views, of whom 179 were detained and the rest were out on bail, according to the Assistance Association for Political Prisoners.

On March 19, Aye Maung, chairman of the Arakan National Party, was sentenced to 20 years in prison for high treason and another two years for defamation of the state. He was arrested and charged in January 2018 after his public remarks at the commemoration of the 233rd anniversary of the fall of the Arakan Kingdom—remarks that allegedly expressed and encouraged support for the rebel AA.

Aung Ko Htway, jailed in March 2018 for defaming the military following an interview he gave to an international media outlet on his experiences as a former child soldier, was released in September.

Many former political prisoners experienced significant surveillance and restrictions following their release, including the inability to resume studies.
undertaken prior to incarceration, secure travel documents, or obtain other documents related to identity or ownership of land.

**Civil Judicial Procedures and Remedies**

No specific mechanisms or laws provide for civil remedies for human rights violations; however, complainants may use provisions of the penal code and laws of civil procedure to seek civil remedies. Individuals and organizations may not appeal an adverse decision to regional human rights bodies.

**Property Restitution**

Under the constitution the state owns all land, although the law allows for registration and sale of private land ownership rights. Authorities and private-sector organizations seized land during the year; restitution was very limited, despite the law. In Shan State communities were further concerned by the expansion of private-sector investment for coal mining on the seized land. Protests in September stopped studies for a copper mine in Sagaing Region.

The law provides for compensation when the government acquires land for a public purpose; however, civil society groups criticized the lack of safeguards in the law and said that compensation was infrequent and inadequate in such cases. The government can also declare land unused and assign it to foreign investors or designate it for other uses.

There is no judicial review of land ownership or confiscation decisions; administrative bodies subject to political control by the national government make final decisions on land use and registration. Researchers and civil society groups said land laws facilitate land confiscation without providing adequate procedural protections. In some cases advance notice of confiscations was not given.

In 2018 land-law amendments undercut provisions that favored recognition of traditional land-tenure systems. In late 2018 the Ministry of Agriculture announced that small holders had six months to register their land or risk becoming trespassers on their own land. If rigorously enforced, this order could result in millions of persons losing rights of access to their lands. Awareness of the amendments remained low in affected communities.

Police arrested farmers during the year for violating the land-use law. In September a court in Ayeyarwaddy Region sentenced eight farmers, who claimed
to be the original and uncompensated owners of land seized as vacant and transferred to a private company, to two years in prison for farming the land. During the year many other farmers were awaiting trial in similar cases.

Civil society groups raised concerns that the vacant-land law posed a particularly serious threat to traditional collective land ownership patterns prevalent in areas inhabited by ethnic minority groups. Ethnic and civil society groups staged protests during the year in Kachin and Karen States, Mandalay Region, and elsewhere over the government’s land policies.

Observers were concerned that the law could also be used to prevent displaced Rohingya from returning to their land or receiving adequate compensation. Officials stated that burned land would revert to the government and posted signs in several instances to that effect. Moreover, following the military campaign in Rakhine State, authorities bulldozed villages, demolished structures, and cleared vegetation to build security bases and other structures. Because of this and because the land law also requires that land not used productively within four years revert to the government, civil society groups saw little progress in returning land confiscated by the government.

The General Administration Department under the Ministry of the Office of the Union Government oversees land return. Adequate compensation was not provided to the many farmers and rural communities whose land was confiscated without due process during the former military regime, including by the Myanmar Oil and Gas Enterprise, the Myanmar Ports Authority, and the military itself.

**f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence**

The law protects the privacy and security of the home and property, but these protections were poorly enforced. The law does not protect the privacy of correspondence or other communications, and activists reported authorities routinely conducted surveillance of civil society organizations’ operations.

Some activists reported the government systematically monitored citizens’ travel and closely monitored the activities of politically active persons, while others reported they did not experience any such invasions of privacy. Special Branch police, official intelligence networks, and other administrative systems (see section 2.d.) were reported agents of such surveillance.
The law restricts the ability of Buddhist women to marry non-Buddhist men by imposing a requirement of public notification prior to any such marriage and allowing for objections to the marriage to be raised in court, although the law was rarely enforced.

In Rakhine State, local authorities prohibited Rohingya families from having more than two children, although this was inconsistently enforced. Authorities there also required Rohingya to obtain a permit to marry officially, a step not required of other ethnicities. Waiting times for the permit could exceed one year, and bribes usually were required. Unauthorized marriages could result in prosecution of Rohingya men under the penal code, which prohibits a man from “deceitfully” marry a woman, and could result in a prison sentence or fine.

There were reports of regular, unannounced nighttime household checks in northern Rakhine State and in other areas.

g. Abuses in Internal Conflict

There were long-running armed internal conflicts across the country. Reports of killings, disappearances, beatings, torture, forced labor, forced relocations, the use of child soldiers, excessive use of force, disregard for civilian life, sexual violence, and other abuses committed by government forces and armed opposition and rebel groups were common. Within the military, impunity for abuses and crimes generally continued, although the military took disciplinary action in some cases.

In December 2018 the military declared a four-month unilateral ceasefire covering Kachin and Shan States; it was extended to September 21. The ceasefire was partly responsible for a reduction in violence in Kachin State, although fighting, including military violations of the cease-fire, continued in northern Shan State and there was a significant upturn in violence in August. Conflict continued in central and northern Rakhine State between the military and the Rakhine-ethnic AA.

Fighting in Kachin continued throughout the year, resulting in civilian casualties, credible reports of military abuses of civilians, and the displacement of large numbers of people; fighting also affected the Paletwa Township in southern Chin State. In Shan State, clashes continued between and among various groups and the military, with credible allegations of abuse of civilian populations by both the military and ethnic armed groups. In most of the southeast, pervasive and organized violent abuse of civilian populations in ethnic minority areas declined,
largely due to a number of bilateral cease-fire agreements reached with ethnic armed groups.

**Killings**: Military officials reportedly killed, tortured, and otherwise seriously abused civilians in conflict areas without public inquiry or accountability. Following ethnic armed groups’ attacks on the military, the military reportedly often directed its attacks against civilians, resulting in civilian deaths. Some ethnic armed groups, most notably the Ta’ang National Liberation Army (TNLA), allegedly killed civilians suspected of being members of rival armed groups. The AA allegedly killed civilians suspected of providing information to the military.

On September 10, two decapitated male bodies were found in the middle of a market in Kan Htaung Gyi town in Rakhine State’s Myebon Township. The incident brought to 13 the number of unsolved murders of civilians in northern Rakhine State during the year. The military and the AA accused each other of being responsible.

On August 15, the TNLA, likely with some support from allied ethnic armed groups, attacked military and police bases, killing 13 security personnel. The military and TNLA were responsible for artillery and other fire that resulted in the deaths of civilians, including five civilians (three of them children) killed on August 31 during fighting near Kutkai. Each side blamed the other for the civilian deaths.

In September the military announced its court of inquiry would begin court-martial proceedings against an unspecified number of soldiers for “weakness in following instructions” in connection with 2017 clashes with the Arakan Rohingya Salvation Army in Gu Dar Pyin, Rakhine State. A military spokesperson stated the court martial concerned violations of the military’s rules of engagement and was not connected to press reports of a mass grave of Rohingya men in Gu Dar Pyin.

**Abductions**: Government soldiers and nonstate armed groups abducted villagers in conflict areas. There were credible reports that the military abducted individuals in Rakhine State in March and kept them incommunicado. In February the AA abducted civilians from Paletwa, Chin State, and took them into Bangladesh; they returned the civilians months later to their homes. On September 23, government soldiers in Shan State reportedly arrested 14 civilians, including four girls, and forced them to join their patrol, with one civilian ordered to march in front of the column formation.
Physical Abuse, Punishment, and Torture: Nongovernmental organization (NGO) reports provided credible information that the military engaged in torture and beating of civilians alleged to be working with or perceived to be sympathetic to ethnic armed groups in Rakhine State. There were also continued reports of forced labor and forced recruitment by the United Wa State Army (UWSA), the Restoration Council of Shan State, and the TNLA.

Reports continued that the military forced civilians to carry supplies or serve in other support roles in conflict areas such as northern Shan, southern Chin and Rakhine States.

The United Nations, media, and NGOs during the year documented the widespread use of rape and sexual violence by the military in Rakhine, Kachin, and Shan States since at least 2011.

Civilians, armed actors, and NGOs operating inside the country and along the border reported continued landmine use by the military and armed groups.

Child Soldiers: The military and four armed groups--the Kachin Independence Army, the armed wing of the Kachin Independence Organization; the Karen National Liberation Army, the armed wing of the Karen National Union; the TNLA; and the UWSA--were listed in the UN secretary-general’s 2019 report on Children and Armed Conflict as perpetrators of the recruitment and use of children.

The penalties imposed for recruiting and using child soldiers were not commensurate with the seriousness of these crimes. In past years most of these cases reportedly culminated in reprimands, demotions, relocations, fines, or decreases in pensions, penalties significantly less than those prescribed by criminal law. Despite military directives prohibiting the use of children, some children were still recruited. There were reports middlemen helped bypass age verification procedures to allow the enrollment of underage recruits, sometimes at the request of the recruits’ families. The Ministry of Defense undertook to investigate military personnel implicated in recruiting child soldiers. There was, however, no evidence that the government prosecuted soldiers in civilian courts for recruitment or use of child soldiers.

The military generally allowed UN monitors to inspect for compliance with agreed-upon procedures for ending the recruitment of children and identifying and demobilizing those serving in armed conflict. There were, however, some delays in securing official permissions, and access to conflict areas was generally denied.
The government continued to prevent ethnic armed groups from signing joint plans of action with the United Nations to end the recruitment of child soldiers and to demobilize and rehabilitate those already serving.

Also see the Department of State’s Trafficking in Persons Report at https://www.state.gov/trafficking-in-persons-report/.

Other Conflict-related Abuse: The government restricted the passage of relief supplies and access by international humanitarian organizations to conflict-affected areas of Rakhine, Kachin, and Shan States. The government regularly denied access to the United Nations, international NGOs, and diplomatic missions, asserting the military could not ensure their security or by claiming that humanitarian assistance would benefit ethnic armed group forces. In some cases the military allowed gradual access as government forces regained control over contested areas.

As of October there were an estimated 40,000 internally displaced persons (IDPs) in areas of the country outside government control, primarily in northern Kachin State. Fighting in Rakhine and Shan States displaced tens of thousands of persons during the year, compounding the long-term displacement of conflict-affected communities in these areas. Most of those newly displaced in Shan State, however, were able to return home during the year. Locally based organizations had some access to IDPs in areas outside government control, but the military increased restrictions on their access, including through threats of prosecution. The military has largely restricted access to IDPs and Rohingya in general in the conflict-affected areas of Rakhine State to only the Red Cross and the World Food Program, resulting in unmet humanitarian needs among these IDPs. The government has not granted the United Nations or other international organizations humanitarian access to areas in Kachin State outside of military control since June 2016.

More than 107,000 persons remained displaced by conflict in Kachin and Shan States. In some cases villagers driven from their homes fled into the forest, frequently in heavily mined areas, without adequate food, security, or basic medical care (see section 2.d.).

Section 2. Respect for Civil liberties, including:

a. Freedom of Expression, including for the Press
The constitution provides that “every citizen shall be at liberty in the exercise of expressing and publishing freely their convictions and opinions,” but it contains the broad and ambiguous caveat that exercise of these rights must “not be contrary to the laws enacted for national security, prevalence of law and order, community peace and tranquility, or public order and morality.” Threats against and arrests of journalists continued during the year.

**Freedom of Expression:** Freedom of expression was more restricted than in 2018. Authorities arrested, detained, convicted, intimidated, and imprisoned citizens for expressing political opinions critical of the government and the military, generally under charges of defamation, incitement, protesting without a permit, or violating national security laws. This included the detentions and trials of activists and ordinary citizens. The government applied laws carrying more severe punishments than in the past, including laws enabling years-long prison sentences.

The criminal defamation clause under the telecommunications law was frequently used to restrict freedom of expression. Several critics of the government and the military faced charges under this law. On August 29, for example, noted filmmaker and human rights activist Min Htin Ko Ko Gyi was sentenced to one year in prison for Facebook posts that were critical of the military’s role in politics; he also faced other potential charges.

Five members of the Peacock Generation performance troupe were detained without bail for a satirical performance during the April New Year holiday criticizing the military’s role in politics. On October 30, five members were found guilty of defaming the military and were sentenced to one year of labor. As of November the case for other charges continued.

Military officers brought or sought to bring charges against several prominent religious figures based on their criticism of the military, including multiple Buddhist monks and the prominent Kachin Baptist reverend, Hkalam Samson. Authorities dropped the complaint against Samson, but the cases against at least two prominent, protolerance monks critical of the military and Bamar Buddhist ultranationalism, Sein Ti Ta and Myawaddy Sayadaw, remained open as of November.

A variety of laws were used to censor or prosecute public dissent. On June 19 and 21, the military used a privacy law to press charges against 12 individuals, including reporters, for allegedly aiding and abetting trespass on seized land in Kayah State. As of November the case continued.
Some persons remained wary of speaking openly about politically sensitive topics due to monitoring and harassment by security services and ultranationalist Buddhist groups. Police continued to monitor politicians, journalists, writers, and diplomats.

Press and Media, Including Online Media: Independent media were active and able to operate, despite many official and unofficial restrictions. The government continued to permit the publication of privately owned daily newspapers. As of July authorities approved 46 dailies; however, press freedom declined compared with 2018, and the security forces detained journalists under laws carrying more severe sentences than those it used in previous years.

Local media could cover human rights and political issues, including, for example, democratic reform and international investigations of the 2017 ethnic cleansing in Rakhine State, although they observed some self-censorship on these subjects. Official action or threats of such action increased against journalists reporting on conflict in Rakhine State involving the AA. The government generally permitted media outlets to cover protests and civil conflict, topics not reported widely in state-run media.

The military continued to practice zero tolerance of perceived critical media commentary through prosecution by civil authorities. Members of the ruling party increasingly prosecuted journalists perceived as critical.

In May the president granted amnesty to two Reuters reporters detained in late 2017 and sentenced in 2018 to seven years in prison under the Official Secrets Act for their investigation of security forces’ activities in northern Rakhine State.

On September 30, a court ruled a defamation case could again be heard against Myanmar Now editor in chief Swe Win. Charges were dismissed on July 2 after the plaintiff, Wirathu, repeatedly failed to appear in court; as of November the case continued. Swe Win was arrested in 2017 for allegedly sharing a Facebook post suggesting the monk Wirathu, a prominent Ma Ba Tha (a local Buddhist organization) figurehead, violated the monastic code of conduct by making statements commending the 2017 assassination of well known Muslim constitutional lawyer Ko Ni (see section 1.a.).

The government relaxation of its monopoly and control of domestic television broadcasting continued, with five private companies broadcasting using Ministry
of Information platforms. Many media outlets reported the cost of applying for and maintaining a television channel was prohibitive. The government offered three public channels--two controlled by the Ministry of Information and one by the military; the ministry channels regularly aired the military’s content. Two private companies that had strong links to the previous military regime continued to broadcast six free-to-air channels. The government allowed the general population to register satellite television receivers for a fee, but the cost was prohibitive for most persons outside of urban areas. The military, government, and government-linked businesspersons controlled the eight privately or quasi-governmentally owned FM radio stations.

**Violence and Harassment:** Nationalist groups continued to target journalists who criticized government policy on intercommunal and Rakhine State issues. Businesspersons engaged in illegal enterprises, sometimes together with local authorities, also harassed and threatened journalists reporting on their activities, including with the threat of legal action. Officials continued to monitor journalists in various parts of the country.

**Censorship or Content Restrictions:** Although generally not enforced, laws prohibit citizens from electronically passing information about the country to foreign media, exposing journalists who reported for or cooperated with international media to potential harassment, intimidation, and arrest. There were no reports of overt prepublication censorship, and the government allowed open discussion of some sensitive political and economic topics, but incidents of legal action against publications that criticized the military or the government heightened concern among local journalists and increased self-censorship.

Self-censorship was common, particularly on issues related to Buddhist extremism, the military, the situation in Rakhine State, and the peace process. Journalists reported that such self-censorship became more pronounced after the 2018 trial and conviction of two Reuters journalists. The government ordered media outlets to use certain terms and themes to describe the situation in northern Rakhine State and threatened penalties against journalists who did not follow the government’s guidance, which exacerbated already high levels of self-censorship on this topic. Authorities prevented journalists’ access to northern Rakhine State except on government-organized trips that participants reported to be tightly controlled and designed to advance the government’s narrative. The government continued to use visa issuance and shortened visa validities to control foreign journalists, especially those not based in the country.
The government censorship board reviews all films to be screened inside the country. On June 15, the screening of a film critical of the military was abruptly pulled from the opening night of the Human Rights Human Dignity International Film Festival. The founder of the festival, Min Htin Ko Ko Gyi, was in jail at the time and was later convicted of criticizing the military (see section 2.a.).

Journalists continued to complain about the widespread practice of government informants attending press conferences and other events, which they said intimidated reporters and the events’ hosts. Informants demanded lists of hosts and attendees.

Libel/Slander Laws: Military and civilian government officials used broad defamation statutes to bring criminal charges against journalists, activists, and ordinary citizens.

In February a Dawei Township court fined the editor of the Thanintharyi Journal 500,000 kyat ($330) over the journal’s 2017 publication of a satirical article about a regional official. On August 26, six Karenni youths were charged with slander for calling the Kayah State chief minister a traitor over his support for the erection of a statue to Aung San Suu Kyi’s father. On November 7, they were sentenced to six months in prison with labor.

In September a local NLD office in Ayeyarwaddy Region brought charges against a cartoonist for allegedly defaming the township and the NLD. On September 19, an NLD official in Mandalay sued two Facebook users, alleging their satiric memes defamed the regional chief minister.

Internet Freedom

The government did not generally censor online content. The government did, however, restrict access to the internet. On June 20, the Ministry of Transport and Communications ordered mobile phone operators to stop mobile internet traffic in eight townships in northern Rakhine State and in Paletwa Township in southern Chin State due to “disturbances of peace and use of internet services to coordinate illegal activities.” The ban was lifted on August 31 in five of the nine affected townships but remained in effect in four townships in northern Rakhine State as of November.

The Telecommunications Law includes broad provisions giving the government the power to temporarily block and filter content, on grounds of “benefit of the
people.” According to Freedom House, pressure on users to remove content continued to originate from the government, military, and other groups. The law does not include provisions to force the removal of content or provide for intermediary liability, although some articles are vague and could be argued to cover content removal. Pressure to remove content instead came from the use or threat of use of other criminal provisions.

The government’s Social Media Monitoring Team reportedly continued to monitor internet communications without clear legal authority and used defamation charges to intimidate and detain some individuals using social media to criticize the military, government officials, or the ruling party. There were also instances of authorities intimidating online media outlets and internet users. Social media continued to be a popular forum to exchange ideas and opinions without direct government censorship, although there were military-affiliated disinformation campaigns on social media.

**Academic Freedom and Cultural Events**

Government restrictions on academic freedom and cultural events continued.

The government tightened restrictions on political activity and freedom of association on university campuses. On February 13, seven students of Yadanabon University in Mandalay were found guilty of arson and of holding a December 2018 protest without providing proper notification. The students were sentenced to a total of three months’ in prison with hard labor. The seven students were prominent members of the Yadanabon Student Union and were involved in organizing a series of protests beginning on December 28 on Yadanabon University campus, calling for improved campus security. During the protest dozens of students burned a mock coffin containing photos of the university rector, the chief minister of Mandalay Region, the regional minister for electricity, road, and transportation, and the minister for security and border affairs.

The government generally allowed the informal establishment of student unions, although among university rectors and faculty there was considerable fear and suspicion of student unions. Although some student unions were allowed to open unofficial offices, the All Burma Federation of Student Unions, as in previous years, was unable to register but participated in some activities through informal networks.
There were reported incidents of the government restricting cultural events. There is a ban on street art.

b. Freedoms of Peaceful Assembly and Association

The constitution provides for the freedoms of peaceful assembly and association, but the government restricted these rights.

Freedom of Peaceful Assembly

Although the constitution provides the right to peaceful assembly, it was not always respected in practice. Authorities used laws against criminal trespass as well as provisions which criminalize actions the government deemed likely to cause “an offense against the State or against the public tranquility” to restrict peaceful assembly.

Restrictions remained in place in 11 Rangoon townships on all applications for processions or assemblies. Some civil society groups asserted these restrictions were selectively applied and used to prevent demonstrations against the government or military. Farmers and social activists continued to protest land rights’ violations and land confiscation throughout the country, and human rights groups reported the arrest of farmers and supporters. Many reported cases involved land seized by the former military regime and given to private companies or persons with ties to the military.

Whether civil society organizations were required to apply for advance permission before holding meetings and other functions in hotels and other public venues varied by situation and by government official. Some officials forced venues to cancel civil society events where such permission was not obtained; others required civil society organizations to request advance permission from the local government to meet with diplomats.

Following a peaceful protest in February against the erection of a statue of the Burmese independence hero (and father of Aung San Suu Kyi) General Aung San in Loikaw, Kayah State, the local government arrested 55 demonstrators, with charges of defamation and illegal protest which were later dropped after negotiations between activists and the local government.

On October 2, the chairwoman of the Karen Women’s Union, Naw Ohn Hla, and two other activists were convicted and sentenced to 15 days in prison for holding
an unauthorized Karen Martyr’s Day celebration in Rangoon in August. They had sought approval from authorities before the commemoration, but it was not granted because of the use of the term “martyr,” a term the government tended to associate exclusively with Aung San and the members of his cabinet who were assassinated alongside him.

**Freedom of Association**

Although the constitution and laws allow citizens to form associations and organizations, the government sometimes restricted this right.

In July the State Sangha Maha Nayaka Committee (a government-appointed body of high-ranking Buddhist monks) again declared Ma Ba Tha an “illegal organization.” The State Sangha Maha Nayaka Committee had banned Ma Ba Tha from using that name in 2017. Some local branches of the organization continued to use the name on their signs in spite of the ban, and as of October no action had been taken against them.

The law on registering organizations stipulates voluntary registration for local NGOs and removes punishments for noncompliance for both local and international NGOs. Some NGOs that tried to register under this law found the process extremely onerous.

Activists reported that civil society groups, community-based organizations, and informal networks operated openly and continued to discuss human rights and other political problems openly. They reported, however, that state surveillance of such operations and discussions was common and that government restrictions on meetings and other activity continued during the year.

**c. Freedom of Religion**

See the Department of State’s *International Religious Freedom Report* at [https://www.state.gov/religiousfreedomreport/](https://www.state.gov/religiousfreedomreport/).

**d. Freedom of Movement**

The law does not protect freedom of internal movement, foreign travel, emigration, or repatriation. Local regulations limit the rights of citizens to settle and reside anywhere in the country. By law the president may require the registration of
foreigners’ movements and authorize officials to require foreigners to register every change of address exceeding 24 hours.

The government appeared to restrict informally repatriation by maintaining an opaque “black list” of individuals, including some from the exile community, who were prohibited from entering the country.

**In-country Movement**: Regional and local orders, directives, and instructions restrict freedom of movement.

Restrictions on in-country movement of Rohingya were extensive. Authorities required the largely stateless Rohingya to carry special documents and travel permits for internal movement in areas in Rakhine State where most Rohingya reside. Township officers in Buthidaung and Maungdaw Townships continued to require Rohingya to submit a “form for informing absence from habitual residence” for permission to stay overnight in another village and to register on the guest list with the village administrator. Obtaining these forms and permits often involved extortion and bribes.

Restrictions governing the travel of foreigners, Rohingya, and others between townships in Rakhine State varied, depending on township, and generally required submission of a document known as “Form 4.” A traveler could obtain this form only from the township Immigration and National Registration Department (INRD) and only if that person provided an original copy of a family list, a temporary registration card, and letters from two guarantors. Travel authorized under Form 4 is generally valid for two to four weeks, but it is given almost exclusively for medical emergencies, effectively eliminating many opportunities to work or study. The cost to obtain the form varied from township to township, with required payments to village administrators or to the township INRD office ranging from the official amount of 30,000 to more than two million kyats ($20 to $1,320). Extensive administrative measures are imposed on Rohingya and foreigners in Rakhine State, which effectively prevented persons from changing residency.

There were credible reports of hundreds of Rohingya serving prison terms of up to two years for attempting to travel out of Rakhine State without prior authorization. In October authorities convicted 30 Rohingya for attempting to travel from Rakhine State to Rangoon without travel permits. The court sentenced 21 of them to two years in prison and sent eight children to a detention center. The youngest, age five, was being held in a Pathein prison with his mother as of November. In
January seven Rohingya, including a child, from Kyauktaw Township in Rakhine State were sentenced to two years’ detention for travelling without valid documents after walking 300 miles to western Bago Region.

Foreign Travel: The government maintained restrictions to prevent foreign travel by political activists, former political prisoners, and some local staff of foreign embassies, although such persons reported encountering far fewer delays and restrictions. Stateless persons, particularly Rohingya, were unable to obtain documentation necessary for foreign travel.

e. Internally Displaced Persons

As of October an estimated 263,000 individuals were living as IDPs due to violence in Kachin, Rakhine, and northern Shan states. Some 101,000 Rohingya IDPs have been displaced since 2012. The UN Office of Coordination for Humanitarian Affairs estimated that more than 28,000 of the primarily Rohingya IDPs in Rakhine State have been displaced by armed conflict since January and that more than 8,000 persons were displaced in northern Shan State at the height of the violence there in August, although most of these later returned home. Approximately 128,000 Rohingya remained confined to IDP camps in Rakhine State following 2012 intercommunal violence; a small number of Kaman and Rakhine have also lived in IDP camps since 2012. An additional estimated 7,000 Rohingya remained internally displaced following atrocities beginning in 2017 in northern Rakhine State along with a small number of individuals from other ethnic groups. Accurate figures were difficult to determine due to continued poor access to affected areas.

In addition to internal displacement provoked by conflict, a March report by the UN special rapporteur on human rights in Burma highlighted displacement (as well as the loss of livelihood) caused by natural resource extraction and environmental destruction in Kachin, Shan, and Kayin States. The special rapporteur noted increased human rights abuses associated with militarization around resource extraction sites prevented IDPs from returning home.

The United Nations and other humanitarian agencies reported significant deterioration in humanitarian access during the year, and the military blocked access to IDPs and other vulnerable populations in areas controlled by nonstate armed groups (see section 1.g., Other Conflict-related Abuse). Access to displaced persons in or near conflict zones continued to be a challenge, with the military
restricting access by humanitarian actors seeking to provide aid to affected communities.

The government restricted the ability of IDPs and stateless persons to move, limiting access to health services and schooling. While a person’s freedom of movement generally derived from possession of identification documents, authorities also considered race, ethnicity, religion, and place of origin as factors in enforcing these regulations. Residents of ethnic-minority states reported the government restricted the travel of IDPs and stateless persons.

Some 101,000 Rohingya IDPs lived in Sittwe’s rural camps, where they relied on assistance from aid agencies. Humanitarian agencies provided access to clean water, food, shelter, and sanitation in most IDP camps for Rohingya.

f. Protection of Refugees

Abuse of Migrants, Refugees, and Stateless Persons: The government did not always cooperate with the UN High Commissioner for Refugees (UNHCR) or other humanitarian organizations in providing protection and assistance to IDPs, refugees, returning refugees, asylum seekers, and other persons of concern. For example, the government routinely refused to allow humanitarian organizations access to Rakhine State and other locations.

Access to Asylum: The law does not provide for granting asylum or refugee status, and the government has not established a system for providing protection to refugees. UNHCR did not register any asylum seekers during the year.

g. Stateless Persons

The vast majority of Rohingya are stateless. Following the forced displacement of more than 700,000 Rohingya to Bangladesh in 2017, up to 600,000 Rohingya were estimated to remain in Rakhine State. There were also likely significant numbers of stateless persons and persons with undetermined nationality throughout the country, including persons of Chinese, Indian, and Nepali descent. Although these latter groups did not face the same level of official and social discrimination as Rohingya, they were still subject to the lesser rights and greater restrictions of associate and naturalized citizenship.

The government recognizes 135 “national ethnic groups” whose members are automatically full citizens. The law also establishes two forms of citizenship short
of full citizenship: associate and naturalized. Citizens of these two types are unable to run for political office; form a political party; serve in the military, police, or public administration; inherit land or money; or pursue certain professional degrees, such as medicine and law. Only members of the third generation of associate or naturalized citizens are able to acquire full citizenship.

The law defines “national ethnic group” only as a racial and ethnic group that can prove origins in the country dating back to 1823, the year prior to British colonization. In practice the government has granted or withdrawn “national ethnic group” status from ethnic groups throughout the country on various occasions. Because the Rohingya are not on the list, and due to other government action, they are stateless. Several ethnic minority groups, including the Chin and Kachin, criticized the classification system as inaccurate.

Some Rohingya are technically eligible for full citizenship. The process involves additional official scrutiny and in practice requires substantial bribes to government officials, and even then it does not provide for the rights guaranteed to other full citizens. Members of other ethnic groups faced similar challenges.

The law does not provide protection for children born in the country who do not have a “relevant link” to another state.

The government continued to call for Rohingya to apply for National Verification Cards (NVC), created in 2015. The government claims that these cards are necessary to apply for citizenship. NGO reports indicated that Rohingya were pressured or coerced to accept NVCs. For example, there were reported cases of government officials requiring Rohingya to have an NVC to go fishing or access a bank account. Many Rohingya expressed the need for more assurances about the results of the process. Many said they were already citizens and expressed fear the government would either not affirm their citizenship or would provide a form of lesser citizenship, thereby formalizing their lack of rights. Some townships in Rakhine State required Rohingya to identify as “Bengali” to apply for NVCs.

**Section 3. Freedom to Participate in the Political Process**

The constitution provides citizens limited ability to choose their government through elections held by secret ballot; the electoral system is not fully representational and does not assur e the free expression of the will of the people. Under the constitution, active-duty military are appointed to one-quarter of all national and regional parliamentary seats, and the military has the right to appoint
the ministers of defense, home affairs--which has responsibility for police, prisons, and other domestic security matters--and border affairs. The military can also indefinitely assume power over all branches of the government should the president declare a national state of emergency. The constitution prohibits persons with immediate relatives holding foreign citizenship from becoming president. Amending the constitution requires approval by more than 75 percent of members of parliament, giving the military effective veto power over constitutional amendments.

**Elections and Political Participation**

**Recent Elections:** Observers considered the 2015 national election to be generally reflective of the will of the people, notwithstanding some structural shortcomings, and considered subsequent by-elections in 2017 and 2018 basically free and fair. Observers raised concerns that 25 percent of seats in parliament were reserved for unelected military officers; potential Muslim candidates were disqualified by their political parties on an apparently discriminatory basis; almost all members of the Rohingya community, many of whom voted in elections prior to 2015, were disenfranchised; and the government canceled voting in some conflict-affected ethnic minority areas. The NLD, chaired by Aung San Suu Kyi, won more than 77 percent of the contested 1,150 seats at the state, regional, and union levels in the 2015 election.

**Political Parties and Political Participation:** Opposition parties and civil society organizations continued to exercise their rights to assemble and protest. New political parties were generally allowed to register and compete in elections, which featured fewer restrictions on party organization and voter mobilization. Only sporadic interference from government officials was reported. Competition was skewed in part by the military-backed United Solidarity and Development Party’s systematic support from the military, whose personnel and their families are eligible to vote, casting ballots in military barracks in some cases. Moreover, some legal provisions can be invoked to restrict parties’ operations. The constitution contains a requirement that political parties be loyal to the state, which carries the potential for abuse. Laws allow for penalties, including deregistration, against political parties that accept support from foreign governments or religious bodies, or that are deemed to have abused religion for political purposes or disrespected the constitution.

**Participation of Women and Minorities:** No laws limit the participation of women and members of minorities in the political process, and they did participate.
Nevertheless, women and minorities continued to be underrepresented in government. Aung San Suu Kyi was the only woman in a national cabinet of 24 ministers. Women made up only about 13 percent of national and local elected legislators. Women were chief ministers of Kayin State and Tanintharyi Region, although the latter was dismissed in March following accusations of corruption.

As of October, five chief ministers of the seven ethnic states belonged to the largest ethnic groups of their states, including the chief minister of Rakhine State; one of two union-level vice presidents belonged to the Chin ethnic minority group and one belonged to the Mon ethnic group. Ethnic-minority parliamentarians from ethnic-minority political parties made up about 9 percent of legislators at the national, state, and regional level; this did not include the numerous ethnic-minority members of the NLD, or the Union Solidarity and Development Party.

As noncitizens in the view of the government, Rohingya were excluded from the political process. Most Rohingya-majority areas were represented by an ethnic Rakhine nationalist party. No Muslim candidate won in 2015, resulting in a national parliament that for the first time had no Muslim representatives.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials, and the government continued efforts to curb corruption.

Corruption: Corruption remained a problem, particularly in the judiciary. Police reportedly often required victims to pay substantial bribes for criminal investigations and routinely extorted money from the civilian population. The government took some steps to investigate and address corruption of government officials.

On September 9, the Anti-Corruption Commission charged Aung Zaw, general manager of the state-owned Burma Pharmaceutical Industry, with bribery for the improper purchasing of raw materials for the factory. As of November the case continued. On July 26, Industry Minister Khin Maung Cho was forced to resign for failing to open a tender process for the procurement of raw materials worth more than one billion kyats ($660,000) at the same factory.

Financial Disclosure: Public officials were not subject to public financial disclosure laws. The law requires the president and vice presidents to furnish a list of family assets to the speaker of the joint houses of parliament, and the law
requires persons appointed by the president to furnish a list of personal assets to the president. The government did not make the reports available to the public.

Civil servants cannot accept gifts worth more than 25,000 kyats ($17). The rules also require civil servants to report all offers of gifts to their supervisors, whether or not they are accepted.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights

The government did not allow domestic human rights organizations to function independently. Human rights NGOs were able to open offices and operate, but there were reports of harassment and monitoring by authorities, and authorities sometimes pressured hotels and other venues not to host meetings by activists or other civil society groups.

Foreign human rights activists and advocates, including representatives from international NGOs, continued to be restricted to short-term visas that required them to leave the country periodically for renewal. The government continued to monitor the movements of foreigners and interrogated citizens concerning contacts with foreigners.

The United Nations or Other International Bodies: The government has not agreed to the opening of an Office of the UN High Commissioner for Human Rights (OHCHR) and has not approved visa requests for OHCHR staff.

In August a UN fact-finding mission, established by the UN Human Rights Council, published two reports on the country: one on sexual and gender-based violence and the gendered impact of ethnic conflicts and the other on the military’s economic interests and their relation to human rights abuses. The government rejected the mandate of the fact-finding mission and the content of its reports and denied the mission members permission to enter the country.

The government has also refused cooperate with or give the Independent Investigative Mechanism for Myanmar, created by the UN Human Rights Council, access to the country.

The government continued to refuse entry to the UN special rapporteur on the situation of human rights in Myanmar, but permitted the UN secretary-general’s special envoy on Myanmar, Christine Schraner-Burgener, to open an office in the
country and to meet with senior officials, including Aung San Suu Kyi and Commander in Chief Min Aung Hlaing.

The ICRC had access to civilian prisons and labor camps. The government also allowed the ICRC to operate in ethnic-minority states, including in Shan, Rakhine, and Kachin States.

**Government Human Rights Bodies:** The Myanmar National Human Rights Commission investigated some incidents of human rights abuses. In some cases it called on the government to conduct investigations into abuses. Its ability to operate as a credible, independent mechanism remained limited. The commission supported the development of human rights education curricula, distributed human rights materials, and conducted human rights training.

The Independent Commission of Enquiry for Rakhine State, formed by the government in July 2018, continued its investigations but had not released any findings as of November. Previous government-led investigations into reports of widespread abuses by security services against the Rohingya in northern Rakhine State in 2016 yielded no findings of responsibility by security forces and were criticized by international observers as deeply flawed.

### Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

**Women**

**Rape and Domestic Violence:** Rape is illegal but remained a significant problem, and the government did not enforce the law effectively. Spousal rape is not a crime unless the wife is younger than 14. Police generally investigated reported cases of rape, but there were reports police investigations were not sensitive to victims. Civil society groups continued to report police in some cases verbally abused women who reported rape, and women could be sued for impugning the dignity of the perpetrator.

On July 6, an estimated 6,000 demonstrators protested the alleged sexual assault in May of a two-year-old girl at a nursery school in Nay Pyi Taw and over concerns about the transparency of the trial. Thousands of Facebook users changed their profile pictures to the silhouette of a girl to demand “Justice for Victoria,” the pseudonym of the victim. On July 9, the leader of the campaign was arrested for Facebook posts “defaming” the police officers investigating the case. Both cases continued as of November.
Domestic violence against women, including spousal abuse, remained a serious problem. Abuse within families was prevalent and considered socially acceptable. Spousal abuse or domestic violence was difficult to measure because the government did not maintain comprehensive statistics and victims typically did not report it, although the government attempted to document cases, and reported cases were on the rise. The law prohibits committing bodily harm against another person, but there are no laws specifically against domestic violence or spousal abuse unless the wife is younger than 14. Punishment for violating the law includes sentences ranging from one year to life in prison in addition to possible fines. Overlapping and at times contradictory legal provisions complicated implementation of these limited protections.

**Sexual Harassment:** The penal code prohibits sexual harassment and imposes a maximum of one year’s imprisonment and a fine for verbal harassment and a maximum of two years’ imprisonment and a fine for physical contact. There was no information on the prevalence of the problem because these crimes were largely unreported. Local civil society organizations reported police investigators were not sensitive to victims and rarely followed through with investigations or prosecutions.

**Coercion in Population Control:** There were no reports of coerced abortion or involuntary sterilization. A 2015 law, however, contains provisions that if enforced could impose coercive birth-spacing requirements. Under the law the president or the national government may designate “special regions” for health care following consideration of factors such as population, natural resources, birth rates, and food availability. Once a special region is declared, the government may create special health-care organizations to perform various tasks, including establishing regulations related to family-planning methods. The government has not designated any such special regions since the law’s enactment.

A two-child local order issued by the government of Rakhine State pertaining to the Rohingya population in two northern townships remained in effect, but the government and NGOs reported it was not consistently enforced (see section 1.f.).

**Discrimination:** By law women enjoy the same legal status and rights as men, including property and inheritance rights and religious and personal status, but it was not clear the government enforced the law. The law requires equal pay for equal work, but it was not clear the formal sector respected this requirement. NGOs reported some sectors, such as the garment industry, did not comply.
Poverty affected women disproportionately. The law governing hiring of civil service personnel states that nothing shall prevent the appointment of men to “positions that are suitable for men only,” with no further definition of what constitutes positions “suitable for men only.”

Customary law was widely used to address issues of marriage, property, and inheritance; it differs from the provisions of statutory law and was often discriminatory against women.

Children

Birth Registration: The law automatically confers full citizenship to children of two parents from one of the 135 recognized national ethnic groups and to children who met other citizenship requirements. Moreover, the government confers full citizenship to second-generation children of both parents with any citizenship, as long as at least one parent has full citizenship. Third-generation children of associate or naturalized citizens can acquire full citizenship.

A prominent international NGO noted significant rural-urban disparities in birth registration. In major cities (e.g., Rangoon and Mandalay), births were registered immediately because registration is required to qualify for basic public services and to obtain national identification cards. In smaller towns and villages, birth registration often was informal or nonexistent. For the Rohingya community, birth registration was a significant problem (see section 2.d.). The Advisory Commission on Rakhine State noted in its interim report that nearly one-half of all residents in Rakhine State lacked birth documentation.

A birth certificate provides important protections for children, particularly against child labor, early marriage, and recruitment into the armed forces and armed groups. Sometimes a lack of birth registration complicated access to public services in remote communities.

Education: By law, education is compulsory, free, and universal through the fourth grade (up to age 10). This leaves children ages 10 through 13 vulnerable to child labor, since they are not required to attend school but are not legally permitted to work, as the minimum age for work is 14. The government continued to allocate minimal resources to public education, and schools charged informal fees.

Schools were often unavailable in remote communities and access to them for internally displaced and stateless children also remained limited.
Child Abuse: Laws prohibit child abuse, but they were neither adequate nor enforced. NGOs reported corporal punishment was widely used against children. The punishment for child abuse is a maximum of two years’ imprisonment or a maximum fine of 10,000 kyats ($6.60). There was anecdotal evidence of violence against children occurring within families, in schools, in situations of child labor and exploitation, and in armed conflict. The Ministry of Social Welfare, Relief, and Resettlement continued its child protection programs in partnership with UNICEF to improve data collection, develop effective laws, provide psychosocial assistance, and combat trafficking. Violence in Rakhine, Shan, and Kachin States exposed many children to an environment of violence and exploitation.

Early and Forced Marriage: The law stipulates different minimum ages for marriage based on religion and gender. The minimum age for Buddhists is 18, while the minimum age for non-Buddhists is 16 for boys and 15 for girls. Child marriage still occurred, especially in rural areas. There were no reliable statistics on forced marriage.

Sexual Exploitation of Children: Children were subjected to sex trafficking in the country, and a small number of foreign child-sex tourists exploited children. The law does not explicitly prohibit child-sex tourism, but it prohibits pimping and prostitution, and the penal code prohibits sex with a minor younger than 14. The penalty for the purchase and sale of commercial sex acts from a child younger than 18 is 10 years’ imprisonment. The law prohibits child pornography and specifies a minimum penalty of two years’ imprisonment and a fine of 10,000 kyats ($6.60). On July 23, the Child Rights Law was enacted; it provides for one to seven years’ imprisonment, a fine of one million to two million kyats ($660 to $1,320), or both for sexual trafficking or forced marriage. If a victim is younger than 14, the law considers the sexual act statutory rape. The maximum sentence for statutory rape is two years’ imprisonment when the victim is between the ages of 12 and 14 and 10 years to life imprisonment when the victim is younger than 12. On March 25, the penal code was amended; the penalty for rape against a girl younger than 12 is imprisonment for life or for a term of 20 years.

The country’s antitrafficking in persons law requires a demonstration of force, fraud, or coercion to constitute a child-trafficking offense.

Displaced Children: The mortality rate for internally displaced children in conflict areas was significantly higher than in the rest of the country (see section 2.d.). The United Nations estimated that 53 percent of the 128,000 IDPs in Rakhine State...
were children; the vast majority of this population was Rohingya. The United Nations estimated that 46 percent of the 100,000 IDPs in Kachin State and 48 percent of the 9,000 IDPs in Shan State were children.


**Anti-Semitism**

There was one synagogue in Rangoon serving a small Jewish congregation. There were no reports of anti-Semitic acts.

**Trafficking in Persons**

See the Department of State’s *Trafficking in Persons Report* at [https://www.state.gov/trafficking-in-persons-report/](https://www.state.gov/trafficking-in-persons-report/).

**Persons with Disabilities**

The law prohibits discrimination against persons with physical, sensory, hearing, intellectual, and mental disabilities. The law directs the government to ensure that persons with disabilities have easy access to public transportation. The government did not effectively enforce these provisions.

Civil society groups reported that children with disabilities attended school through secondary education at a significantly lower rate than other persons; many never attended school due to stigma and lack of any accommodation for their needs.

Persons with disabilities reported stigma, discrimination, and abuse from civilian and government officials. Students with disabilities cited barriers to inclusive education as a significant disadvantage.

Military veterans with disabilities received official benefits on a priority basis, usually a civil service job at pay equivalent to rank, but both military and ethnic-minority survivors of conflict in rural areas typically did not have access to livelihood opportunities or affordable medical treatment. Official assistance to civilian persons with disabilities in principle included two-thirds of pay for a
maximum of one year for a temporary disability and a tax-free stipend for permanent disability. The law providing job protection for workers who become disabled was not implemented.

National/Racial/Ethnic Minorities

Wide-ranging governmental and societal discrimination against minorities persisted, including in areas such as education, housing, employment, and access to health services. Ethnic minorities constituted 30 to 40 percent of the population. The seven ethnic minority states comprised approximately 60 percent of the national territory, and significant numbers of minorities also resided in the country’s other regions.

International observers noted significant wage discrepancies based on religious and ethnic backgrounds were common.

Burmese remained the mandatory language of instruction in government schools. The government’s official education plan does not cover issues related to mother-tongue instruction, but ethnic languages have been taught as extra subjects in government schools since 2013. Outside of Mon State, however, progress has been limited due to resource constraints, the nonstandardization of regional languages, a lack of educational material in minority languages, and varying levels of interest. In schools controlled by armed ethnic groups, students sometimes had no access to the national curriculum.

Tension between the military and ethnic minority populations, while somewhat diminished in areas with cease-fire agreements, remained high, and the military stationed forces in some ethnic groups’ areas of influence and controlled certain cities, towns, and highways. Ethnic armed groups, including the Kachin Independence Army, the Karen National Union, and the AA, pointed to the presence of large army contingents as a major source of tension and insecurity. Reported abuses included killings, beatings, torture, forced labor, forced relocations, and rapes of members of ethnic groups by government soldiers. Some groups also committed abuses (see section 1.g.).

The name Rohingya refers to a predominantly Muslim ethnic group that claims to have lived in what is now Rakhine State for generations. In 2016 the government began to refer to the group as “Muslims in Rakhine State.” Many military and government officials, however, continued to use the term “Bengali,” which the Rohingya consider pejorative as it suggests they are not from Burma. The
“Bengali” term is also used on identification documents, including as the person’s race on his or her citizenship card if he or she was naturalized.

The Rohingya faced severe discrimination based on their ethnicity and sometimes their religion. Most Rohingya faced extreme restrictions on their ability to travel; use health-care services; engage in economic activity (see section 7.d.); obtain an education; register births, deaths, and marriages (see section 2.d.); freely practice their faith; and participate in political processes (see section 3). Most of those displaced in 2012 remained confined to semipermanent camps with severely limited access to education, health care, and livelihoods.

The government required Rohingya to receive prior approval for travel outside their village of residence and prohibited them from working as civil servants, including as doctors, nurses, or teachers. Authorities in northern Rakhine State forced Rohingya to work and arbitrarily arrested them. Authorities required Rohingya to obtain official permission for marriage and limited the registration of children to two per family, although local enforcement of the two-child policy was inconsistent. NGOs reported the government resumed issuing birth certificates to Rohingya newborns in northern Rakhine State, although Rohingya born in the last two decades generally did not have birth certificates.

Rohingya were restricted in their ability to construct houses or religious buildings. Authorities continued to prevent Rohingya from accessing mosques in Rakhine State.

The military and other security forces committed widespread atrocities against Rohingya villagers starting in 2017 that were documented during the year, including extrajudicial killings, rape, torture, arbitrary arrest, and burning of hundreds of villages, religious structures, and other buildings. These atrocities and associated events have forced more than 700,000 Rohingya to flee to Bangladesh as of October and constituted ethnic cleansing against the Rohingya.

**Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity**

Consensual same-sex sexual activity remains illegal under the penal code, which contains a provision against “unnatural offenses” with a penalty of a maximum of 10 years’ imprisonment and a fine. Laws against “unnatural offenses” apply equally to both men and women, but were rarely enforced. Lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons reported that police used the threat of
prosecution to extort bribes. While the penal code was used more for coercion or bribery, LGBTI persons, particularly transgender women, were most frequently charged under so-called shadow and disguise laws. These laws use the justification that a person dressed or acting in a way that is perceived as not being in line with their biological gender is in “disguise.” According to a local NGO, transgender women reported higher levels of police abuse and discrimination than other members of the LGBTI community.

In March 2018 authorities in Rangoon used the “unnatural offenses” law to charge an openly gay restaurant owner for allegedly sexually assaulting a male member of his staff. As of November the case continued.

Political reforms in recent years made it easier for the LGBTI community to hold public events and openly participate in society, yet discrimination, stigma, and a lack of acceptance among the general population persisted. There were reports of discrimination based on sexual orientation and gender identity in employment. LGBTI persons reported facing discrimination from medical-care providers.

**HIV and AIDS Social Stigma**

There were continued reports of societal violence and discrimination, including employment discrimination, against persons with HIV/AIDS. Negative incidents, such as exclusion from social gatherings and activities; verbal insults, harassment, and threats; and physical assaults continued to occur. Laws that criminalize behaviors linked to an increased risk of acquiring HIV/AIDS remain in place, directly fueling stigma and discrimination against persons engaged in these behaviors and impeding their access to HIV prevention, treatment, and care services.

High levels of social stigma and discrimination against female sex workers and transgender women hindered their access to HIV prevention, treatment, and social protection services. Police harassment of sex workers deterred the workers from carrying condoms.

**Other Societal Violence or Discrimination**

Anti-Muslim sentiment and discrimination persisted. Members of Buddhist nationalist groups, including members of Ma Ba Tha, continued to denigrate Islam and called for a boycott of Muslim businesses and the establishment of “Muslim-free” villages.
Muslim communities complained about unequal treatment by police, pressures to practice Islam in private, difficulty in obtaining citizenship cards, close monitoring of their travel or denials of travel requests by local governments, and restrictions on educational opportunities. In addition, some Muslims reported discrimination by private parties in renting housing.

Anti-Muslim hate speech was prevalent on social media, in particular on Facebook, the most popular social media platform in the country. Independent reporting indicated that the military, using false accounts, was also responsible for generating and promulgating hate-speech content.

Multiple sources noted that restrictions on Muslims and Christians impeded their ability to pursue higher education and assume high-level government positions; Muslims also were unable to invest and trade freely.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides for the right of workers to form and join independent unions, bargain collectively, and conduct legal strikes. The law permits labor organizations to demand the reinstatement of workers dismissed for union activity, but it does not explicitly prohibit antiunion discrimination in the form of demotions or mandatory transfers, nor does it offer protection for workers seeking to form a union. The law does not provide adequate protection for workers from dismissal before a union is officially registered.

Laws prohibit civil servants and personnel of the security services and police from forming unions. The law permits workers to join unions only within their category of trade or activity, and the definition of trade or activity lacks clarity. Basic labor organizations must have a minimum of 30 workers and register through township registrars with the Chief Registrar’s Office of the Ministry of Labor, Immigration, and Population (Ministry of Labor). Township labor organizations require a minimum of 10 percent of relevant basic labor organizations to register; regional or state labor organizations require a minimum of 10 percent of relevant township labor organizations. Each of these higher-level unions must include only organizations within the same trade or activity. Similarly, federations and confederations also require a minimum number of regional or state labor organizations (10 percent and 20 percent, respectively) from the next lower level in
order to register formally. The law permits labor federations and confederations to affiliate with international union federations and confederations.

The law provides for voluntary registration for local NGOs, including NGOs working on labor issues. Organizations that choose to register are required to send organizational bylaws and formation documents to the government. Broader restrictions on freedom of assembly remained in place (see section 2.b.).

The law gives unions the right to represent workers, to negotiate and bargain collectively with employers, and to send representatives to a conciliation body or conciliation tribunal. Union leaders’ rights to organize, however, are only protected after the official registration of the union. The law does not contain detailed measures regarding management of the bargaining process, such as requiring bargaining to be in good faith or setting parameters for bargaining or the registration, extension, or enforcement of collective agreements. The National Tripartite Dialogue Forum (NTDF), with representatives from government, business, and labor unions, met three times during the year. The NTDF consults with parliament on revising legislation on labor.

The law stipulates that disputes in special economic zones be settled in accordance with original contracts and existing laws. The government appointed a labor inspector for each such zone and established zonal tripartite committees responsible for setting wage levels and monitoring the ratio of local and foreign labor.

In May parliament passed an amended law on the settlement of labor disputes; however, the implementing regulations remained under draft. The law continues to provide the right to strike in most sectors, with a majority vote by workers, permission of the relevant labor federations, and detailed information and three days’ advance notice provided to the employer and the relevant conciliation body. The law does not permit strikes or lockouts in essential services. For “public utility services” (including transportation; cargo and freight; postal; sanitation; information, communication, and technology; energy; petroleum; and financial sectors), lockouts are permitted with a minimum of 14 days’ notice provided to the relevant labor organizations and conciliation body. Strikes in public utility services require generally the same measures as in other sectors, but with 14 days’ advance notice and negotiation between workers and management before the strike takes place to determine maintenance of minimum service levels. The law prohibits strikes addressing problems not directly relevant to labor issues.
The amended law no longer defines complaints as “individual” or “collective,” but as “rights-based” or “benefits-based.” A “rights-based” dispute includes violations of labor laws, whereas a “benefits-based” dispute pertains to working conditions. The type of dispute determines the settlement procedure. Under the amended law, “rights-based” disputes do not go through a conciliation process or an arbitration proceeding, but go directly to court proceedings. The amended law significantly increases fines for labor violations, but it eliminates prison terms as punishment for violations.

Labor groups continued to report labor organizations’ inability to register at the national level, a prerequisite for entering labor framework agreements with multinational companies, due to the registration requirements under the law. In addition, the International Labor Organization (ILO), labor activists, and media outlets continued to report employers firing or engaging in other forms of reprisal against workers who formed or joined labor unions. Trade unions reported cases in which criminal charges were filed against workers for exercising their right to strike, and trade union members were arrested and charged with violating peaceful assembly laws when holding demonstrations regarding labor rights generally. Labor organizations also reported that local labor offices imposed unnecessary bureaucratic requirements for union registration that were inconsistent with the law.

Workers and workers’ organizations continued to report they generally found the Ministry of Labor to be helpful in urging employers to negotiate, but there were consistent reports of employers engaging in forms of antiunion discrimination.

b. Prohibition of Forced or Compulsory Labor

Laws nominally prohibit all forms of forced or compulsory labor, although it is allowed for use by the military and in penal institutions. Laws also provide for the punishment of persons who impose forced labor on others. The government did not effectively enforce the law.

The law provides for criminal penalties for forced labor violations; penalties differ depending on whether the military, the government, or a private citizen committed the violation. The penalties are insufficient to deter forced labor.

The government established an interim complaints mechanism under the authority of the President’s Office with the aim of having a more fully developed mechanism
at a later date. The ILO and unions expressed concerns that the government’s mechanism does not provide for protections for victims.

The ILO reported the number of complaints of forced labor was decreasing. Reports of forced labor occurred across the country, including in conflict and cease-fire areas, and the prevalence was higher in states with significant armed conflict.

The military’s use of forced labor in Rakhine, Kachin, and Shan States remained a significant problem, according to the ILO. Forced labor reports included forced portering and activities related to the military’s “self-reliance” policy. Under this policy, military units are responsible for procuring their own food and labor supplies from local villagers--a major factor contributing to forced labor and other abuses.

Although the military and the government received complaints logged by the complaints mechanism, no military perpetrators have been tried in civilian court; the military asserted that commissioners and other ranks were subjected to military justice.

Prisoners in the country’s 48 labor camps engaged in forced labor (see section 1.c., Prison and Detention Center Conditions).

The ILO did not receive any verified reports of forced labor in the private sector. Domestic workers remain at risk of domestic slavery.

Also see the Department of State’s Trafficking in Persons Report at https://www.state.gov/trafficking-in-persons-report/.

c. Prohibition of Child Labor and Minimum Age for Employment

The law does not prohibit all of the worst forms of child labor. In July parliament passed the Child Rights Law, which set the minimum age at 14 for work in certain sectors, including shops, establishments, and factories; the law establishes special provisions for “youth employment” for those older than 14. There is, however, no minimum age for work for all sectors in which children were employed, including agriculture and informal work. Some sector-specific laws identify activities that are prohibited for children younger than 18. The law prohibits employees younger than 16 from working in a hazardous environment, and the government has
prepared a hazardous work list enumerating occupations in which child labor is specifically prohibited.

Trained inspectors from the Factories and General Labor Laws Inspection Department monitored the application of these regulations, but their legal authority only extends to factories. In addition, inspectors were hindered by a general lack of resources.

The Ministry of Labor worked with other ministries to collect better data on existing child labor and continued a campaign directed at parents to raise awareness of the risks of child labor and provide information on other education options available to children. The Ministry of Labor engaged with the Ministry of Education on two programs: one to bring children out of the workplace and put them in school, the other to support former child soldiers’ pursuit of classroom education or vocational training. The Labor Ministry supported vocational schools to train young workers for jobs in nonhazardous environments.

The ILO noted the widespread mobilization and recruitment of children for use in armed conflict. Penalties under the law and their enforcement for other child labor violations were insufficient to deter violations.

The government did not effectively enforce the law. Child labor remained prevalent and highly visible. Children were at high risk, with poverty leading some parents to remove them from schools before completion of compulsory education. In cities children worked mostly as street vendors or refuse collectors, as restaurant and teashop attendants, and as domestic workers. Children also worked in the production of garments.

Children often worked in the informal economy, in some instances exposing them to drugs and petty crime, risk of arrest, commercial sexual exploitation, and HIV/AIDS and other sexually transmitted infections (also see section 6).

Children were vulnerable to forced labor in teashops, agriculture, and begging. In rural areas children routinely worked in family agricultural activities, occasionally in situations of forced labor.

Also see the Department of Labor’s Findings on the Worst Forms of Child Labor report at https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings and the Department of Labor’s List of Goods Produced by Child Labor or Forced Labor at https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods.
d. Discrimination with Respect to Employment and Occupation

Labor laws and regulations do not specifically prohibit employment discrimination.

Women remained underrepresented in most traditionally male-dominated occupations (mining, forestry, carpentry, masonry, and fishing) and were effectively barred from certain professions.

There were reports government and private actors practiced anti-Muslim discrimination that impeded Muslim-owned businesses’ operations and undercut their ability to hire and retain labor, maintain proper working standards, and secure public and private contracts. There were reports of discrimination based on sexual orientation and gender identity in employment, including the denial of promotions and firing of LGBTI persons. Activists reported job opportunities for many openly gay and lesbian persons were limited and noted a general lack of support from society as a whole. Activists reported that in addition to general societal discrimination, persons with HIV/AIDS faced employment discrimination in both the public and private sectors, including suspensions and the loss of employment following positive results from mandatory workplace HIV testing.

e. Acceptable Conditions of Work

The official minimum daily wage was above the poverty line. The minimum wage covers a standard eight-hour workday across all sectors and industries and applies to all workers except for those in businesses with fewer than 15 employees. The law requires the minimum wage to be revised every two years. Labor unions and activists criticized the May 2018 raise in the minimum wage as too small for workers to keep up with the rising cost of living.

The law requires employers to pay employees on the date their salary is due for companies with 100 or fewer employees. For companies with more than 100 employees, the employer is required to pay employees within five days from the designated payday. Overtime cannot exceed 12 hours per workweek, should not go past midnight, and can exceed 16 hours in a workweek only on special occasions. The law also stipulates that an employee’s total working hours cannot exceed 11 hours per day (including overtime and a one-hour break). The law applies to shops, commercial establishments, and establishments for public entertainment.
The law sets the terms and conditions required for occupational safety, health, and welfare. It was not clear if workers could remove themselves from situations that endanger their health or safety without jeopardizing their employment.

The Ministry of Labor’s Factories and General Labor Laws Inspection Department oversees labor conditions in the private sector. The government did not effectively enforce the law. The number of labor-law inspectors and factory inspectors was insufficient to address occupational safety and health standards, wage, salary, overtime, and other issues adequately. In some sectors other ministries regulated occupational safety and health laws (e.g., the Ministry of Agriculture, Livestock, and Irrigation). Workers’ organizations alleged government inspections were rare and often announced with several days’ notice that allowed factory owners to bring facilities--often temporarily--into compliance. Corruption and bribery of inspectors reportedly occurred.

The public sector was reasonably likely to respect labor laws; frequent violations occurred in private enterprises. Workers continued to submit complaints to relevant government agencies and the dispute settlement mechanism.

Several serious industrial accidents occurred during the year. In April, for example, more than 50 miners died in an accident at a jade mine.
TAB 3
Dear Reader:

For 20 years, the Trafficking in Persons Report (TIP Report) has demonstrated the United States’ conviction that human trafficking is a global threat necessitating a global response. Traffickers are denying nearly 25 million people their fundamental right to freedom, forcing them to live enslaved and toil for their exploiter’s profit. This report arms governments with the data they need to increase the prosecution of traffickers, provide victim-centered and trauma-informed protection for victims of trafficking, and prevent this crime altogether.

As this 20th anniversary report is released, we and our allies and partners find ourselves confronting a crisis that has reached previously unimagined proportions. While urgency has always marked the fight against human trafficking, the implications of the COVID-19 pandemic have magnified the need for all stakeholders to work together in the fight more than ever. We know that human traffickers prey upon the most vulnerable and look for opportunities to exploit them. Instability and lack of access to critical services caused by the pandemic mean that the number of people vulnerable to exploitation by traffickers is rapidly growing.

To turn the tide, action must accompany words. Among other steps, governments must end state-sponsored forced labor; they must increase prosecutions of human traffickers; and they should expand their efforts to identify and care for trafficking victims, while ensuring they are not punished for crimes traffickers compelled them to commit.

The opportunity for impact in the days ahead is great. I am so proud of all who lead us forward in this work, especially our TIP Report Heroes who model the courageous leadership we need for the road ahead. I am grateful for the Trump Administration’s unending commitment to this cause, and for my colleagues at the State Department who have delivered this impressive report under extraordinary circumstances.

We are leading by example as we encourage governments, survivors, NGOs, industry leaders, communities of faith, and advocates in every country to remain steadfast in the protection of human dignity and the pursuit of freedom. Let’s all continue this fight together.

Sincerely,

[Signature]
A Bangladeshi survivor of sex trafficking stands in front of a window in a shelter. Governments and NGOs often work together to provide specialized, trauma-informed care for trafficking victims.
Dear Reader:

There has never been a more important moment to engage the fight for freedom. Now, more than ever, we must collectively commit to stopping human traffickers and protecting victims. We will not be deterred from dismantling this crime down to its very foundations and ensuring the protection of future generations.

This year, the TIP Report looks into the evolution of the report itself over the past 20 years. Since the passage of the Trafficking Victims Protection Act (TVPA) in 2000, we have faced many challenges as a global community, and the TIP Report has been produced throughout all of them. As we now launch this 20th anniversary report in the midst of the COVID-19 emergency, we are making it clear: neither terrorism nor financial crisis nor a pandemic will stop us from pursuing freedom for victims.

As we have continued our work during the COVID-19 pandemic, traffickers have continued as well. Traffickers did not shut down. They continue to harm people, finding ways to innovate and even capitalize on the chaos. The ratio between risk and reward is expanding in their favor. And so, we press on all the more. As the vulnerable become more vulnerable, we remain resolved in our pursuit of freedom for every victim of human trafficking and accountability for every trafficker.

This 20th anniversary TIP Report is a powerful tool forged to advance the global community’s commitment to put freedom first. I am grateful to State Department officers around the world, ambassadors, and the Secretary for prioritizing the production of this report. To my intrepid colleagues at the Office to Monitor and Combat Trafficking in Persons (TIP Office), thank you for your perseverance and grit in every detail of this work. You are truly remarkable.

Despite the schemes of traffickers, the reality is this: governments across the world, survivors, NGOs, faith communities, and advocates are still at work. For 20 years we have determined that we will not grow weary in our fight for freedom, and we have only just begun. Hope lies ahead.

Sincerely,
**BURMA: TIER 3**

The Government of Burma does not fully meet the minimum standards for the elimination of trafficking and is not making significant efforts to do so; therefore Burma remained on Tier 3. Despite the lack of significant efforts, the government increased investigations and prosecutions of trafficking crimes, including those involving official complicity, and increased investigations of forced labor in the fishing industry. It also identified and referred to care more victims than in previous years and enacted long-awaited legislation enhancing protections for child victims. The state armed forces engaged in fewer instances of child soldier recruitment during the reporting period than in previous years. The government created policies and practices to increase and streamline the demobilization of child soldiers from the military and, for the first time, conferred permission to the UN to enter into child soldier demobilization agreements with all ethnic armed groups (EAGs). However, during the reporting period there was a policy or pattern of forced labor; the international monitor-verified use of children in labor and support roles by certain military battalions increased in conflict zones in Rakhine and Shan States. The military continued to rely on local communities to source labor and supplies, thereby perpetuating conditions enabling the forced labor of adults and children. Enduring military conflict with EAGs in several areas in the country continued to dislocate thousands of Rohingya and members of other ethnic minority groups, many of whom were at risk of human trafficking in Burma and elsewhere in the region as a result of their displacement.

**PRIORITIZED RECOMMENDATIONS:**

Cease official involvement in compelling civilians to perform any type of forced labor for the military by strengthening, re-issuing, and fully implementing associated military command orders against all forms of forced labor, and by prosecuting, convicting, and imprisoning officials involved in the practice. • Cease all unlawful recruitment and use of children by armed forces, including in non-combatant roles, and continue cooperation with the UN to facilitate ending child soldier recruitment and use by the military and EAGs. • Initiate the issuance of high security identity documents, with a nationwide priority of issuance to children, to prevent the use of counterfeit documents by children attempting to enlist in the military at the behest of their families or civilian brokers. • Finalize implementing regulations for the Child Rights Law, and in particular those related to accountability for crimes involving the recruitment and use of child soldiers. • Expand formal procedures to proactively identify and protect victims among vulnerable populations, including communities displaced by conflict and internal migrants working in the agricultural sector, using the new national referral mechanism. • Grant UN agencies and their partners immediate, safe, and unhindered access, including humanitarian access, to Rakhine, Chin, Kachin, and Shan States. • Provide legal status to stateless persons and facilitate high security official identity documents to stateless persons and other vulnerable populations in Burma to decrease their vulnerability to trafficking. • Eliminate restrictions on freedom of movement for internally displaced members of ethnic minority groups. • Strengthen efforts to identify, prosecute, and convict civilian brokers and military and other officials complicit in the unlawful recruitment and use of child soldiers, and impose significant prison terms. • Amend the anti-trafficking law to explicitly state that a demonstration of force, fraud, or coercion is not required to constitute a child sex trafficking offense. • Strengthen efforts to prioritize and increase resources available for victim protection, including victim shelters, provision of services for male victims, and reintegration support for former child soldiers. • In partnership with civil society, increase the capacity of relevant ministries to enforce labor laws, raise public awareness on deceptive recruitment and safe job placement channels, and proactively prevent and detect forced labor in the agricultural, extractive, domestic work, and fishing sectors. • Establish and implement a comprehensive criminal justice record-keeping system to track data on anti-trafficking investigations, prosecutions, convictions, and sentencing.

**PROSECUTION**

The government increased some law enforcement efforts; however, military authorities did not use civilian courts to seek criminal accountability for military personnel involved in the use and recruitment of child soldiers. The 2005 Anti-Trafficking in Persons Law criminalized all forms of labor trafficking and some forms of sex trafficking and prescribed penalties of five to 10 years’ imprisonment and a fine for trafficking offenses involving male victims, and penalties of 10 years’ to life imprisonment for trafficking offenses involving female or child victims. These punishments were sufficiently stringent and, with regard to sex trafficking, commensurate with those prescribed for other serious crimes, such as rape. Inconsistent with international law, the 2005 Anti-Trafficking in Persons Law required a demonstration of force, fraud, or coercion to constitute a child sex trafficking offense and therefore did not criminalize all forms of child sex trafficking. However, in July 2019, parliament enacted the Child Rights Law, which criminalized all forms of child sex trafficking, thereby addressing this gap. The new law prescribed penalties of one to 10 years’ imprisonment and a fine of one million to two million kyat ($1,360), which were also sufficiently stringent and commensurate with those prescribed for other serious crimes, such as rape. Forced labor, including the recruitment and use of children in military non-combatant roles is a criminal offense under the 2005 Anti-Trafficking in Persons Law, the 2012 Wards and Village Tracts Administration Act, Section 374 of the Penal Code, and the newly enacted Child Rights Law. The military continued to cite provisions in military law to punish individuals who used or recruited children for forced labor in non-combat roles; punishments included demotions, pension reductions, and geographic reassignments, which were disproportionately low compared to the seriousness of the crime. Authorities drafted legislation in late 2019 to replace the 2005 anti-trafficking law in an effort to criminalize all forms of trafficking in accordance with international standards and expand law enforcement mandates for certain interagency stakeholders; the draft was pending cabinet approval at the end of the reporting period.

The government improved collection of anti-trafficking law enforcement statistics during the reporting period through the use of a database maintained by the Anti-Trafficking in Persons Division (ATIDP). Most identified trafficking cases continued to involve Burmese women subjected to some form of exploitation through forced marriage to Chinese men. In 2019, the government reported initiating investigations into 207 trafficking cases, a slight increase from 205 in 2018 and 185 in 2017. According to the ATIDP, 3137 were cases of forced marriage that featured corollary sex trafficking or forced labor indicators. Of the remaining cases, 22 were cases of forced labor (21 in 2018; 22 in 2017; 41 in 2016), 18 were cases of “forced prostitution” (20 in 2018), and one involved forced surrogacy. Another case constituted an instance of forced adoption, which was outside the standard definition of trafficking.
Media reports indicate the government increased attention to forced labor in the fishing industry following a highly publicized case in the Ayeyarwady region in late 2019; police arrested and charged 19 individuals in connection with the case, and their prosecutions were pending at the end of the reporting period. Authorities recorded an additional 42 cases pending investigation at year’s end. Among the 207 total cases investigated, authorities reported initiating prosecutions against 624 suspects during the reporting period, a significant increase from 342 prosecutions in 2018 and 532 in 2017; however, many of these were conducted in absentia, as the traffickers had fled prior to arrest—in most cases to China. Unlike in prior years, authorities attempted to provide comprehensive conviction and sentencing data. According to the ATIPD, courts reached a verdict in cases involving 163 traffickers in 2019 (unreported in 2018; 156 in 2017; and 145 in 2016); this included 97 convictions, 10 cases discharged without conviction, two acquittals, and 57 guilty verdicts for defendants who had absconded. Sentences ranged from four years’ to life imprisonment (unreported in 2018), with longer sentences associated to cases involving organized groups or defendants who had previously absconded. During the reporting period, the government also initiated prosecutions of dozens of brokers under the Overseas Employment Act for crimes involving illegal recruitment practices impacting hundreds of potential trafficking victims; conviction data was unavailable, but penalties for violation of the law were limited to one year imprisonment, a fine, or both.

The ATIPD maintained dedicated anti-trafficking task force (ATTF) police units throughout the country and increased the number of regional offices from 32 to 60 in 2019. Burma’s Central Body for the Suppression of Trafficking in Persons (CBTIP) coordinated the government’s anti-trafficking efforts, including training for the ATIPD offices. It also continued to host training sessions and coordination meetings on trafficking for government officials independently and with foreign donor assistance. Police capacity to address human trafficking continued to improve, but progress was limited amid challenges in interagency coordination. Limited training and training capacity for non-specialized Myanmar Police Force (MPF) officers, coupled with regular law enforcement turnover, continued to hamper the success of some investigations and prosecutions. Some civil society organizations observed in prior years that non-specialized police officers were sometimes unaware of how to pursue human trafficking investigations without consulting ATTF; it is therefore possible that some victims human trafficking were turned away when attempting to report their cases. ATIPD and ATTF officers consulted and cooperated with law enforcement agencies in China, Laos, India, and Thailand, as well as through ASEAN mechanisms, as part of formal dialogues on human trafficking and border security issues. Law enforcement and justice sector officials had limited ability or authority to exercise their investigative mandates in geographic areas not controlled by the government.

Some government and law enforcement officers reportedly participated in, facilitated, or profited from human trafficking. Corruption and impunity reportedly continued to hinder law enforcement in general; this included police officers and other public officials acting on bribes, as well as individuals claiming to have ties to high-level officials purportedly pressuring victims not to seek legal redress against their traffickers in some cases. In late 2019, the government’s anti-corruption commission reported initiating the prosecution of a Burmese labor attaché for allegedly accepting bribes from employment agencies in exchange for issuance of fraudulent documents, leading to the placement of thousands of Burmese workers into vulnerable sectors in Thailand; the trial was ongoing at the end of the reporting period. Additionally, for the first time, the government reported arresting, detaining, initiating court martial proceedings, and proposing civilian criminal investigations into two different cases involving military officers for their alleged role in facilitating the sex and labor trafficking of Burmese women in China in 2019; both defendants remained in prison awaiting trial at the end of the reporting period. In one of the cases, four associated civilian perpetrators were sentenced to 20 years in prison each in February 2020. Authorities also convicted and imprisoned the spouse of an auxiliary police officer for her involvement in a trafficking crime prosecuted in the previous reporting period.

The newly enacted Child Rights Law strengthened penalties for any individual who, knowingly or through “failure to inspect,” engaged in child soldier recruitment or use. However, authorities did not report data on its implementation. Some international observers continued to express concern that Burma’s array of relevant laws were insufficient to adequately deter commission of child soldier-related crimes. The constitutionally-guaranteed power of the military continued to limit the ability of the government to address cases of adult forced labor and child soldier recruitment and use by the armed forces. Burmese law provided for separate judicial procedures for military personnel accused of criminal misconduct. The Ministry of Defense (MOD) reported taking disciplinary action against 18 military personnel for child soldier recruitment in 2019, compared to 27 punished in 2018 and 19 punished in 2017; penalties included reprimands impacting promotion, service recognition, and pensions. The MOD did not report punitive measures for military personnel guilty of subjecting adults to forced labor within Burma. In past years, most of these cases reportedly culminated in reprimands, fines, or pension reduction—penalties significantly less than those prescribed by criminal law. The government did not provide data on the prosecution of civilians involved in the recruitment of child soldiers, despite ongoing media, NGO, and international organization reports.

**PROTECTION**

The government increased some victim protection efforts, but the use of children in support roles by the military reportedly increased in conflict areas in Rakhine and Shan States during the reporting period. Burma’s new Child Rights Law, enacted in July 2019, featured language strengthening some protections for child victims of forced labor and sex trafficking, including for children recruited and used in armed conflict. The government also ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. With the help of an international organization, the government finalized a national referral mechanism featuring a national standard operating procedure (SOP) on victim return, reintegration, and rehabilitation—a process that began in 2016. Civil society groups viewed the new Child Rights Law and the establishment of these mechanisms as important steps in improving interagency coordination on victim identification and protection issues.

During the reporting period, police identified 335 victims of trafficking, including 64 men and 271 women, in addition to 216 women and three men who may have experienced some form of exploitation in China and one individual from Indonesia who returned to Burma; this marked a significant increase from receipt and identification of 312 foreign referrals in 2018 and 289 in 2017. Many of these cases involved forced marriage that included corollary forced labor or sex trafficking. The exact number of domestic victims identified by Burmese authorities was unknown, but police reported assisting 16 victims of trafficking within the country (29 in 2018 and 44 in 2017). The military granted most UN monitors’ requests within 72 hours to access and inspect military installations for the presence of children. However, due to ongoing conflicts, the government sometimes prevented assistance from reaching displaced Rohingya and other vulnerable populations during the year by implementing access restrictions on the UN and other humanitarian agencies. Continued violence in Rakhine State and conflict in Kachin and Shan States also limited some monitoring efforts.

The Child Rights Law set the minimum age of voluntary military
recruitment at 18, addressing a key ambiguity in preexisting legislation and fulfilling a long-held recommendation from international human rights organizations. It also included language strengthening certain protections for children subjected to recruitment or use by state and non-state armed forces, including automatic dismissal of criminal charges and referral to protective care for certain crimes they were forced to commit as a result of said recruitment or use. However, although the law increased the age at which a child could legally be considered a criminal from seven to 10 years, some international observers were concerned it remained too low to fully protect children from penalization for certain crimes.

International monitors received at least 33 new allegations of child recruitment by the military, but did not verify any of these (at least two new instances of recruitment and 36 cases from previous years verified in 2018; 49 total cases in 2017). Past recruitment methods have included deception, force, and coercion by both informal civilian and military brokers, as well as intake of minors joining at the behest of their families. International monitors noted that, while instances of recruitment continued to decrease, the production of increasingly sophisticated counterfeit identity documents by civilian brokers continued to complicate age verification measures, which could have led to some inadvertent acceptance of children into the military’s ranks. In prior years the government issued explicit military command orders prohibiting the conscription of civilians and prisoners in portering; the use of civilians in military base maintenance and construction; and the use of children under 18 for non-combat roles. Despite this, some military battalions based in conflict areas continued to use children for short-term labor or other non-combat support roles, including in barracks cleaning and camp maintenance, paddy harvesting, guiding, portering, and cooking. International monitors verified 191 such cases of short-term child use by the military in northern Rakhine State during the reporting period; observers attributed this relatively high figure to ongoing and increasing military conflict in several areas of the country, including Rakhine State and Shan State, but noted that increased family facilitation may have been a factor. According to media reports, soldiers forced four girls in Shan State to march with their patrol, possibly to serve as human shields. The Border Guard Police also reportedly used children for forced labor in Rakhine State. The military removed from its ranks at least 22 children and young men suspected of having been recruited as minors in response to notification letters from international monitors, who observed increased and expedited efforts on the part of the MOD to clear backlogged child soldier cases during the reporting period (75 in 2018; 49 in 2017 and 112 in 2016). International monitors did not report how many of these, if any, had been removed from frontlines (12 in 2018). Among improved efforts was the implementation of a new “benefit of the doubt” policy, under which the military agreed to immediately demobilize any individuals serving without proof of age upon suspicion of minor status, rather than waiting on age verification.

The government continued to operate five centers for women and children who were victims of violent crime; all five could shelter trafficking victims, and one was dedicated to female trafficking victims. Another housed repatriated trafficking victims. Prior to their reintegration, these victims had the alternative option to stay in any of four transit centers run by the Department of Rehabilitation (DOR) under the Ministry of Social Welfare, Relief, and Resettlement (MSWRR); these facilities were called “Women’s Vocational Training Centers,” and a fifth was in development at the end of the reporting period. The government reported a total of 532 individuals were referred to temporary shelter services during the reporting period, including 370 female victims and 162 male victims (unreported in previous years); some of these were likely victims of crimes outside the standard definition of trafficking. The government also operated three facilities funded by a foreign donor that could serve both male and female victims. Services in government facilities remained rudimentary, but authorities allocated increased funding for trafficking victim protection, and some victims received psycho-social counseling, travel allowances, support for obtaining official documents, and assistance in returning to home communities. NGOs and foreign donors funded and facilitated delivery of most services available to trafficking victims. In conjunction with an international organization, MSWRR continued to implement child protection programs that featured services for victims of trafficking. CB/TIP reported allocating to a central fund 64 million kyat ($43,390) for victim support during the reporting period (unreported in 2018). MSWRR provided 15.6 million kyat ($10,580) to fund reintegration services for 78 trafficking victims, compared with 19.75 million kyat ($13,390) for 175 victims in 2018. The ATIPD contributed an additional 60 million kyat ($40,680) to assist with reintegration, transport, meals, and medical care for the same victims. In an effort to improve coordination on victim protection, the government significantly increased DOR staff to 202 (132 in 2019, 72 in 2018), but it reportedly remained under-resourced. DOR also provided separate assistance to 16 Burmese nationals subjected to trafficking within Burma, including five child sex trafficking victims, during the reporting period.

The new Child Rights Law mandated social service referral procedures for children identified among state- and non-state armed groups. Overall government support to demobilized child soldiers remained minimal, with most services provided by civil society partners. DOR provided up to 19 million kyat ($12,880) for the rehabilitation and reintegration of 38 former child soldiers during the reporting period (unreported in 2018). Longer-term support was limited to vocational training for some former child soldiers and women in major city centers and border areas; the lack of adequate protective measures for victims—particularly males—increased their risk of re-trafficking. The government trained 60 diplomats and 35 attachés on human trafficking during the reporting period. It maintained labor attachés in Thailand, Malaysia, and the Republic of Korea whose responsibilities included assisting trafficking victims, and ATIPD officers staffed liaison offices established by the UN and international organizations at the Chinese and Thai border to facilitate victim repatriation. DOR reported repatriating and assisting 491 Burmese nationals from abroad with the help of an international organization; this figure included 314 women subjected to forced marriage in China with possible sex or labor trafficking indicators; 16 child sex trafficking victims from Thailand; 161 male economic migrants returning from Thailand, some of whom may have experienced forced labor; and at least one victim of unspecified trafficking circumstances returned from Indonesia (unreported in 2018). As was the case in 2018, the government received repatriation requests from a large volume of Burmese economic migrants from both Thailand and China, but ATIPD reportedly assessed that their cases did not meet the definition of trafficking; however, it is possible that some victims went undetected amid insufficient or inconsistently applied screening procedures. Authorities reported repatriating four foreign women subjected to sex trafficking in Burma during the reporting period, including two from Thailand and two from Vietnam (unreported in 2018); they also assisted in the repatriation to Thailand of a transgender woman in commercial sex, but they did not report if she had been subjected to trafficking.

The government maintained Department of Social Welfare (DSW) offices throughout the country, each with full-time case managers, to provide health care, reintegration assistance, psycho-social care, and legal services to trafficking victims, including child soldiers. The government also maintained a working group on victim repatriation, reintegration, and rehabilitation under the DSW. However, the DSW continued to lack the resources necessary to adequately provide these services to trafficking victims, and high ATTF turnover and lack of awareness impeded the coordination required to ensure victims identified by law enforcement officers would be connected
Trafficking victims frequently declined to cooperate with authorities due to the lack of adequate victim protection or compensation programs, language barriers, a lengthy and opaque trial process, fear of repercussions from their traffickers, and general mistrust of the legal system. A cumbersome investigative process sometimes required victims to give statements multiple times to different officials, increasing the likelihood of re-traumatization; however, the authorities’ increased use of police-prosecutor guidelines on trafficking case cooperation reportedly generated some improvement to this trend. In 2019, the government initiated a pilot court program allowing video testimony for victims, and ATIPD cited two ongoing cases using this technology at the end of the reporting period. The government did not provide legal alternatives to the removal of foreign victims to countries where they may face hardship or retribution, nor did it provide temporary legal status to any foreign victims, although foreign victims were entitled to temporary shelter while awaiting repatriation. There was at least one instance of victim penalization during the reporting period; in September 2019, authorities filed charges against several factory workers for going on strike after having been subjected to forced overtime at a Chinese-owned factory in the Ayeyarwady region. The case was pending at year’s end.

PREVENTION

The government increased prevention efforts; however, because the military did not fully implement previously issued military command orders prohibiting certain forms of forced labor, some military authorities continued to subject adults and children from vulnerable populations—particularly in conflict areas populated by members of ethnic minorities—to forced labor. CBTIP continued to coordinate anti-trafficking programs and policies, and authorities finalized an anti-trafficking work plan that outlined preventative efforts for the 2020 calendar year. A 2014 directive prohibiting the use of children by the military remained in place. The military continued to conduct oversight and monitoring of recruitment procedures to prevent child recruitment; this involved age verification measures and relevant training sessions for enlisted personnel, training centers, and recruitment officials. The government continued to convene an interagency “Committee for Preventing Grave Violations against Children in Armed Conflicts” to formulate and implement relevant public awareness campaigns.

In previous years, Burmese fishermen had no formal channels through which to seek employment in the Thai fishing industry, and instead relied exclusively on unregulated brokerage networks that exacerbated their indebtedness and vulnerability to coercion at sea. To address this issue, Burma signed a memorandum of understanding (MOU) with Thailand during the reporting period to facilitate labor recruitment into the Thai fishing sector through a formalized, government-to-government hiring process. However, the MOU did not standardize or clarify the two countries’ disparate laws and policies on eligible recruitment fees and minimum wages, constraining meaningful implementation. Further, most vessel owners were unaware of the new hiring system and continued to staff their crew through unregulated Thai and Burmese intermediaries charging high recruitment fees that continued to place Burmese fishermen at risk of debt-based coercion into forced labor. Some Burmese recruitment agencies avoided the hiring system altogether due to distrust of labor conditions in the Thai fishing sector and doubts concerning the capacity of the Thai authorities to enforce the MOU. During the reporting period, the government cooperated with counterpart agencies in Cambodia and Laos to strategize and exchange views on addressing broader forced labor among migrant workers in Thailand. The government also partnered with an international organization to conduct an interagency training on fisheries crime focusing on corruption, document fraud, and other crimes that could be generative of or connected to forced labor.

Ethnic minority groups in Burma—particularly internally displaced Rohingya, Rakhine, Shan, and Kachin communities—continued to be at elevated risk of forced labor as a result of longstanding armed conflict between the military and EAGs. EAGs continued their recruitment and use of child soldiers during the reporting period amid ongoing violence in several areas of the country. However, for the first time, the government granted formal permission to the UN to enter into child soldier demobilization agreements with EAGs, addressing a longstanding recommendation from the international community. Violence in northern Rakhine State also continued to result in the migration of Rohingya into neighboring Bangladesh, where many of them were vulnerable to trafficking—especially via transport to other countries for the purpose of sex trafficking—as a result of their displacement.

According to the 2014 census, approximately one quarter of Burma’s residents lacked access to citizenship or identity documents, significantly increasing their vulnerability to traffickers in Burma and in other countries. Authorities continued to offer a citizenship verification process pursuant to a 1982 law, but participation was low among Rohingya in Rakhine State amid concerns that the authorities might require these individuals to inaccurately list themselves as “Bengali,” a term that could potentially further limit their access to certain rights. During the reporting period, the government provided documents, including birth certificates, to some undocumented Rohingya, and it began accelerating certain citizenship verification processes. Immigration authorities also initiated a mobile service center to issue these documents to residents of internally displaced persons (IDP) camps in Shan, Kachin, and Rakhine States. However, most Rohingya who received citizenship were naturalized—a distinction that afforded them fewer rights than full citizens. International observers were concerned provisions of the Child Rights Law would further codify statelessness for some groups. Government policies limiting freedom of movement in some jurisdictions continued to hinder access to employment and education for some communities, especially in IDP camps housing Rohingya and other ethnic minority groups, further aggravating economic conditions that may have contributed to individuals pursuing irregular migration and employment channels known to engender forced labor and sex trafficking.

Restrictions on freedom of assembly left some workers who protested unacceptable working conditions, including indicators of forced labor, vulnerable to law enforcement action. However, during the reporting period, the Ministry of Labor, Immigration, and Population held dialogues with trade unions to review a draft law expanding workers’ right to assemble; the legislation remained in draft at year’s end. The government also passed the Labor Dispute Law in 2019 to streamline workers’ access to recourse for a range of labor violations, including forced labor, but bylaws necessary for sufficient implementation were still under review at the end of the reporting period, and some international observers doubted their efficacy. In a previous reporting period, the government worked with an international organization to establish a labor complaints mechanism; following conclusion of the program in late 2018, the government established a new national forced labor complaints mechanism to replace it in February 2020. Some civil society contacts characterized labor inspection practices as untimely, unresponsive to complaints, and devoid of enforcement. Government officials noted a lack of adequate human resources, increasingly sophisticated document forgery techniques, conflict, and geographic remoteness constrained sufficient oversight into several sectors known or
Multiple agencies reported conducting awareness-raising campaigns involving over 5,000 separate activities reaching more than 2 million people. Other efforts involved print, television, radio, roadshows, lectures, and other media—particularly in high-vulnerability states—as well as training for members of community-based watch groups and students on trafficking (2,251 in 2018 and 2,300 in 2017). The government also placed thousands of billboards and posters and distributed more than 700,000 anti-trafficking pamphlets nationwide, including in ethnic minority languages. CBTIP used state-owned radio, television, and a social media platform to raise awareness on safe migration guidelines and government policies, regulations, and laws related to trafficking. The government aided an international organization in conducting at least 57 awareness-raising events in IDP camps in Kachin and Rakhine States reaching more than 5,500 individuals. The government also maintained contact with local law enforcement liaison offices in non-government-controlled areas to disseminate awareness-raising materials in vulnerable communities. Authorities continued to release information on the prosecution of traffickers via government-supported and private media throughout the country. The ATIPD maintained a hotline and a social media account with information on trafficking, including updated law enforcement statistics; it reported receiving 1,708 hotline calls leading to the identification of 65 trafficking cases, and it initiated an additional 46 trafficking investigations based on information received via its social media page. The government investigated and prosecuted brokers and labor recruiters suspected of illegal recruitment practices under the Overseas Employment Act. Authorities also collaborated with multiple international and civil society organizations to raise awareness on safe migration to decrease vulnerability to trafficking abroad. The police did not report any cases of child sex tourism during the reporting period. Authorities continued to partner with an NGO to raise awareness about child sex tourism, and ATIPD conducted relevant training and awareness campaigns through the Ministry of Hotels and Tourism for new official tour guides. The government did not take steps to reduce the demand for commercial sex acts.

TRAFFICKING PROFILE
As reported over the past five years, human traffickers subject men, women, and children to forced labor, and women and children to sex trafficking, both in Burma and abroad. There have also been limited reports of traffickers transporting foreign victims through Burma en route to other countries in Asia. Traffickers subject some Burmese men, women, and children who migrate for work abroad—particularly to Thailand and China, as well as other countries in Asia, the Middle East, and the United States—to forced labor or sex trafficking. Traffickers force men to work domestically and abroad in fishing, manufacturing, forestry, agriculture, and construction, and they subject women and girls primarily to sex trafficking or forced labor in garment manufacturing and domestic service. NGOs continue to report instances of Burmese males transiting Thailand en route to Indonesia and Malaysia, where traffickers subject them to forced labor, primarily in fishing and other labor-intensive industries. Recruitment agencies in Burma and other Southeast Asian countries lure fishermen with promises of high wages, charge fees and curtailment deposits to assign them fake identity and labor permit documents, and then send them to fish long hours in remote waters on vessels sailing under complicated multinational flagging and ownership arrangements. Senior crew aboard vessels in the Thai and Taiwan fishing fleets subject some Burmese men to forced labor through debt-based coercion, passport confiscation, contract switching, wage garnishing and withholding, threats of physical or financial harm, or fraudulent recruitment; they also subject some to physical abuse and force them to remain aboard vessels in international waters for years at a time without coming ashore. Informal brokers also lure Burmese men onto offshore fishing and shrimping rafts in Burmese waters, where traffickers confine and physically abuse them to retain their labor for months at a time. There are some reports of boys subjected to forced labor in Burma’s fishing industry as well. Traffickers are increasingly transporting Burmese women to China and subjecting them to sex trafficking and forced labor in domestic service under the false pretense of marriage to Chinese men; Burmese government officials are occasionally complicit in this form of trafficking. Some traffickers abduct Rohingya women and children in transit while fleeing violence—and reportedly from refugee camps in Bangladesh—and sell them into sex trafficking and forced marriage in India, Indonesia, and Malaysia; some may experience conditions indicative of forced labor. Companies operating under the auspices of the Japanese government’s “Technical Intern Training Program” have exploited Burmese nationals in forced labor in food processing, manufacturing, construction, and fishing.

Within Burma, men, women, and children from predominantly ethnic minority areas—including an estimated 109,000 persons displaced by conflict in Kachin and northern Shan States, 40,000 persons displaced in non-government controlled areas, and at least 135,000 persons displaced in Rakhine State—are at increased risk of trafficking. Children in Kachin and northern Shan States are particularly vulnerable to sex traffickers operating near the Chinese border. Traffickers reportedly prey on girls living in Rakhine IDP camps and subject them to forced labor and sex trafficking in Malaysia. Restrictions on IDP camp residents’ freedom of movement and employment, particularly among Rohingya communities, drive internal migration through irregular, unsafe channels known for trafficking vulnerabilities. Criminals in EAG-controlled areas reportedly force children, especially boys, to serve as drug mules in Shan, Kachin, and Karen States. Absent oversight and enforcement measures in non-government controlled areas, often in border zones, women and girls from these border regions and elsewhere in Southeast Asia may be vulnerable to sex trafficking in casinos and Special Economic Zones owned or operated by EAGs and Chinese and Thai companies. Farming communities displaced following land confiscation by the military and private commercial entities are also at higher risk of exploitation due to ensuing economic hardships.

Approximately one quarter of the population in Burma does not have access to citizenship or identification documents, generating human trafficking vulnerabilities that disproportionately affect ethnic minority groups—particularly in Kachin, Shan, and Rakhine States. In Kachin, displaced women and girls are also vulnerable to trafficking, including forced concubinism leading to forced childbearing, via forced or fraudulent marriages to Chinese men arranged by deceptive or coercive brokers. One academic study found that 2,800 out of 5,000 Kachin and Shan women returning to Burma after experiencing forced marriage in China had also been subjected to forced childbearing. Rohingya individuals are at particularly high risk of labor trafficking in Rakhine state, including forced labor perpetrated by the military. Many women and girls among the estimated 740,000 Rohingya who fled conflict in Rakhine State to neighboring Bangladesh since August 2017 have been subjected to sex trafficking in Bangladesh and India. Ethnic Rakhine are reported to be victims of forced labor on the margins of conflict between the military and EAGs in Rakhine State. Traffickers subject members of Burma’s vulnerable populations to sex trafficking and forced labor in seasonal strawberry and longan harvesting, year-round orange farming, manufacturing in registered and unregistered factories, and construction of roads and city government facilities across the border in northwestern Thailand. Traffickers use deceptive recruitment tactics and immigration status-based coercion to subject migrant workers from Shan State to forced labor on sugarcane plantations in China’s Yunnan Province. Illegal logging operations near the Chinese border may subject local communities to forced labor.
Local traffickers use deceptive tactics to recruit men and boys into forced labor on oil palm, banana, and rubber plantations; in jade and precious stone mines; in bamboo, teak, rice, and sugarcane harvesting; and in riparian fishing. IDPs from the Sagaing, Bago, Irrawaddy, Mandalay, and Tanintharyi regions, as well as from Shan and Rakhine States, experience contract discrepancies, wage garnishing and withholding, forced and arbitrary cost-sharing of pesticides, penalty fees, coerced overtime, identity document retention, and restricted freedom of movement in banana plantations in Kachin State. Communities displaced by environmental degradation resulting from the establishment and operation of these plantations, which are often Chinese-owned, are also vulnerable to trafficking, including on lands they previously occupied and through internal economic migration to other parts of the country. In Kachin State, men, women, and children are also at risk of forced labor in jade prospecting throughout refuse areas created by larger mining operations, as well as in road and dam construction. A majority of these prospectors are reportedly addicted to opiates or methamphetamine, which some traffickers—including members of EAGs and government-supported militias—may intentionally facilitate and exploit to retain their labor. Crime syndicates subject women and girls to sex trafficking in massage parlors located in close proximity to these refuse mining areas, often in partnership with local government and law enforcement officials. Many people displaced by violence in Rakhine State, including ethnic Rakhine, travel to Kachin State for this work. Forced eviction from new mining sites and resulting economic hardships make some communities in Kachin, Shan, and Kayin States more vulnerable to trafficking. Traffickers subject children to sex trafficking or to forced labor, at times through debt-based coercion, in teashops, small businesses, the agricultural and construction sectors, in domestic work, and in begging. Traffickers subject children and adults to forced domestic servitude. A small number of foreign child sex tourists exploit Burmese children.

Some military personnel, civilian brokers, informal civilian intermediaries, border guard officials, and EAGs continue to recruit or use child soldiers, particularly in conflict-affected ethnic areas. Civilian recruiters in some cases coerce or offer incentives to children or their families through false promises about working conditions, salary, and promotion opportunities. EAGs force men and boys to serve through intimidation, coercion, threats, arbitrary taxation, and violence. The military has employed the same tactics in the past, although most children identified in military service initially enter under the auspices of civilian brokers or enlist at the behest of their own families. The military may still deploy some child soldiers to the front-line as combatants. Military-backed militias are also involved in the recruitment and use of children in conflict settings. Some EAGs abduct or recruit children, including from IDP camps, to fight against the military.

The military, informal civilian brokers, and some EAGs also use deception and various forms of coercion, including threats of financial and physical harm, to compel adult victims into short term forced labor. Under the auspices of the legacy counter-insurgency strategy of “self-reliance,” some military authorities in areas with active conflict subject members of local populations—mostly men, but also women and children—to forced labor in portering, construction, cleaning, cooking, and public infrastructure projects. Reports of military-controlled forced labor and other abuses are highest among ethnic minority communities in the conflict zones within Shan, Rakhine, and Kachin States.

The government operates as many as 47 prisons and 48 labor camps called “agriculture and livestock breeding career training centers” and “manufacturing centers,” respectively. The labor camps house thousands of inmates across the country, likely including some political prisoners. Eighteen of these camps feature government-managed mining operations. According to limited reporting, authorities at times may subject these incarcerated populations to unlawful prison labor or conditions with indicators of forced labor for private gain. Anti-LGBTI laws place some LGBTI individuals at higher risk of extortion and psychological coercion by law enforcement. Discriminatory hiring practices complicate access to formal sector employment for LGBTI individuals and persons diagnosed with HIV/AIDS, forcing some to seek opportunities in unregulated sectors known for trafficking vulnerabilities—particularly among transgender persons in commercial sex.

**BURUNDI: TIER 3**

The Government of Burundi does not fully meet the minimum standards for the elimination of trafficking and is not making significant efforts to do so; therefore Burundi remained on Tier 3. Despite the lack of significant efforts, the government took some steps to address trafficking by working with an international organization to provide training to immigration officials, identifying victims of trafficking abroad, conducting public awareness campaigns in partnership with an international organization, and increasing cooperation with civil society. However, the government did not convict any trafficking offenders for the fifth consecutive year. Despite continuing allegations, it did not investigate, prosecute, or convict officials allegedly complicit in trafficking crimes. The government continued to lack standard operating procedures (SOPs) to identify and refer victims to services and did not have adequate protection services available for victims. The government did not report providing or referring victims to rehabilitation services. Authorities continued to lack a clear understanding of trafficking and, although the government trained immigration officials during the reporting period, it did not institutionalize anti-trafficking training for its personnel.

**PRIORITIZED RECOMMENDATIONS:**

- Implement the anti-trafficking law and significantly increase efforts to more effectively investigate, prosecute, and convict traffickers.
- Develop national-level data collection on law enforcement and victim identification efforts. • Investigate all credible accusations of official complicity and hold complicit officials criminally accountable. • Institutionalize anti-trafficking training—including training on case investigation and victim identification—for all law enforcement and on implementation of the anti-trafficking law for all prosecutors and judges.
- Develop and provide training on national standardized procedures to allow for the systematic identification and referral of trafficking victims to appropriate care.
- Expand protective services for victims through partnerships with NGOs, including by allocating resources and providing separate shelter for children and adults. • Devote sufficient resources to implement the 2019-2020 national action plan. • Implement and consistently enforce strong regulations and oversight of labor recruitment companies, including by eliminating recruitment fees charged to migrant workers and holding fraudulent labor recruiters criminally accountable. • Finalize and implement bilateral labor negotiations with destination country governments on migrant worker rights.
TAB 4
Burma (Myanmar) 2020 Crime & Safety Report

This is an annual report produced in conjunction with the Regional Security Office at the U.S. Embassy in Rangoon (Yangon). OSAC encourages travelers to use this report to gain baseline knowledge of security conditions in Burma (Myanmar). For more in-depth information, review OSAC’s Burma country page for original OSAC reporting, consular messages, and contact information, some of which may be available only to private-sector representatives with an OSAC password.

Travel Advisory

The current U.S. Department of State Travel Advisory at the date of this report’s publication assesses Burma at Level 2, indicating travelers should exercise increased caution due to areas of civil unrest and armed conflict.

Do not travel to:
- Buthidaung, Kyauktaw, Maungdaw, Minbya, Mrauk-U, Ponnagyun, and Rathedaung townships in Rakhine State due to civil unrest and armed conflict.
- Paletwa township in Chin State due to civil unrest and armed conflict.
- Hpakan, Momauk, Sumpрабum, Tanai, and Waingmaw townships in Kachin State due to civil unrest and armed conflict.
- Hpapun township in Kayin State due to civil unrest.

Reconsider travel to:
- Ann, and Myebon townships in Rakhine State due to civil unrest and armed conflict.
- Matupi township in Chin State due to civil unrest.
- Bhamo, Mansi, and Mogaung townships in Kachin State due to civil unrest.
- Hopang, Lashio, Mongkaung, Namhsan, Nanhsan, Nantkan townships in Shan State due to civil unrest.
- Lashio township in Shan State due to civil unrest.

Review OSAC’s report, Understanding the Consular Travel Advisory System.

Overall Crime and Safety Situation

The U.S. Department of State has assessed Rangoon as being a LOW-threat location for crime directed at or affecting official U.S. government interests. Although the police do not issue crime or arrest statistics, the rising cost of living, increasing expatriate presence, and rapidly expanding tourism sector appear to have led to an uptick in crime. In Rangoon, Burmese nationals experience nighttime robbery, petty street crime, home invasion, and homicide at rates similar to other major cities in Southeast Asia. Many reports of crime are unverifiable due to third-party sources that are difficult to corroborate.

The most common crimes expatriates report are non-violent crimes of opportunity such as pickpocketing, theft of unattended possessions in public places, and bag snatchings. Exercise the same level of caution you would in any major city in the U.S. Review OSAC’s reports, All That You Should Leave Behind.

Incidents of financial fraud are increasing. While Burma is still largely a cash-only society, this is changing, particularly in larger urban areas where many stores, hotels, and restaurants catering to tourists accept credit cards as a form of payment. You can find ATMs in larger urban areas, but it is common for them to run out of money, especially on local paydays. Travelers must often carry large sums of local currency, especially to more rural locations. Avoid flashing large sums of currency in public. Review OSAC’s reports, The Overseas Traveler’s Guide to ATM Skimmers & Fraud and Taking Credit.
Avoid responding to unsolicited opportunities to make money, including business opportunities that seem too good to be true. Beware of merchants selling gems, gold, and/or semi-precious stones; purchasing these items could result in substantial loss of money and/or a violation of local laws. Do not purchase gems or minerals from an unlicensed source.

Violent crime and the use of weapons in the commission of crimes are not common. In the event of an armed confrontation, immediately hand over the desired property to avoid escalation or injury.

There were only three break-ins of diplomatic or foreign owned residences in Rangoon’s Bahan Township in 2019. Proper use of door and gates locks would likely have prevented these crimes. Supervise all workers in your residence. Keep doors and windows of residences and hotel rooms secured. Do not store valuable items and large amounts of currency at home; they may attract the attention of criminals. Review OSAC’s reports, Hotels: The Inns and Outs and Considerations for Hotel Security.

Cybersecurity Issues

Authorities may prosecute, fine, and/or imprison you for posting negative or derogatory comments on social media, including Facebook, under the 2013 Telecommunications Law, which criminalizes “extortion of any person, coercion, unlawful restriction, defamation, interfering, undue influence, or intimidation using a telecommunications network.”


Other Areas of Concern

Internal ethnic conflicts, communal violence, and religious tensions make certain areas outside of Rangoon off-limits for Embassy personnel. You must obtain permission to visit sensitive areas from the Burmese government prior to travel. Foreigners traveling overland outside of Rangoon or other major cities/tourist destinations may experience problems without a Burmese interpreter to facilitate interaction with non-English speakers.

Transportation and Safety Situation

Road Safety and Road Conditions

Although major thoroughfares (e.g. the Rangoon-Mandalay highway) have received government attention and undergone safety improvements, many roads throughout Burma are in poor condition and/or may be impassable after heavy rains. Many roads lack pavement, lighting, shoulders, and/or grading. Driving under these conditions has led to an increase in fatalities, particularly on highways. U.S. Embassy personnel may not drive outside of major cities after dark.

The monsoon season (May-October) presents additional transportation and logistics challenges including mud, deep potholes, flooding, and near-zero visibility at times. These challenges may hamper the ability to drive safely. Drivers should familiarize themselves with flood-prone areas and travel in high-clearance 4WD vehicles. Inclement weather may add several hours to estimated travel time. Only travel during daylight hours using road worthy vehicles. Those driving to remote areas should consider using redundant vehicles and carrying vehicle recovery equipment in the event a vehicle becomes stuck or breaks down.

Vehicle import restrictions have eased, causing the number of vehicles on Rangoon’s streets to increase in recent years. Narrow streets congested with vehicles, pedestrians, and animals; poor road maintenance; and inadequate traffic infrastructure can result in difficult daily commutes. Many motorists are new to driving. Drivers are often impatient and exhibit little consideration for pedestrians, other motorists’ right-of-way, or general safe driving practices. Drivers routinely cross into oncoming traffic to pass, pull into traffic without looking, fail to merge properly, and cut off other vehicles. Many vehicle accidents occur due to the erratic behavior of local drivers. Exercise caution when driving. You must have a Burmese government recognized driver license to operate a motor vehicle in Burma. Burma does not recognize driver’s licenses from the United States; an international driver license is only valid for one year.

Pedestrians often walk in the middle of roads or stand on painted lane dividers, often only inches from passing vehicles, seemingly unaware of the potential safety hazard. Many pedestrians wear dark clothing, and local drivers tend to use high beams at night (or no headlights at all), posing additional risks to other motorists and pedestrians. In 2017, a passing motorist struck and killed a U.S. citizen attempting an ill-advised crossing of a busy road at night. Another struck a U.S citizen pedestrian while making an illegal turn, causing serious injuries. Pedestrians should maintain a high degree of situational awareness and not assume they have the right of way.

By law, authorities permit no alcohol in one’s system while operating a vehicle. Nevertheless, drunk or drug-impaired driving is a major concern and poses a significant risk to visitors, especially at night.

Drivers also must contend with motorbikes, which often lack proper signals and safety gear; give them a wide berth. Always keep adequate space behind the vehicle in front of you to ensure adequate stopping distance. Bicycling can also be hazardous due to poor conditions and erratic drivers. Be aware of what is taking place outside of the vehicle. It is common for beggars and street vendors to approach vehicles at stoplights. Always keep your windows up and your doors locked. Always park in secure, well-lighted locations. Do not hitchhike or pick up hitchhikers.
Public Transportation Conditions

Public transportation (e.g., taxis, bus, and rail) is readily available in Rangoon and some parts of the country. Most trains and buses are overcrowded; others are old and in poor condition, frequently causing them to break down, for these reasons the U.S. Embassy discourages the use of public transportation for its employees.

In Rangoon, taxis are a more reliable method of transportation. They are generally safe, but many are in poor condition and/or lack seatbelts. Take particular care when taking taxis late at night. To avoid confrontation or overcharging, negotiate rates with the driver prior to departure. Identify if the driver seems impaired due to drinking or drugs. When in doubt, hail another taxi. The U.S. Embassy permits its employees to use licensed taxis and app-based services such as Grab.

For more information, review OSAC’s Report, Security in Transit: Airplanes, Public Transport, and Overnights.

Aviation/Airport Conditions

In December 2018, the U.S. Federal Aviation Administration audit assessed that Burma is compliant with International Civil Aviation Organization safety standards. However, safety records of Burma's commercial air carriers are not readily available, and there is little information available regarding government oversight of commercial aviation. Passenger screening remains below international standards.

Other Travel Conditions

Fuel stations and police assistance are limited outside of Rangoon and other major towns/cities; motorists should plan accordingly.

Terrorism Threat

Local, Regional, and International Terrorism Threats/Concerns

The U.S. Department of State has assessed Rangoon as being a MEDIUM-threat location for terrorism directed at or affecting official U.S. government interests. The government is sensitive to the threat of terrorism and engages with international partners on this issue. There is no evidence to suggest that terrorist organizations have operational capacity in Burma. The government is not a state sponsor of terrorist activities and does not knowingly allow foreign fighters to transit the country. However, terrorists can target Westerners anywhere in the world. Consider that any large public gatherings could become attractive targets for terrorists. While both Al-Qa’ida in the Indian Sub-Continent (AQIS) and the Islamic State in the Philippines (ISIS-P) have threatened to launch attacks in Burma in response to the Rakhine crisis, so far those threats are largely aspirational.

Burma has hosted numerous recent large public events, including a Papal visit, the Pan-Asia Games, and an Association of South East Asian Nations (ASEAN) summit, all of which took place without major security incidents.

Political, Economic, Religious, and Ethnic Violence

Civil Unrest

The U.S. Department of State has assessed Rangoon as being a HIGH-threat location for political violence directed at or affecting official U.S. government interests. There is a higher risk of political violence in other parts of the country. This political violence is limited primarily to states in Burma’s periphery. Fighting between the Burmese military and various ethnic armed groups (EAGs) and militia forces continues in several border regions, including parts of Kachin, Shan, Rakhine, and Chin states. Exercise caution when traveling to these areas. Fighting generally does not occur in the destinations most U.S. citizen visitors frequent, including Rangoon, Bagan, Kalaw-Inle Lake region, Ngapali Beach, Naypyitaw, and Mandalay.

Burma has one of the world’s longest-running internal armed conflicts, between the ethnic-Bamar dominated central government and nearly two dozen EAGs. These conflicts are rooted in political grievances and ethnic minorities’ desire for greater rights and protections; the EAGs also clash with the government and with each other over territory and resources. In 2015, ten EAGs signed a ceasefire agreement with the government, but some armed conflict continues in parts of Kachin, Shan, Rakhine, and Chin states. This conflict is often sporadic in nature and tends to spike during dry season (November through February). Starting in January 2019, the most sustained fighting has occurred between the military and the Arakan Army, an ethnic-Rakhine EAG, in northern Rakhine State. In August 2019, due to an eruption of fighting in northern Shan State, fifteen U.S. citizens were isolated for several days until roads closed due to the fighting could reopen. Avoid traveling in border areas where armed conflict has occurred or is occurring. The EAGs have not shown any desire to target U.S. interests.

Burma held historic national elections in 2015. No significant civil unrest or political violence occurred during the elections. There remains a bifurcated system of authority, where the civilian government does not have oversight or control of the military or the security services. Leading up to the November 2020 general elections, there is a possibility of localized intercommunal tension or violence.
Intercommunal conflicts, public demonstrations, and outbursts of violence may challenge U.S. private-sector organizations and could jeopardize U.S. investments and operations, even if they are not direct targets. Avoid large crowds, demonstrations, and political activity, and maintain a high level of situational awareness. Be careful about messages posted on social media; statements supporting one political cause or another could create a serious online backlash that could have real consequences outside of the social media sphere.

In Burma, protests are not uncommon. The government has arrested protestors for contravening the Peaceful Assembly Act by protesting without permission. Although public protests, often in response to human rights violations, interethnic tensions, or to support religious freedom, education, and labor rights, are normally peaceful, spontaneous violence may occur.

In February 2019, police injured 21 protestors when using rubber bullets and water cannons to break up a protest of Karen people in Loikaw, Kayah State. In May 2018, police forcibly broke up an anti-war protest and arrested several protestors for disturbing the peace and for protesting without a permit. In January 2018, police fired upon protestors in Mrauk-U, north-central Rakhine State killing nine people and injuring 19 others. The crowd was protesting the cancellation of an Arakan festival.

Review OSAC's report, Surviving a Protest

Religious/Ethnic Violence

Burma has 135 officially recognized ethnic groups. While Burma's ethnic diversity is a source of national pride, it has also suffered from a long history of ethnic and sectarian conflicts. Most ethnic-based violence is the result of fighting between the Myanmar military and the EAGs or between the different EAGs in Kachin, Shan, Rakhine, and Chin States.

Intercommunal tension remains high in Rakhine State between the ethnic Rakhine and the Rohingya, a group that is not one of the officially recognized ethnic groups and which many in Burma view as illegal immigrants. As the Rakhine are Buddhist and the Rohingya Muslim, this conflict sometimes takes on a religious dimension, but the Rakhine also deeply resent the perceived oppression by their Bamar co-religionists who run the central government. Because the government does not recognize Rohingya as a minority, they must undergo verification to receive Burmese citizenship and are often unable to obtain identification cards or travel documents. In addition, they face abuse, institutionalized discrimination, and restrictions on freedom of movement, as well as a lack of access to education, livelihoods, and basic services. As a result, many have fled to Bangladesh, Indonesia, Thailand, and Malaysia. The Arakan Rohingya Salvation Army (ARSA) attacks in 2017 and the military operations that followed led over 700,000 Rohingya refugees out of an estimated population of 1.1 million to flee into Bangladesh. The governments of Bangladesh and Burma continue to work on a repatriation process, but progress has been slow. The situation is now more complicated due to ongoing conflict between the military and the Arakan Army. Fighting has spread across central and northern Rakhine and southern Chin States. Tensions remain high.

Post-specific Concerns

Environmental Hazards

During the monsoon season (May-October), street flooding is pervasive throughout southern Burma. Low-lying villages are susceptible to floods, resulting in food shortages and other health concerns. Rangoon lacks the drainage infrastructure to accommodate storm water runoff. As a result, low-lying parts of Rangoon including major vehicle thoroughfares suffer from flash flooding. A prolonged monsoon season in 2017 led to one of the worst outbreaks of dengue fever in recent history. Additionally, heavy rains can down power lines, creating an electrocution hazard. Avoid areas where power lines are down.

Burma is prone to cyclones during two seasons, which peak in May and November. These violent storms can overwhelm an already weak infrastructure, causing widespread destruction. Major earthquake fault lines are also present; consider them when developing contingency plans. Areas of Rangoon and Bago experienced a 6.0-magnitude earthquake in January 2018.

Critical Infrastructure

The former military junta chronically mismanaged the economy and failed to invest in critical infrastructure projects, allowing the country's transit infrastructure, electrical grid, tele-communications network, and tourism facilities to fall into disrepair. Burma's infrastructure is substandard compared to regional neighbors and will require significant investment and years of updating. An old, inadequate electrical power grid is one of the biggest challenges causing frequent blackouts, even in major urban centers, as demand continues to outpace supply.

Burma’s telecommunications and Internet infrastructure is substandard in rural areas, but is standard in major cities and continues to grow and expand throughout the country. Travelers may not have access to cellular networks and should consider redundant or alternative forms of communication, especially outside the major cities.

Economic Concerns

According to Transparency International’s 2019 Corruption Perceptions Index, Burma improved its global ranking from 156 in 2016 to 130 in 2019. However, corruption remains a serious barrier to commerce and investment, and permeates the government and economy. U.S. companies may find competitors are able to obtain an advantage when proposing or bidding on projects, although the government has taken clear steps to improve the transparency and evaluation of major tenders and to tackle official corruption. U.S. companies generally find that government officials and businesspeople are less likely to seek or expect “facilitation payments” or other gifts than elsewhere in Southeast Asia.
U.S. firms consider the lack of clarity surrounding commercial laws and regulations, and the lack of adequate infrastructure (especially reliable electricity) to be the most serious impediments to doing business. A non-transparent and protectionist import permit system often blocks imports, particularly for agricultural products. A bright spot is that the government has focused on drafting and passing commercial laws, including the 2016 Investment Law and the 2017 Companies Act.

The limitations of rule of law are an impediment for U.S. private-sector organizations. The judicial system is archaic, and decisions are often made through personal relationships or bribes. Burma suffers from an antiquated legal system and outdated legislation; many laws are vague and often subject to manipulation. According to the 2019 World Bank Doing Business report, Burma ranked number 204th out of 25 in the East Asia and Pacific Region for starting a new business in the Ease of Doing Business Report, last for protecting minority investors, and 24th out of 25 for enforcing contracts. The country has introduced reforms, including a 2019 decision to allow full foreign ownership in the life insurance sector. Globally Burma ranks 165 out of 190 in the World Bank ease of doing business rankings.

Privacy Concerns

Government interest in the activities of foreigners persists. Visitors conducting sensitive political or commercial business should assume the government monitors their actions, especially in public places. Because the government controls the country’s telephone network and Internet providers, it can intercept calls and emails. Depending upon the government’s level of interest, it may employ overt surveillance. U.S. private-sector organizations should be aware that the “no expectation of privacy” policy could make the discussion of proprietary information and sensitive information difficult. Protect all financial and personal information. Do not discuss travel plans or other business in an open venue. Be alert to any unusual surveillance or activity near the places you frequently visit. Vary your routes and times.

Personal Identity Concerns

Consensual same-sex sexual activity is illegal under the Burmese penal code, which has provisions against “sexually abnormal” behavior and entails punishments up to life imprisonment. Laws against “unnatural offenses” apply equally to men and women, but are rarely enforced. LGBTI persons have reported that police used the threat of prosecution to extort bribes. LGBTI activists have also reported allegations of rape by security forces in some cases, arbitrary arrest (for example for loitering), detention, and broad societal and familial discrimination. However, several officially sanctioned Pride events have occurred in Rangoon without ill effect. Review the State Department’s webpage on security for LGBTI+ travelers.

Individuals with disabilities should prepare to face difficulties throughout Burma. Roads and sidewalks are often difficult to cross. Ramps or handicapped-accessible facilities are rare. Review the State Department’s webpage on security for travelers with disabilities.

Insulting religion is a prosecutable offense. ‘Insult’ is a very broad term that could include tattoos or other religious representations in a non-religious context. Images of the Buddha can be particularly sensitive. In 2016, authorities deported a foreign tourist for allegedly having a tattoo of the Buddha on his leg. As in any country, be respectful of local customs when visiting religious sites. Review OSAC’s report, Freedom to Practice, and the State Department’s webpage on security for faith-based travelers.

Other Issues

Always ask permission before taking a photograph. Local citizens may request a small fee for taking a picture of them or their surroundings. Do not photograph government buildings, embassies, military installations, airports, harbors, or other locations or items of a possible security or intelligence interest; cameras may be confiscated. Review OSAC’s report, Picture This: Dos and Don’ts for Photography.

Importing unmanned aerial systems (drones) without prior government permission and flying them in sensitive areas can result in criminal penalties including jail time and the permanent confiscation of the drone. Sensitive areas include government buildings, famous tourist sites, and religious buildings. However, it is not always clear what constitutes a sensitive area making all recreational use of drones inadvisable. Authorities have recently detained several foreigners, including a U.S. citizen, for flying drones in sensitive locations. If you wish to bring a drone to Burma, seek official permission from the Burmese government.

Read the State Department’s webpage on customs and import restrictions for information on what you cannot take into or out of other countries.

Police Response

Police capability, responsiveness, and professionalism is substandard compared to that in the U.S. Police units are often under-funded, under-staffed, poorly equipped or trained, and suffer from limited resources and corruption. Many crimes go unreported or are not fully investigated. Authorities often cite a lack of adequate transportation as an excuse for slow response. Few police officers speak English.

While Burmese may view foreigners as wealthy, there continues to be a perception that police investigate crimes against U.S. travelers and other Westerners more thoroughly and punish perpetrators more rigorously. This belief has been reinforced with the government’s establishment of a Tourist Police unit in 2013, a 2015 decision to reinforce and strengthen that unit, and installation of billboards directing nationals to “warmly welcome” and “take care” of foreigners. When in 2017, a vehicle struck and severely injured a U.S. government employee, Tourist Police were the first on the scene and, at the victim’s request, rushed the man to a medical facility.
Enforcement of traffic regulations is often haphazard or a means to solicit bribes. Police will often signal motorists to pull over for a donation or "tea money." Low pay and low morale create an environment in which even bribes of a few dollars can make allegations disappear. Do not pay bribes, comply with requests for a gift, or pay on-the-spot fines.

If an officer persists, comply with instructions, identify yourself as a U.S. citizen, and obtain the officer's name and badge number. Politely ask to speak with a supervisor or request they take you to police headquarters for further processing. Police must notify the Embassy when arresting or detaining a U.S. citizen; however, delayed notifications are common. If arrested, assert this right and request to speak with a representative from the U.S. Embassy by calling (95)-1-536-509. The U.S. Embassy maintains a liaison with local law enforcement officials and is available to assist U.S. citizens during emergencies.

The emergency line in Burma is 192. However, it is not operational outside of Rangoon and Mandalay. Download the State Department's Crime Victims Assistance brochure.

Central police (Rangoon and Mandalay): 199
Fire emergency: 191 or 192
Tourist police: 01-378-479 (Rangoon); 09-448-539-507 (Mandalay)

Medical Emergencies

Find contact information for available medical services and available air ambulance services on the U.S. Embassy to Burma’s Medical Assistance website.

Medical facilities in Burma fall critically short of Western standards; there are no 911-equivalent ambulance services available. Trauma care is extremely limited; only use local hospitals in the event of an extreme medical emergency requiring immediate attention. Many primary health care workers, especially in rural areas, lack adequate professional training. Instances of misdiagnosis, improper treatment, and the administration of improper drugs have occurred. Quality, comprehensive medical services are very limited in Rangoon, and are almost nonexistent for all but the most minor treatment in other parts of the country. Medicines are in short supply and may be counterfeit products of questionable quality. Due to inadequate diagnostic equipment, lack of medical resources, and limited medical specialty personnel, complex diagnosis and treatment are unavailable.

All visitors traveling to Burma should have current vaccinations prior to arrival. For current advice on vaccinations, consult the Center for Disease Control’s (CDC’s) website.

Visitors should bring their own supply of medications, as the quality of medications in Burma is inconsistent, and counterfeit drugs remain a problem. Commonly needed medications, such as over-the-counter medication, antibiotics, allergy remedies, or malaria prophylaxis, are limited or non-existent.

Although it is gradually changing, Burma remains largely a cash-based society. The SOS clinic, and Victoria hospital accept credit cards, but most health care facilities in Burma require patients to pay cash before receiving medical services. Foreigners may receive a higher rate than local residents for most medical services.

There is no dedicated medical air ambulance or helicopter in Myanmar. Expect delays; air medical transportation requires diplomatic approval, and most flights come from and return to Bangkok or Singapore. Flights may only be able to enter or exit through the larger international airports.

Purchase medical evacuation (medevac) insurance in case of a serious accident, injury, or illness. Medevac can cost tens or hundreds of thousands of dollars, depending on the severity of the situation; all travelers should ensure their policies provide sufficient coverage. If you are traveling with a group, ensure your fellow travelers know that you carry travelers insurance, and know where to find the insurance information if you are unconscious. Review the State Department’s webpage on insurance overseas.

Review OSAC’s reports, The Healthy Way, Traveling with Medication, I’m Drinking What in My Water?, Shaken: The Don’ts of Alcohol Abroad, Health 101: How to Prepare for Travel, and Fire Safety Abroad

Country-specific Vaccination and Health Guidance

See a physician prior to travel to ensure you have appropriate vaccines, immunizations, and precautions. Gastrointestinal diseases, tuberculosis, dengue fever, malaria, rabies, and Japanese Encephalitis pose serious risk to travelers in Burma. Obtain information on vaccinations and other health precautions, such as safe food and water precautions and insect bite protection, from the CDC’s hotline for international travelers at 1-877-FYI-TRIP (1-877-394-8747) or via the CDC website. For more information about outbreaks of infectious diseases abroad, consult the infectious diseases section of the World Health Organization (WHO) website.

The CDC offers additional information on vaccines and health guidance for Burma.

OSAC Country Council Information

The OSAC Burma Country Council meets regularly. Additionally, the Regional Security Office (RSO) provides coordination for representatives of U.S. businesses, non-governmental organizations, academia, and faith-based organizations as requested. For more information on the Country Council, or to connect with the RSO, contact OSAC’s East Asia Pacific team.
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American Citizen Services: +(95) 1-536-509 ext. 4240
State Department Emergency Line: +1-202-501-4444

Helpful Information

Before you travel, consider the following resources:

OSAC Risk Matrix
OSAC Travelers Toolkit
State Department Traveler's Checklist
Smart Traveler Enrollment Program (STEP)

Attachments

OSAC - 2020 CSR - Burma.pdf

Related Content

Burma (Myanmar) 2019 Crime & Safety Report

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unacceptable, they then take it up with local leaders. In some communities, the solution often takes the form of an apology rather than a punishment; for example, an animal may be killed and used to feed the whole village. In Kachin State, village-based committees typically deal with disputes, which are usually resolved through mediation or compensation. In the case of a rape, the victim and her family are typically required to ‘cleanse’ the village, by holding a ceremony and feeding the whole village. Often GBV victims are returned to their families and provided inadequate support. According to the US Department of State, the government operates five centres for women and children victims of violent crime (including trafficking).

3.101 Health services in both rural and urban areas lack expertise in sexual and reproductive health. A UN assessment of sexual, reproductive, maternal, newborn and adolescent services in Myanmar in 2016 found that effective coverage was as low as 24 per cent nationally, with considerable disparities between state and regions, ranging from 48 per cent in Karen State to 9 per cent in Chin State. Access to contraception remains limited. While abortion is illegal, it is reportedly common, and contributes to Myanmar’s high maternal mortality rates. The reluctance of women to report crimes of sexual violence also prevents women receiving timely medical services, including to prevent pregnancy or HIV/AIDS.

3.102 In 2017, the government reportedly investigated 185 cases of trafficking, with most related to sex trafficking or the involuntarily domestic servitude of Myanmar women, including through forced marriages to Chinese men, primarily in Kachin State. There have been, however, credible reports that government officials have facilitated or profited from both sex and labor trafficking of women and girls, including by hindering law enforcement efforts against the perpetrators. In 2018, the US Department of State downgraded Myanmar to a Tier 3 (the lowest category) country in its Trafficking in Persons report, largely because of the government’s management of the Rohingya crisis. According to the report, many Rohingya who fled Rakhine State have been subjected to exploitation, or transported to other countries for sex trafficking following their displacement. The report identifies Rohingya women in the displacement camps in Bangladesh as being particularly vulnerable to trafficking within Bangladesh and to India. Local sources told DFAT that investigations into trafficking are typically inadequate, and there are limited opportunities for justice.

3.103 Rohingya women in Rakhine State face multiple levels of discrimination. In addition to the official and societal discrimination faced by Rohingya people in general (see Rohingya), Rohingya society is conservative and women often face familial or community-based restrictions on their movements and activities. Rohingya girls over the age of 13 are often prevented from leaving their homes until they are married. Violence against Rohingya women is reportedly highly prevalent, particularly intimate partner violence. Rohingya women in Rakhine State also face additional restrictions on their marital and reproductive rights. Local authorities prohibit Rohingya families from having more than two children, although this is inconsistently enforced. Local authorities also require Rohingya to obtain a marriage permit (not required for other ethnic minorities), which can take up to two years and bribes to process (see Rohingya). Other restrictions on Rohingya in Rakhine State.

3.104 Overall, DFAT assesses that women in Myanmar face moderate levels of societal discrimination, and Rohingya women in Rakhine State face high levels of official and societal discrimination on the basis of their gender. Women throughout Myanmar face a moderate risk of GBV, particularly domestic violence.

LGBTI

3.105 Article 377 of the Penal Code prohibits ‘carnal intercourse against the order of nature with any man, woman or animal’, with a punishment of a fine and up to ten years’ imprisonment. This is interpreted, inter alia, as criminalising sex between men; sex between two women is not considered to be covered under Article 377. There have been two prominent cases where authorities have used this provision against
members of the LGBTI community: a transgender person who was sentenced to five years imprisonment in 2011 (released after three years), and an unsuccessful attempt to prosecute a gay couple who held a civil ceremony in 2014. Authorities also use Article 377 to prosecute perpetrators of child sexual offences and same-sex rape (provisions in the Penal Code only discuss rape of a female victim by a male perpetrator), thus conflating homosexuality and paedophilia. There have been no recent prosecutions under Article 377, and local civil society representatives told DFAT that this provision is primarily used by the police to extort money, particularly from gay and transgender men.

3.106 There are credible and recent reports of police harassment, extortion, physical and sexual abuse of LGBTI people. Section 35 (c) of the Police Act (1945) and Section 30 (c) and (d) of the Rangoon Police Act (1902) (known as the ‘Shadow and Disguise Acts’) are also used to intimidate and arrest LGBTI individuals. These provisions allow the police to detain a person located on the street between sunset and sunrise, with a covered face or being otherwise disguised, and unable to give a satisfactory account of oneself. LGBTI people are increasingly being detained at patrol sites, rather than being taken to police stations, and forced to pay fines of around MMK 50,000 (approximately AUD 45) for release. As police officers are frequently the perpetrators of harassment, a victim’s ability to seek legal recourse is limited. When victims do file cases at police stations, officers are frequently uncooperative in gathering evidence and identifying perpetrators. Furthermore, the majority of documented cases cannot proceed to court due to an insufficient number of qualified lawyers being equipped and willing to advise in cases involving LGBTI individuals. A recent report from a LGBTI rights group identified 13 organisations and 15 lawyers around the country who provide legal aid to LGBTI people, mostly in or near the larger cities.

3.107 The LGBTI community has become increasingly visible in Myanmar in recent years, but societal discrimination persists, particularly in rural areas. Most Myanmar people hold conservative views about gender roles, and the open discussion of sex in Myanmar is considered taboo. Traditional Buddhist beliefs consider homosexuality a result of karma. In remote and rural areas, religious groups (Buddhist, Muslim and Christian) have a high level of influence, and perpetrate societal discrimination against LGBTI, particularly transgender individuals. Some LGBTI individuals relocate from rural areas to avoid social stigma, and to seek employment opportunities. Forced heterosexual marriage occurs, particularly involving gay and transgender men. LGBTI people can cohabit in major cities, with large numbers of LGBTI people living in Yangon and Mandalay. Some restaurants, hotels and other venues in these major cities openly identify as LGBTI friendly; however, these venues can face some resistance from more conservative parts of the community, including religious organisations.

3.108 Public violence by the community against LGBTI individuals is rare, however credible sources told DFAT that parents often use corporal punishment to ‘correct’ behaviour in young children that does not align with traditional gender roles or heterosexual norms. Some parents are also reported to support teachers to discriminate against their LGBTI children at school. In school, LGBTI individuals are bullied by both peers and teachers, and there are high rates of school drop-out in the LGBTI community. There are restrictions on dress for transgender men in some universities. However, some recent improvement in the education system has been made, including the development of sexual orientation and gender identity content for the school curriculum by LGBTI rights groups and the Ministry of Education in 2017.

3.109 LGBTI people, particularly transgender, have limited employment prospects, including in large cities. Gay men are not permitted to take up senior positions in the police force or Tatmadaw. Employment in the beauty and entertainment industries is generally socially accepted for gay men and transgender women, but is often seasonal and poorly paid. Outside of these industries, most transgender women are required to dress as men in their workplace. Transgender men often work in low-paid manual jobs, including as construction workers or rickshaw drivers. Research by LGBTI rights groups indicate that there are gay and lesbian individuals working in government and the private sector, but they choose not to disclose their sexual orientation in the workplace for fear of discrimination. Workplace discrimination as experienced by
lesbians and transgender men is not as well-documented as that experienced by gay men and transgender women. However, LGBTI rights organisations report it is higher due to the double disadvantage of being biological female in a patriarchal society. For example, transgender men have reported being given heavy workloads in manual jobs, while receiving the lower wages of a woman.

3.110 LGBTI people, particularly transgender, routinely experience discrimination in accessing health services. LGBTI people typically prefer to seek medical treatment in clinics operated by NGOs, especially in rural areas, due to experiences of discrimination on the basis of their sexual orientation and gender identity in government hospitals, including compulsory HIV/AIDS testing of transgender patients. Some of these NGO clinics provide antiretroviral therapy to HIV/AIDS patients. There are no fertility services for LGBTI individuals, and hormone replacement therapy for transgender women is often self-administered using contraceptive pills due to a lack of endocrine specialists. Sexual reassignment surgery is permissible in Myanmar with a doctor’s recommendation; without this, a transgender individual could be charged under Section 312 of the Penal Code that relates to sterilisation by surgery. DFAT is aware of only one case, in 2005, of a transgender woman successfully changing her identity documentation following sexual reassignment surgery.

3.111 Media coverage of LGBTI issues is often negative, but visibility of LGBTI issues is increasing, particularly in urban centres. For example, in 2018 the fourth ‘&PROUD’ Yangon LGBTI film festival attracted around 5,000 people, after it was first held in 2014. Social media has helped to increased awareness of LGBTI issues, but has also been a medium for hate speech targeting the LGBTI community. There is an active LGBTI civil society in Myanmar; the Myanmar LGBTI Rights Network is a group of around 20 civil society organisations advocating for LGBTI rights. These groups have permission to operate from the government, but can be subject to threats and intimidation.

3.112 DFAT assesses that LGBTI people in Myanmar face a moderate risk of official and societal discrimination on a day-to-day basis. DFAT further assesses that LGBTI people in Myanmar face a low risk of violence due to their sexual orientation or gender identity.

**Children**

3.113 Myanmar’s Child Law (1993) defines a child as a person under the age of 16, which contravenes the Convention on the Rights of the Child to which Myanmar is a signatory. The law sets the minimum age of criminal responsibility at seven years, well below the 12 years considered acceptable under international law. DFAT understands these issues are under consideration in the draft Child Rights Law, which was under parliamentary review at the time of publication.

3.114 Myanmar is a source country for children subjected to forced labour and sex trafficking, both in Myanmar and abroad. While the government raised the minimum age for work in shops, establishments, and factories to 14 years in 2016, child labour remains prevalent. Poverty drives some parents to remove their children from school to contribute to household earnings. In cities, children commonly work as street vendors, refuse collectors, restaurant and teashop attendants, and domestic workers. In rural areas, children routinely work in family agricultural activities. Children are vulnerable to forced labour or sex trafficking (including through debt bondage) in teashops and other small business, in the agricultural and construction sectors, and through begging.

3.115 There are also recent accounts of the Tatmadaw and EAOs recruiting children as soldiers or in other support roles. The UN Country Task Force on Monitoring and Reporting (CTFMR), the official mechanism for monitoring and reporting grave violations against children, reported 15 complaints (unverified at the time of publication) of child soldier recruitment in 2017, including in Yangon and Mandalay. The US Department of State reported 13 cases of children working in support roles for the Tatmadaw and its affiliate militias, including cleaning, portering, and cooking. One of these cases was reported to involve more than 200
BURMA 2018 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Burma has a quasi-parliamentary system of government in which the national parliament selects the president and constitutional provisions grant one-quarter of parliamentary seats to active-duty military appointees. The military also has the authority to appoint the ministers of defense, home affairs, and border affairs and one of two vice presidents, as well as to assume power over all branches of the government should the president declare a national state of emergency. In 2015 the country held nationwide parliamentary elections that the public widely accepted as a credible reflection of the will of the people. The National League for Democracy (NLD) party leader Aung San Suu Kyi was the civilian government’s de facto leader and, due to constitutional provisions preventing her from becoming president, remained in the position of state counsellor. During the year parliament selected NLD member Win Myint to replace Htin Kyaw as president, and the country held peaceful and orderly by-elections for 13 state and national offices.

Under the constitution, civilian authorities have no authority over the security forces; the armed forces commander in chief, Senior General Min Aung Hlaing, maintained effective control over the security forces.

Independent investigations undertaken during the year found evidence that corroborated the 2017 ethnic cleansing of Rohingya in Rakhine State and further detailed the military’s killing, rape, and torture of unarmed villagers during a campaign of violence that displaced more than 700,000 Rohingya to neighboring Bangladesh. Some evidence suggested preparatory actions on the part of security forces and other actors prior to the start of violence, including confiscation of knives, tools, iron, and other sharp objects that could be used as weapons in the days preceding attacks by the Arakan Rohingya Salvation Army (ARSA). An additional 13,764 Rohingya fled to Bangladesh between January and September. The government prevented assistance from reaching displaced Rohingya and other vulnerable populations during the year by using access restrictions on the United Nations and other humanitarian agencies. The military also committed human rights abuses in continuing conflicts in Kachin and Shan States.

Human rights issues included reports of unlawful and arbitrary killings by security forces; torture; harsh and sometimes life-threatening prison conditions; political prisoners; arbitrary or unlawful interference with privacy; arbitrary arrest and prosecution of journalists and criminalization of defamation; substantial
interference with the rights of peaceful assembly and freedom of association, including arrests of peaceful protesters and restrictions on civil society activity; restrictions on religious freedom; significant restrictions on freedom of movement, in particular for Rohingya; corruption by some officials; unlawful use of child soldiers by the government; trafficking in persons; crimes involving violence or threats targeting members of national, ethnic, and religious minorities; and the use of forced and child labor. Consensual same-sex acts among adults remained criminalized, although those laws were rarely enforced.

Although the government took some limited actions to prosecute or punish officials responsible for abuses, the vast majority of such abuses continued with impunity.

Some nonstate groups committed human rights abuses, including killings, unlawful use of child soldiers, forced labor of adults and children, and failure to protect civilians in conflict zones. These abuses rarely resulted in investigations or prosecutions.

**Section 1. Respect for the Integrity of the Person, Including Freedom from:**

**a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings**

There were many reports security forces committed arbitrary or unlawful killings (see also section 1.g.).

Security forces used excessive and sometimes lethal force against civilians. On January 16, police in Mrauk-U shot and killed seven and injured 12 Rakhine demonstrators who were protesting a decision by officials to cancel an annual event in commemoration of the anniversary of the end of the Arakan Dynasty. Police beat demonstrators--some of whom threw stones and attempted to take over a government administrative building--in addition to firing live rounds into the crowd.

There were several documented extrajudicial killings of Rohingya in Rakhine State during the year and several documented assaults by police against unarmed Rohingya.

On April 5, government soldiers shot and killed the environmental rights activist and community leader Saw O Moo in Karen State. The military stated that Saw O
Moo, who was riding a motorcycle with a Karen National Liberation Army (KNLA) fighter, was suspected of involvement in planning attacks. His family and other activists denied this claim and said he was only giving a ride to the KNLA fighter.

With additional, albeit still limited, access to northern Rakhine State granted by the government during the year, Amnesty International reported that Arakan Rohingya Salvation Army (ARSA) fighters were almost certainly responsible for a massacre of 53 Hindu villagers in Kha Maung Seik Village, Maungdaw Township, in August 2017.

The trial of four people charged in the death of Ko Ni, a prominent Muslim lawyer and adviser to Aung San Suu Kyi who was assassinated outside Rangoon’s international airport in January 2017, continued as of October. Civil society groups and religious groups noted Ko Ni’s death had a chilling effect on lawyers working for constitutional reform and accountability for military abuses, as well as on Muslims fighting for improved treatment.

Arbitrary and unlawful killings related to internal conflict also occurred (see section 1.g.).

b. Disappearance

There were reports of disappearances by security forces.

There was no action taken during the year or additional information regarding the whereabouts of Rohingya men ages 15 to 40 who were reportedly arrested in 2017 by police without charges or warrants due to purported links to ARSA, several of whom reportedly were not heard from since their arrest.

Disappearances related to internal conflict also occurred (see section 1.g.).

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits torture; however, members of security forces reportedly tortured and otherwise abused prisoners, detainees, and other citizens and stateless persons in incidents not related to armed conflict. Such incidents occurred, for example, in Rakhine and Kachin States. The government did not launch any investigation into reports of sexual violence by the military in prior years.
Security forces reportedly subjected detainees to harsh interrogation techniques designed to intimidate and disorient, including severe beatings and deprivation of food, water, and sleep. Human rights groups continued to report incidents of torture in ethnic minority areas. Authorities generally took no action to investigate incidents or punish alleged perpetrators.

At least two contingents of Border Guard Police (BGP) in northern Rakhine State in August 2017 tortured and otherwise abused 25 Rohingya men and boys, according to a report released during the year by Amnesty International. Torture included severe beatings, burnings, and sexual violence lasting several days or even weeks. One Rohingya teenager described being beaten severely while hung from a chain attached to the ceiling, first with a hard plastic stick, and then with gloves filled with nails.

On August 21, Human Rights Watch reported that the BGP apprehended and tortured six Rohingya refugees who fled to Bangladesh in 2017 and had since returned to Rakhine State. Authorities, accusing them of illegal border crossing, tried the refugees in Burmese, which they did not understand, and sentenced them to four years in prison.

**Prison and Detention Center Conditions**

The Ministry of Home Affairs operates the prison system and continued during the year to significantly restrict access by international organizations--other than the International Committee of the Red Cross (ICRC)--to prison and detention facilities generally. The military also operates detention facilities and did not permit access. There were continued reports that conditions in prisons and labor camps were harsh and sometimes life threatening due to overcrowding, degrading treatment, and inadequate access to medical care and basic needs, including food, shelter, and hygiene, although observers noted some minor improvement in more centrally located prisons.

**Physical Conditions:** The Department of Corrections under the Ministry of Home Affairs operated an estimated 47 prisons and 48 labor camps, officially called “agriculture and livestock breeding career training centers” and “manufacturing centers,” according to the government. More than 20,000 inmates were serving their sentences in these labor camps across the country. Authorities reportedly sent prisoners whose sentences did not include “hard labor” to labor camps in contravention of the law and rented out prisoners as labor to private companies. In
spite of reforms in recent years, conditions at these camps remain life threatening for some, especially at 18 camps where prisoners work as miners.

A prominent human rights group estimated there were more than 90,000 prisoners; women and men were held separately. Overcrowding was reportedly a serious problem in many prisons and labor camps; a human rights group reported that occupancy at the country’s largest prison was more than double capacity. Some prisons held pretrial detainees together with convicted prisoners. Authorities held some political prisoners separately from common criminals, but political prisoners whom authorities arrested for problems related to land rights were generally held together with common criminals.

Medical supplies and bedding were often inadequate. Bedding sometimes consisted of a single mat, wooden platform, or laminated plastic sheet on a concrete floor. Prisoners did not always have access to potable water. In many cases family members had to supplement prisoners’ official rations with medicine and basic necessities. Inmates reportedly paid wardens for necessities, including clean water, prison uniforms, plates, cups, and utensils.

Detainees were unable to access adequate and timely medical care. Prisoners suffered from health problems, including malaria, heart disease, high blood pressure, tuberculosis, skin diseases, and stomach problems, caused or exacerbated by unhygienic conditions and spoiled food. Former prisoners also complained of poorly maintained physical structures that provided no protection from the elements and had rodent, snake, and mold infestation.

There were reports of custodial deaths due to health problems associated with prison conditions and lack of adequate and timely medical care.

Prison conditions in Rakhine State were reportedly among the worst, with hundreds of Rohingya arbitrarily detained in prison and nonprison facilities, denied due process, and subjected to torture and abuse by Rakhine State prison and security officials.

Administration: Some prisons prevented full adherence to religious codes for prisoners, ostensibly due to space restrictions and security concerns. For example, imprisoned monks reported authorities denied them permission to observe Buddhist holy days, wear robes, shave their heads, or eat on a schedule compatible with the monastic code. Citing security considerations, authorities denied permission for Muslim prisoners to pray together as a group, as is the practice for
Friday prayers and Ramadan. Prisoners and detainees could sometimes submit complaints to judicial authorities without censorship or negative repercussions. The ICRC followed up with relevant authorities on allegations of inappropriate conditions.

**Independent Monitoring:** Although the ICRC had unfettered access to prisons, prisoners, and labor camps, it did not have access to military detention sites. The ICRC reported its findings through a strictly confidential bilateral dialogue with prison authorities. These reports were neither public nor shared with any other party.

**d. Arbitrary Arrest or Detention**

The law does not specifically prohibit arbitrary arrest, and the government continued to use the Unlawful Associations Act to arrest persons, often in ethnic and religious minority areas, on an arbitrary basis.

The law allows authorities to extend sentences after prisoners complete their original sentence. The law allows authorities to order detention without charge or trial of anyone they believe is performing or might perform any act that endangers the sovereignty and security of the state or public peace and tranquility. The civilian government and the military continued to interpret these laws broadly and used them arbitrarily to detain activists, student leaders, farmers, journalists, political staff, and human rights defenders.

**Role of the Police and Security Apparatus**

The Ministry of Home Affairs is generally responsible for the country’s internal security, with oversight of the Myanmar Police Force (MPF) and the General Administration Department, which has a role in security planning as part of its overall civil administrative responsibilities. The home affairs ministry is led by an active-duty military general who is nominated by the armed forces commander in chief in accordance with the constitution.

In conflict and some cease-fire areas, and in northern Rakhine State, representatives from the Ministry of Border Affairs, also led by an active-duty military general appointed by the commander in chief, have significant roles in security planning, as does the military itself. In these areas, lines of authority for internal security may be blurred. During the operations in northern Rakhine State beginning in August 2017, military commanders assumed primary control over all
security arrangements and appeared to wield considerable operational influence over the BGP, which is administratively part of the MPF.

The MPF is a national police force with approximately 80,000 police officers. While the MPF continued to make progress in developing baseline capacity, there were still significant gaps in expertise and resources that posed challenges to building a force that effectively serves the public. The MPF specialized units devoted to counternarcotics, antitrafficking in persons, and other transnational crimes continued to make progress in developing operational and investigative capacity.

There were continued reports during the year of harassment and extortion of Rohingya by the BGP, including through surprise raids of private homes, usually with the involvement of the military, to inspect whether residents present matched official household lists. Such lists were often lost or damaged, and as a result these raids sometimes resulted in arbitrary detentions. The BGP also used excessive force. For example, BGP forces on June 28 shot an 11-year-old Rohingya boy in the leg near the border with Bangladesh without provocation while the boy was gathering firewood.

Civil society groups noted corruption remained a concern and that the MPF’s Special Branch continued to engage in surveillance and monitoring. Security forces continued to intimidate civilians through physical abuse and threats to livelihoods. Legal mechanisms exist to investigate abuses by security forces but were seldom used and generally perceived to be ineffective.

**Arrest Procedures and Treatment of Detainees**

While the law generally requires warrants for searches and arrests, personnel from the Office of the Chief of Military Security Affairs and police reportedly conducted searches and made arrests at will.

Except in capital cases, the law does not grant detainees the right to consult an attorney or, if indigent, to have one provided by the state. The government amended the legal aid law in May to provide the public access to fair and equal legal aid based on international standards and to ensure legal aid workers could operate independently and with legal protection, but by year’s end the legal aid system was not yet operational.
There is a functioning bail system, but bribery was a common substitute for bail. Bail is commonly offered in criminal cases, but defendants were often required to attend numerous pretrial hearings before bail was granted. In some cases the government held detainees incommunicado and refused detainees the right to consult a lawyer promptly.

There were reports of suspects in custody dying as a result of mistreatment by police. On September 26, Aung Aung, a taxi driver who was arrested September 12 with two men accused of theft, died after allegedly being beaten by police during his detention. The Myanmar National Human Rights Commission opened an investigation in the case.

**Arbitrary Arrest:** There were reports of arbitrary arrests, including detention by the military in conflict areas.

In May the military in northern Rakhine State rounded up dozens of Rohingya, almost all of them young men, who had previously fled to Bangladesh and returned informally. These Rohingya were processed for illegal entry into Burma and subsequently pardoned, allegedly on condition that they agree to be processed through the government’s official repatriation process.

**Pretrial Detention:** By law authorities may hold suspects in pretrial detention for two weeks (with a possible two-week extension) before bringing them before a judge or informing them of the charges against them. Lawyers noted police regularly detained suspects for the legally mandated period, failed to lodge a charge, then detained them for a series of two-week periods with trips to the judge in between. Judges and police sometimes colluded to extend detentions. According to lawyers, arbitrary and lengthy pretrial detentions resulted from lengthy legal procedures, large numbers of detainees, judicial inefficiency, widespread corruption, and staff shortages. Periods of detention prior to and during trials sometimes equaled or exceeded the sentence that would result from a guilty conviction.

**Amnesty:** On April 17, President Win Myint pardoned and the government released 8,541 prisoners, including 36 whom the Assistance Association for Political Prisoners-Burma considered political prisoners. The majority of the pardoned political prisoners were arrested under the Unlawful Associations Act on charges of affiliation with ethnic armed groups. The president also nullified a previous condition of political prisoners’ release under which they could be forced to serve the remaining prison term if convicted of any crime in the future.
e. Denial of Fair Public Trial

The law calls for an independent judiciary, although the government appeared to manipulate the courts for political ends and sometimes deprived citizens of due process and the right to a fair trial, particularly regarding the freedom of expression. High-ranking officials, including President Win Myint and State Counsellor Aung San Suu Kyi, spoke publicly regarding pending trials during the year.

The criminal justice system was overburdened by a very high number of cases lodged against small-time drug users, which constituted an estimated 40 to 50 percent of caseloads in the courts. Corruption remained a significant problem. According to civil society organizations, officials at all levels received illegal payments at all stages of the legal process for purposes ranging from influencing routine matters, such as access to a detainee in police custody, to substantive decisions, such as fixing the outcome of a case.

The military and the government, directly or indirectly, were able to exert influence over the outcome of cases, often through overly broad or arbitrary application of legislation on speech or association. In one high-profile case, two Reuters journalists were convicted under a colonial-era law for reporting work in spite of exculpatory evidence presented during trial and procedural irregularities (see section 2.a.).

The attorney general of Yangon Region, one judge, and four other judicial officials were charged with corruption during the year (see section 4).

Trial Procedures

The law provides for the right to a fair and public trial, but it also grants broad exceptions, effectively allowing the government to violate these rights at will. In ordinary criminal cases, the court generally respected some basic due process rights such as the right to an independent judiciary, public access to the courts, and the right to a defense and an appeal. In practice, defendants do not enjoy the rights to presumption of innocence; to be informed promptly and in detail of the charges against them; to be present at their trial; to free interpretation; or, except in capital cases, to consult an attorney of their choice or have one provided at government expense. There is no right to adequate time and facilities to prepare a defense, but defense attorneys in criminal cases generally had 15 days to prepare for trial.
Defendants have the right to appeal judgments. In May the Union Attorney General’s Office adopted a fair trial standards manual, but because of the low standard of legal education, prosecutors, defense attorneys, and judges were often unfamiliar with precedent, case law, and basic legal procedures. No legal provision allows for coerced testimony or confessions of guilt by defendants to be used in court; nonetheless, authorities reportedly engaged in both. There were reports of coercion to plead guilty despite a lack of evidence with promises of reduced sentences to defendants who did so.

Ordinary criminal cases were open to the public, but in practice members of the public with no direct involvement in a case were denied entry to courts. There is no right to confront witnesses and present evidence, although defense attorneys could sometimes call witnesses and conduct cross-examinations. Prodemocracy activists generally appeared able to retain counsel, but defendants’ access to counsel was often inadequate. There were reports of authorities not informing family members of the arrests of persons in a timely manner, not telling them of their whereabouts, and often denying them the right to see prisoners in a timely manner. Local civil society groups noted the public was largely unaware of its legal rights, and there were too few lawyers to meet public needs.

The government retained the ability to extend prison sentences under the law. The minister of home affairs has the authority to extend a prison sentence unilaterally by two months on six separate occasions, for a total extension of one year.

**Political Prisoners and Detainees**

The government continued to detain and arrest journalists, activists, and critics of the government and the military. According to civil society groups that use a definition of political prisoners that includes those who may have engaged in acts of violence and excludes some charges related to freedom of expression and religion, there were 36 convicted political prisoners, 53 political prisoners in pretrial detention or detained with trials in process, and 216 individuals released on bail while facing trial for political charges as of September. These numbers did not include detainees and prisoners in Rakhine State, estimated to be in the hundreds, many of whom likely meet the definition of political prisoner.

The former child soldier Aung Ko Htway, who was arrested in August 2017 for defaming the military following an interview he gave to an international media outlet detailing his experience as a former child soldier, was given a two-year
prison sentence on March 29. He received an additional six-month sentence for contempt of court.

Many released political prisoners experienced significant surveillance and restrictions following their release, including an inability to resume studies undertaken prior to incarceration, secure travel documents, or obtain other documents related to identity or ownership of land.

Civil Judicial Procedures and Remedies

No specific mechanisms or laws provide for civil remedies for human rights violations; however, complainants may use provisions of the penal code and laws of civil procedure to seek civil remedies. Individuals and organizations may not appeal an adverse decision to regional human rights bodies.

Property Restitution

Under the constitution, the state owns all land; however, the law allows for registration and sale of private land ownership rights. Authorities and private-sector organizations perpetrated land grabs during the year, and restitution for past and recent land grabs was very limited.

The law provides for compensation when the government acquires land for a public purpose; however, civil society groups criticized the lack of safeguards in the law to provide payment of fair market compensation and said that compensation was infrequent and inadequate in such cases.

The government can also declare land unused and assign it to foreign investors or designate it for other uses. There is no provision for judicial review of land ownership or confiscation decisions; administrative bodies subject to political control by the national government make final decisions on land use and registration. Researchers and civil society groups had concerns that land laws facilitate land confiscation without providing adequate procedural protections. In some cases of land confiscation, compensation was inadequate or not provided, and advance notice was not given.

The 2016 land use policy emphasizes the recognition, protection, and registration of legitimate land tenure rights of small-holders, communities, ethnic nationalities, women, and other vulnerable groups. It also includes the recognition, protection, and ultimate registration of customary tenure rights, which previously were not
legally recognized. In September parliament passed and the president signed amendments to the Vacant, Fallow, and Virgin Land Management Act that featured limited protections for land “defined in accordance with cultural and traditional systems of local ethnic nationalities.” On November 9, the Ministry of Agriculture announced that, effective from that date, small-holders have six months to register their land or risk becoming a trespasser on their own land; if rigorously enforced, this order could result in millions of people losing rights of access to their lands.

Civil society groups, however, raised concerns that laws continued not to recognize rights in traditional collective land ownership and shifting cultivation systems, which are particularly prevalent in areas inhabited by ethnic minority groups. Parallel legal frameworks and traditional forms of land tenure in areas controlled by ethnic groups in Kachin, Mon, Kayin, and Shan States were not recognized by the government. Ethnic and civil society groups staged protests during the year in Kachin and Kayin States, Mandalay Division, and elsewhere over the government’s land policies.

Observers were concerned that the law could be used to prevent displaced Rohingya, who had security of tenure over lands in northern Rakhine State that were burned by the military, from returning to those lands or receiving adequate compensation from the government. Government officials stated that burned land would revert by law back to the government, without clarifying if such land would be returned to those who previously had security of tenure. There was no systematic effort to document the security of tenure Rohingya previously enjoyed over land from which they were displaced since August 2017.

Following the military campaign in Rakhine State, authorities bulldozed village remains, demolished structures, and cleared vegetation, to reshape some former Rohingya villages and replace former establishments with security bases and other structural developments.

The law requires that land be returned if not used productively within four years, but civil society groups reported land taken by the military was left unused for much longer periods and that there was little progress in returning other land confiscated by the government.

The General Administration Department under the Ministry of Home Affairs oversees land return. Adequate compensation was not provided to the many farmers and rural communities whose land was confiscated without due process
during the former military regime, including by the Myanmar Oil and Gas Enterprise, the Myanmar Ports Authority, and the military itself.

f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence

The law protects the privacy and security of the home and property, but observers said these protections were poorly enforced.

The law does not protect the privacy of correspondence or other communications of citizens, and activists reported authorities had expanded surveillance of civil society organizations’ operations.

Some activists reported the government systematically monitored the travel of citizens and closely monitored the activities of politically active persons, while others reported they did not experience any such invasions of privacy. The government reportedly conducted surveillance in some circumstances by using the Special Branch police, official intelligence networks, and other administrative procedures (see section 2.d.).

The law restricts the ability of Buddhist women to marry non-Buddhist men by imposing a requirement of public notification prior to any such marriage and allowing for objections to the marriage to be raised in court, although this law was rarely enforced.

In January state-run newspapers made public the names of more than 1,400 individuals, including children, whom the government allegedly deemed to be terrorists, the families of terrorists, or sympathizers of terrorist groups. No information was provided regarding how such determinations were made and whether the individuals in question were formally charged or in detention, wanted for prosecution, or sought for questioning. There did not appear to be any formal judicial process involved. Observers noted publishing such a list put the individuals at risk of harm.

In Rakhine State local authorities prohibited Rohingya families from having more than two children, although this prohibition was inconsistently enforced. Also in Rakhine State, local authorities required members of the Rohingya minority to obtain a permit to marry officially, a step not required of other ethnicities. Waiting times for the permit could exceed one year, and bribes usually were required. In 2016 the BGP in Buthidaung Township issued instructions to village
administrators outlining additional requirements for members of the Rohingya community to obtain a permit to marry. Unauthorized marriages could result in prosecution of Rohingya men under the penal code, which prohibits a man from “deceitfully” marrying a woman, and could result in a prison sentence or fine.

g. Abuses in Internal Conflict

The military and eight ethnic armed groups signed the Nationwide Ceasefire Agreement (NCA) in 2015, and two more ethnic armed groups signed the NCA during the year. Nonetheless, incidents involving use of excessive force, disregard for civilian life, and other abuses in conjunction with long-running internal conflicts occurred across the country. The UN Fact-Finding Mission report, published in September, documented a pattern of disregard for civilian life, targeting of civilians, extrajudicial killings, and the use of sexual violence by the military during the past several years.

In Kachin State and parts of Shan State, clashes continued among NCA signatory groups, nonsignatory groups, and the military, with credible allegations of abuse of civilian populations by both the military and ethnic armed groups. The majority of such clashes occurred in northern Shan and Kachin States. In central and southern Rakhine State and southern Chin State, sporadic clashes between the Arakan Army and the military continued, and in early August, the Arakan Army clashed with the Arakan Liberation Party. In Shan State the military clashed with the Ta’ang National Liberation Army (TNLA) and the Restoration Council of Shan State (RCSS), even though the latter is an NCA signatory. Fighting between the RCSS and TNLA also continued. Both of these groups, and the military, were alleged to have abducted, tortured, and killed suspected combatants as well as burned villages. In Chin State and most of the southeast, widespread and systematic violent abuses of civilian populations in ethnic minority areas continued to decline, largely due to a number of bilateral cease-fire agreements reached with ethnic armed groups. These areas also broadly fall under the NCA.

In Kachin and Shan States, continuing armed clashes between the military and ethnic armed groups displaced thousands of persons, compounding long-term displacement of conflict-affected communities in these areas. The military blocked humanitarian access to ethnic armed group-controlled areas, where many of the displaced resided, and nongovernmental organizations (NGOs) reported the military at times fired into internally displaced person (IDP) camps.
Military air and artillery strikes from January to April in Kachin State, especially around the village of Tanai, forced thousands to flee their homes. Air strikes on January 26 killed at least two civilians. Nearby Kachin Independence Army (KIA) bases housed family members and civilians as well as fighters, and attacks on those bases killed or wounded both KIA members and civilians.

The military continued to deploy forces in most ethnic armed groups’ areas of influence and controlled most cities, towns, and highways. Reports continued of widespread abuses by government soldiers and some ethnic armed groups, including killings, beatings, torture, forced labor, forced relocations, and the use of child soldiers. Impunity for these abuses and crimes generally continued, although the military took disciplinary action in some cases.

**Killings:** Military officials reportedly killed, tortured, and otherwise seriously abused civilians in conflict areas without public inquiry or accountability. Following ethnic armed groups’ attacks on the military, the military reportedly exercised a harsh form of collective punishment against civilians. Military attacks, including aerial bombing operations, also resulted in civilian deaths. Some ethnic armed groups, most notably the RCSS and TNLA, allegedly killed civilians suspected of being members of rival armed groups. Clashes between government forces and ethnic armed groups, as well as among ethnic armed groups, broke out periodically in northern Shan State during the year.

In April seven soldiers were sentenced to 10 years in prison with hard labor for the killing of 10 Rohingya men and boys in the village of Inn Din in September 2017. The military stated four officers were among those sentenced, but did not release the names, ranks, or locations of detention. No steps were taken for accountability in other 2017 massacres in Rakhine State that were credibly documented by the United Nations and human rights groups.

On July 12 government soldiers reportedly killed six TNLA female medics in what the TNLA described as an execution following torture and rape. The military stated the six were killed during fighting between government and TNLA soldiers.

**Abductions:** There were reports government soldiers and nonstate armed groups abducted villagers in conflict areas.

On August 17, TNLA soldiers took Nang Mo Hom at gunpoint from her home in Shan State. The TNLA said she had obstructed its soldiers from collecting customs duties and was responsible for the death of one soldier, who was killed by
government forces while seeking to extort money from local residents. The TNLA released Nang Mo Hom in October after sentencing her to three years in prison and subsequently granting her amnesty, under its own alleged legal authority, which the government does not recognize.

During a crackdown in September on Christians in the Wa Self-Administered Division, the United Wa State Army (UWSA) detained a reported 200 Christian leaders while also destroying churches and imposing severe limits on Christian worship, teaching, and proselytizing. The UWSA later released most of those it detained. The government exerts no authority inside the Wa territory, which has been under UWSA control since 1988.

Physical Abuse, Punishment, and Torture: NGO reports provided credible information that the military engaged in torture and beating of civilians alleged to be working with or perceived to be sympathetic to ethnic armed groups in Kachin and Shan States. There were also continued reports of forced labor and forced recruitment by the KIA, the UWSA, and the TNLA.

The military continued to take steps to cease forcing civilians to serve as military porters, yet unconfirmed reports continued that the military forced civilians to carry supplies or serve in other support roles in areas with outbreaks of conflict, such as northern Shan, Rakhine, and Kachin States. There were also unconfirmed reports that the military used local villagers as human minesweepers in conflict areas.

Civilians, armed actors, and NGOs operating inside the country and along the border reported continued landmine use by the military and armed groups. Although the government and ethnic armed groups continued to discuss joint demining action, the discussions did not result in any joint demining activities. UNICEF received reports that the military unilaterally undertook limited landmine clearance operations in the southeast and in northern Shan State where it cleared small numbers of improvised explosive devices and unexploded ordnance when identified.

The Department of Rehabilitation in the Ministry of Social Welfare, Relief, and Resettlement and UNICEF continued to co-chair the one national and four state-level mine risk working groups (MRWG) in Kachin, Kayah, Kayin, and Shan States. In Kayin State the MRWG included representatives from the state-level Department of Social Welfare, military, and ethnic armed groups, including the

The MRWGs coordinated mine-risk education, victim assistance, information management systems, and advocacy. They monitored and documented incidents and casualties from landmines and unexploded remnants of war. Between January and August, UNICEF and the MRWGs documented 193 casualties, including 45 children. Of these casualties, 89 percent occurred in Kachin and Shan States. Many incidents were not reported due to continuing conflicts in Kachin, Shan, and Rakhine States.

Child Soldiers: The government continued to implement the 2012 joint action plan with the United Nations to end underage recruitment and use of child soldiers in the context of the UN Country Task Force on Monitoring and Reporting (CTFMR), which oversees documentation and verification of grave violations against children. UN officials reported the military continued to make progress in decreasing the use and recruitment of children, as well as demobilizing soldiers recruited as children who were still serving in the armed forces. They also noted the timeframe for authorities to verify allegations of child soldier use and recruitment grew longer during the year.

In addition to the military, seven armed groups were listed in the UN Secretary General’s 2017 report on Children and Armed Conflict as perpetrators of the recruitment and use of children: the Democratic Karen Benevolent Army, the Karen National Liberation Army, the Karenni Army, the Karenni National Progressive Party, the RCSS, Shan State Army South, and the UWSA.

From June 2012 to September 2018, the military released 924 individuals who were under the age of 18 when they were recruited, including 75 released at a ceremony in September. The military continued to implement age-verification procedures in the recruitment process, although there were reports middlemen continued to help underage recruits bypass these procedures, sometimes at the request of those recruits’ families. Military directives issued in 2015 and 2016 to prohibit the use of children remained in effect.

The Ministry of Defense undertook efforts to investigate military personnel implicated in recruiting child soldiers. The military provided information to the CTFMR that linked specific accountability measures to the respective cases of child recruitment or use, allowing for verification of the military’s accountability
measures. The military did not make these reports publicly available. By law all accountability measures fall under military discipline or justice regulations.

The United Nations reported that at least 683 of the 924 child soldiers released by the military since June 2012 have received some support for reintegration into civilian life, although the quality and effectiveness of that support was uneven. The Ministry of Social Welfare, Relief, and Resettlement, UNICEF, and other partners provided social assistance and reintegration support to discharged children.

The military generally allowed UN monitors to inspect for compliance with agreed-upon procedures, to cease recruitment of children, and to implement processes for identification and demobilization of those serving in armed conflict. There were some delays in securing official permissions, and access to conflict areas was generally denied. The government continued to prevent ethnic armed groups from signing joint plans of action with the United Nations to end recruitment of child soldiers and to demobilize and rehabilitate those already serving.

Also see the Department of State’s * Trafficking in Persons Report* at [www.state.gov/j/tip/rls/tiprpt/](http://www.state.gov/j/tip/rls/tiprpt/).

**Other Conflict-related Abuse:** The government further restricted the passage of relief supplies and access by international humanitarian organizations to conflict-affected areas of Rakhine, Kachin, and Shan States. The government regularly denied access to the United Nations, international NGOs, and diplomatic missions, arguing the military could not assure security or claiming humanitarian assistance would benefit ethnic armed group forces, although there was no ongoing conflict in northern Rakhine State. In some cases the military allowed gradual access only as government forces regained control over contested areas. Although locally based organizations had some access to the estimated 40,000 IDPs in areas outside government control, primarily in northern Kachin State, the military increased restrictions on access for local organizations, including through threats of prosecution under the Unlawful Associations Act against local humanitarian organizations operating in areas outside government control. The government has not granted the United Nations or other international organizations humanitarian access to areas in Kachin State outside of military control since June 2016. More than 107,000 persons remained displaced by conflict in Kachin and Shan States. In some cases villagers driven from their homes fled into the forest, frequently in
heavily mined areas, without adequate food, security, or basic medical care (see section 2.d.).

The United Nations reported that conflict and fighting in Rakhine, Kachin, and Shan States led to substantially increased reports of the killing and maiming of children, including by landmines, and attacks on schools and hospitals.

There were some reports of the use of civilians to shield combatants.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Expression, Including for the Press

The constitution provides, “every citizen shall be at liberty in the exercise of expressing and publishing freely their convictions and opinions,” but it contains the broad and ambiguous caveat that exercise of these rights must “not be contrary to the laws enacted for national security, prevalence of law and order, community peace and tranquility, or public order and morality.” Threats against and arrests of journalists continued during the year.

Freedom of Expression: Freedom of expression was more restricted compared with 2017. Authorities arrested, detained, convicted, intimidated, and imprisoned citizens for expressing political opinions critical of the government and the military, generally under the charges of defamation, protesting without a permit, or violating national security laws. This included the detentions and trials of journalists and other figures, applying laws carrying more severe punishments than those used previously.

The criminal defamation clause under the Telecommunications Law, known as Section 66(d), was frequently used to restrict freedom of expression and press. Use of the law continued apace from 2017. According to a local activist group that advocates for freedom of expression, 198 criminal defamation cases have been filed under Section 66(d) since the law was introduced in 2013. Several journalists, as well as critics of the government and the military, continued to face charges under this law. On January 6, Mon State authorities sued a Facebook user, U Aung Ko Ko Lwin, for a post disparaging the Mon State Chief Minister Dr. Aye Zaw, citing the separate Law Protecting the Privacy and Security of Citizens, which similarly criminalizes defamation.
Ngar Min Swe, a former newspaper columnist and prominent critic of the government, was arrested in July on charges of “excit[ing] disaffection towards the government” for a Facebook post he wrote in January that was critical of Aung San Suu Kyi. On September 17, he was given a seven-year prison sentence.

Other government prosecutions of politicians and activists included the September 10 high treason (Article 122) and defamation of the state (criminal code Article 505(b)) charges against Aye Maung and Wai Hin Aung for remarks that reportedly expressed support for the Arakan Army, and the October 8 two-year prison sentence under Article 505(c) for inciting conflict between ethnic or religious groups of Maung Thway Chuun for his speech criticizing Christian leaders of the parliament and criticizing the government for allowing Buddhism to “disappear.”

A court in Myitkyina on December 7 sentenced three Kachin peace activists--Lum Zawng, Nang Pu, and Zau Jat--to six months in prison with an additional 500,000 kyat ($320) fine for their involvement in a peaceful protest over conditions of internally displaced persons in Kachin State. They were charged under a section of Myanmar’s penal code that criminalizes defamation of the military, based on statements they made at the April protest, which followed an increase in fighting between the military and the KIA. A court in Myitkyina then fined three other activists who led a peaceful demonstration calling for the release of the first activists.

Other problematic laws that remained in force, including the Unlawful Associations Act, Habitual Offenders Act, Electronic Transactions Law, Television and Video Act, Official Secrets Act, Law on Safeguarding the State from the Danger of Subversive Elements, and Sections 124(a) and 505(b) of the penal code (which cover “exciting disaffection towards the Government” and committing an “offense against the State or against the public tranquility,” respectively), were used to censor or prosecute public dissent. The Law Protecting the Privacy and Security of Citizens, enacted in March, was also used to prosecute a critic of the NLD-appointed chief minister of Mon State.

On August 16, the chairman of the NLD in Magwe Region issued a notice instructing regional bodies to take legal action against people who use Facebook to severely defame State Counsellor Aung San Suu Kyi or the regional and national governments.

Some people remained wary of speaking openly about politically sensitive topics due to monitoring and harassment by security services and ultranationalist
Buddhist groups. Police continued to monitor politicians, journalists, writers, and diplomats. Journalists continued to complain about the widespread practice of government informants attending press conferences and other events, which they said intimidated reporters and the events’ hosts. Informants demanded lists of hosts and attendees.

Press and Media Freedom: Independent media were active and able to operate, despite some restrictions. The government continued to permit the publication of privately owned daily newspapers. As of October authorities approved 28 dailies; however, press freedom declined compared with 2017, and the security forces detained journalists under laws carrying more severe sentences than those it used in previous years.

Local media could cover human rights and political issues, including democratic reform, and international investigations of the 2017 ethnic cleansing in Rakhine State, although they observed some self-censorship on these subjects. The government generally permitted media to cover protests and civil conflict, topics not reported widely in state-run media.

The military continued to practice zero tolerance of perceived critical media commentary, while members of the ruling party increasingly used existing legislation to prosecute journalists and a former columnist perceived as critical.

Two Reuters reporters, who were detained in December 2017 and charged under the Official Secrets Act related to their investigation of security forces’ activities in northern Rakhine State, remained incarcerated throughout their trial and were sentenced on September 3 to seven years in prison after a trial that many observers criticized as lacking due process. State Counsellor Aung San Suu Kyi, in a June 8 interview with Japanese broadcasting organization NHK and in public remarks at the World Economic Forum on the Association of Southeast Asian Nations (ASEAN) in September, rebuffed critics and defended the jailing of the two journalists.

*Myanmar Now* editor in chief Swe Win’s 66(d) trial continued in Mandalay as of October, and the court rejected a motion to dismiss the case. In March 2017 Swe Win was arrested because of allegedly sharing a Facebook post suggesting the monk Wirathu, a prominent Ma Ba Tha figurehead, violated the monastic code of conduct by making statements commending the January 28 assassination of well-known Muslim constitutional lawyer Ko Ni (see section 1.a.).
On October 1, a Dawei township court charged the editor of the Thanintharyi Journal under the Media Law over the journal’s November 2017 publication of a satirical article about a regional official.

On October 10, the Yangon regional government detained two editors and one journalist from the Eleven Media Group and charged them under Section 505(b) following publication of an article concerning the regional government’s alleged financial malfeasance. Following President Win Myint’s order to turn the case over to the Myanmar Press Council, the regional government dropped the charges on November 9, while holding out the possibility of reinstating charges if the press council’s ruling was unsatisfactory.

Radio, television, and the internet were the primary mass communication media. Circulation of independent news periodicals declined outside of urban areas, and circulation of government-controlled print media far exceeded independent media circulation. Several print publications maintained online news websites that were popular among those with access to the internet. The military, government, and government-linked businesspersons controlled the content of the eight privately or quasi-governmentally owned FM radio stations.

The government loosened its monopoly and control on domestic television broadcasting. It offered six public channels--five controlled by the Ministry of Information and one by the military; the ministry channels regularly aired the military’s content. The government allowed the general population to register satellite television receivers for a fee, but the cost was prohibitive for most persons outside of urban areas. The ministry signed licenses in February with five media companies, including formerly exiled media groups DVB and Mizzima Media, to broadcast their content in a landmark public-private broadcasting partnership. The ministry insisted that the five companies, which use state-owned broadcaster Myanmar Radio and Television’s transmission infrastructure, abide by government guidelines on content, including avoiding using the term “Rohingya” in most cases. Many media outlets reported the cost of applying for and maintaining a television channel was prohibitive.

Violence and Harassment: Nationalist groups continued to target journalists who spoke out critically regarding intercommunal and Rakhine State issues. Businesspersons engaged in illegal enterprises, sometimes together with local authorities, also harassed and threatened journalists reporting on their activities, including with the threat of legal action. Officials continued to monitor journalists in various parts of the country.
Censorship or Content Restrictions: Although generally not enforced, laws prohibit citizens from electronically passing information about the country to media located outside the country, exposing journalists who reported for or cooperated with international media to potential harassment, intimidation, and arrest. There were no reports of overt prepublication censorship of press publications, and the government allowed open discussion of some sensitive political and economic topics, but incidents of legal action against publications that criticized the military or the government heightened concern among local journalists and increased the use of self-censorship.

Self-censorship was common, particularly on issues related to Buddhist extremism, the military, the situation in Rakhine State, and the peace process. Journalists reported such self-censorship became more pronounced because of the trial and conviction of the two Reuters journalists. The government ordered media to use certain terms and themes to describe the situation in northern Rakhine State and threatened penalties against journalists who did not follow the government’s guidance, which exacerbated already high levels of self-censorship on this topic. Authorities prevented journalists from accessing northern Rakhine State, with the exception of government-organized trips that participants reported to be tightly controlled and designed to advance the government’s narrative. The number of such trips increased during the year. The government continued to use visa issuance and shortened visa validities to control foreign journalists, especially those not routinely based in the country.

The government censorship board reviews all films to be screened inside the country. This process resulted in the censorship of one film scheduled for screening at the European Film Festival in September because of nudity.

Libel/Slander Laws: Elements of the military sued journalists on multiple occasions for what they perceived as defamation or inaccurate reporting. The military sometimes dropped the cases after a lengthy court process.

Individuals, including political figures, also used the Telecommunications Law to sue reporters for perceived defamation. U Thawbita, a Buddhist monk in Mandalay, surrendered to police on September 28 after being charged under 66(d) because of a Facebook post he wrote criticizing the commander in chief and the military’s role in politics. He was released on bail, and the case continued at year’s end.
Internet Freedom

The government generally did not restrict or disrupt access to the internet or censor online content. The government set up a Social Media Monitoring Team and reportedly monitored internet communications without clear legal authority and used defamation charges to intimidate and detain some individuals using social media to criticize the military, government officials, or the ruling party. There were also instances of authorities intimidating online media outlets and internet users. Social media continued to be a popular forum to exchange ideas and opinions without direct government censorship, although there were military-affiliated disinformation campaigns on social media. According to the International Telecommunication Union, approximately 25 percent of the population had access to the internet in 2016, but estimated mobile phone penetration was 90 percent, and other experts noted the majority of mobile handsets in the country could connect to the internet. The most recent *Freedom on the Net* report issued in 2017 by international NGO Freedom House rated internet freedom in the country not free, consistent with previous years.

Section 66(d) of the Telecommunications Act limited freedom of expression online.

Academic Freedom and Cultural Events

Government restrictions on academic freedom and cultural events continued. The Ministry of Education in some cases demonstrated willingness to collaborate with international institutions to host educational and cultural events, as well as to expand educational opportunities for undergraduate students.

The government tightened restrictions on political activity and freedom of association on university campuses. In January, university administrations expelled 34 students in several universities for participating in student protests calling for increased education funding. In addition the Ministry of Education issued a directive in May forbidding speeches on political issues on university campuses and requiring details to be submitted in advance for the organization of seminars or talks, including names and biographies of all panelists and a list of all participants. Following widespread student protest, the ministry withdrew the directive and issued subsequent regulations that allowed political discussions while keeping in place the need for prior approval of topics and participant lists.
The government generally allowed the informal establishment of student unions. Nonetheless, no laws allow student unions to register officially with the government, and among university rectors and faculty there was considerable fear and suspicion of student unions. Although some student unions were allowed to open offices unofficially in some locations, the All Burma Federation of Student Unions, as in previous years, was unable to register but participated in some activities through informal networks.

There were reported incidents of the government restricting cultural events.

b. Freedoms of Peaceful Assembly and Association

The constitution provides for the freedoms of peaceful assembly and association, but the government restricted these rights.

Freedom of Peaceful Assembly

The constitution provides the right to peaceful assembly, although this right was not always respected in practice. Restrictions remained in place in 11 Rangoon townships on all applications for processions or assemblies. Some civil society groups asserted these restrictions were selectively applied and used to prevent demonstrations against the government or military. Farmers and social activists continued to hold protests over land rights and older cases of land confiscation throughout the country, and human rights groups continued to report cases in which the government arrested groups of farmers and those supporting them for demanding the return of confiscated land. Many reported cases involved land seized by the military under the former military regime and given to private companies or persons with ties to the military.

Local government officials in Yangon Region, Kayah State, and elsewhere required civil society organizations to apply for advance permission before holding meetings and other functions in hotels and other public venues. Officials forced venues to cancel civil society events where such permission was not obtained. Officials in Mandalay Division and Kayah State required civil society organizations to request advance permission from the local government to meet with diplomats.

At least 42 persons were arrested in May for their participation in peaceful antiwar protests in Rangoon, Mandalay, and other cities. Three people who were arrested for their participation in a related poetry reading were sentenced on September 19,
two with fines of 20,000 kyats ($13) and one opting to serve 15 days in prison instead of paying the fine.

Following a peaceful protest on July 3 against the erection of a statue of the Burmese independence hero General Aung San, in Loikaw, Kayah State, 16 demonstrators were arrested; 11 of those 16 faced charges under Sections 505(b) for distributing pamphlets related to the protest. The trial continued as of October.

Common charges used to convict peaceful protesters included criminal trespass, violation of the Peaceful Assembly and Processions Act, and violation of Section 505(b) of the penal code, which criminalizes actions the government deemed likely to cause “an offense against the State or against the public tranquility.”

**Freedom of Association**

Although the constitution and laws allow citizens to form associations and organizations, the government sometimes restricted this right.

In June the State Sangha Maha Nayaka Committee ordered local branches of the organization commonly known as Ma Ba Tha to remove signs using that name, following a 2017 ban on the use of the name after which the organization formally rebranded itself the Buddha Dhamma Parahita Foundation. Some of its members, including Wirathu, were sanctioned in 2017 for inflaming tensions towards the Muslim community using ultranationalist rhetoric. Some local branches of the organization continued to use the name on their signs in spite of the ban, and as of October no action had been taken against them.

The law on registering organizations stipulates voluntary registration for local NGOs and removes punishments for noncompliance for both local and international NGOs. Some NGOs that tried to register under this law found the process extremely onerous.

Activists reported civil society groups, community-based organizations, and informal networks operated openly and continued to discuss openly human rights and other political problems. They reported, however, that state surveillance of such operations and discussions was common and that government restrictions on meetings and other activity increased during the year.

**c. Freedom of Religion**
d. Freedom of Movement

The law does not explicitly and comprehensively protect freedom of internal movement, foreign travel, emigration, and repatriation. Laws provide rights for citizens to settle and reside anywhere in the country “according to law.” Laws related to noncitizens empower the president to make rules for requiring registration of foreigners’ movements and authorize officials to require registration for every temporary change of address exceeding 24 hours.

Abuse of Migrants, Refugees, and Stateless Persons: The government committed widespread and systematic abuses against the Rohingya population (see Stateless Persons).

In-country Movement: Regional and local orders, directives, and instructions restrict freedom of movement.

The government restricted the ability of IDPs and stateless persons to move. While a person’s freedom of movement generally derived from possession of identification documents, authorities also considered race, ethnicity, religion, and place of origin as factors in enforcing these regulations. Residents of ethnic-minority states reported the government restricted the travel of, involuntarily confined, and forcibly relocated IDPs and stateless persons.

Restrictions on in-country movement of Rohingya were extensive. Authorities required the Rohingya, a largely stateless population, to carry special documents and travel permits for internal movement in five areas in Rakhine State where the Rohingya primarily reside: Buthidaung, Maungdaw, Rathedaung, Kyauktaw, and Sittwe. Township officers in Buthidaung and Maungdaw Townships continued to require Rohingya to submit a “form for informing absence from habitual residence” for permission to stay overnight in another village and to register on the guest list with the village administrator. Obtaining these forms and permits often involved extortion and bribes.

Restrictions governing the travel of foreigners, Rohingya, and others between townships in northern Rakhine State varied, depending on township, and generally required submission of a document known as “Form 4.” A traveler could obtain this form only from the township Immigration and National Registration...
Department (INRD) and only if that person provided an original copy of a family list, temporary registration card, and two guarantors. Travel authorized under Form 4 is generally valid for two to four weeks. The cost to obtain the form varied from township to township, with required payments to village administrators or to the township INRD office in amounts ranging from 50,000 to 100,000 kyats ($32 to $64). The government removed the Form 4 requirement between Maungdaw and Buthidaung townships in late 2017, only for individuals in possession of formal identity documents, although other formal and informal local restrictions on movement remained in place. Change of residency from one village or township to another in northern Rakhine State required permission from the INRD or the township, district, and state officials. While Rohingya could change residency, the government would not register them on a new household registration list in that new location. This practice effectively prevented persons from changing residency.

International and local humanitarian staff required travel authorizations from the union and state level to operate in Rakhine State. Local staff had to submit travel applications two weeks in advance, and they were often denied. Humanitarian access to northern Rakhine State was suspended entirely in August 2017; however, during the course of 2018, the Red Cross Movement, World Food Program, and several other organizations regained some degree of access. Media and human rights professionals were routinely denied access to Rakhine State. Travel restrictions effectively prevented Rohingya from northern Rakhine State from traveling to other parts of the state, including the capital of Sittwe, and outside the state.

In May, Hla Phyu was arrested and convicted of false representation after attempting to leave an IDP camp in Rakhine State, where she had been living since her displacement during violence in 2012, and travel to Rangoon. The 23-year-old teacher, who is Muslim, had previously applied for official permission to travel without success, and eventually traveled without receiving permission. She was sentenced to a year in prison with hard labor.

There were reports of regular, unannounced nighttime household checks in northern Rakhine State and in other areas.

Foreign Travel: The government maintained restrictions preventing foreign travel of political activists, former political prisoners, and some local staff of foreign embassies. While some administrative restrictions remained, local organizations
reported encountering far fewer delays and restrictions. Stateless persons, particularly Rohingya, were unable to obtain documentation necessary for foreign travel.

Exile: There was a sizeable diaspora, with some citizens choosing to remain outside the country after years of self-imposed exile. During the year the government encouraged exiles to help rebuild their country, and some returned home; however, the government appeared to maintain an opaque “black list” of individuals, including some from the exile community, who were prohibited from entering the country.

Internally Displaced Persons (IDPs)

An estimated 235,000 persons remained internally displaced by violence in Kachin, Rakhine, and northern Shan States as of September. The UN Office of Coordination for Humanitarian Affairs estimated that more than 28,000 people were displaced by armed conflict in Kachin and Shan States since January. The United Nations and other humanitarian agencies reported significant deterioration in humanitarian access during the year, and the military blocked access to IDPs and other vulnerable populations in areas controlled by nonstate armed groups (see section 1.g., Other Conflict-related Abuse). Approximately 128,000 Rohingya remained confined to IDP camps in Rakhine State following 2012 intercommunal violence. A small number of Kaman and Rakhine have also lived in IDP camps since 2012. This figure did not include an additional unknown number, likely in the tens of thousands, who were internally displaced following atrocities beginning in August 2017 in northern Rakhine State. Accurate figures were difficult to determine due to continued poor access to affected areas.

Fighting between government forces and ethnic armed groups continued in Kachin, Shan, Kayin, and Rakhine States. Ethnic armed groups also clashed among themselves in northern Shan State. Access to displaced persons in or near conflict zones continued to be a challenge, with the military restricting access by humanitarian actors seeking to provide aid to affected communities.

Some 101,000 Rohingya IDPs lived in Sittwe’s rural camps, displaced since 2012, where they relied on assistance from aid agencies. Humanitarian agencies provided access to clean water, food, shelter, and sanitation in most IDP camps. The government limited health and education services and livelihood opportunities through severe and systematic restrictions on movement. Conditions in Aung Mingalar, the sole remaining Muslim quarter in Sittwe, remained poor, with
Rohingya allowed to leave the fenced and guarded compound only to shop for necessities at nearby markets or to visit outside health clinics if they paid a fee to security services. In an attempt to start closing the camps, the government relocated the Rohingya residents of some IDP camps in Rakhine State to nearby locations where they continued to be segregated and concentrated without improvements in freedom of movement or access to livelihoods.

In November, when in the past Rohingya have sought to flee Myanmar in boats after the start of the dry season, Myanmar naval authorities intercepted and detained a group of 106 Rohingya who attempted to leave Rakhine State by sea. Authorities returned some members of the group to Sittwe and others to an IDP camp. There were reports of Myanmar authorities detaining other groups also attempting to depart by boat.

During the year humanitarian agencies received travel authorizations to provide assistance sporadically, and international humanitarian staff were not allowed to travel outside of urban areas in Kachin, northern Shan, and northern Rakhine States for much of the year. Humanitarian access to Rakhine State was irregular and restricted, and humanitarian workers continued to be under pressure from local communities to reduce assistance to Muslim IDPs and villages.

The government continued to restrict humanitarian access throughout Rakhine State with inconsistent approvals of travel authorization requests. Local staff of humanitarian organizations, many of whom lived among affected populations, continued to have to apply for travel permits in order to provide services.

There were reports of some small-scale, spontaneous IDP and refugee returns in the southeast of the country.

Protection of Refugees

Access to Asylum: The country’s laws do not provide for the granting of asylum or refugee status, and the government has not established a system for providing protection to refugees. UNHCR did not register any asylum seekers during the year.

Stateless Persons

The vast majority of Rohingya were stateless. Following the forced displacement of more than 700,000 Rohingya to Bangladesh in 2017, an estimated 520,000 to
600,000 Rohingya remained in Rakhine State. There were likely significant numbers of stateless persons and persons with undetermined nationality throughout the country, including persons of Chinese, Indian, and Nepali descent.

Provisions of the Citizenship Law contributed to statelessness. Following the entry into force of the 1982 law and procedures, the government released a list of 135 recognized “national ethnic groups” whose members are automatically full citizens. This list excluded the Rohingya, and subsequent actions by the government rendered the vast majority of the Rohingya ethnic minority stateless. The law defines “national ethnic group” only as a racial and ethnic group that can prove origins in the country dating back to 1823, the year prior to British colonization. Several ethnic minority groups, including the Chin and Kachin, criticized the classification system as inaccurate. While the majority of the country’s inhabitants automatically acquired full citizenship under these provisions, some minority groups, including the Rohingya; persons of Indian, Chinese, and Nepali descent; and “Pashu” (Straits Chinese), some of whose members had previously enjoyed citizenship in the country, are not included on the government’s list. The Rohingya and others are technically eligible for full citizenship via standard mechanisms unrelated to ethnicity, but they must go through a special process with additional scrutiny that in practice requires substantial bribes to government officials to access the government’s family records or to ensure officials formally accept a citizenship application for processing. This process generally results in naturalized citizenship without the complete set of rights associated with full citizenship. The law does not provide protection for children born in the country who do not have a “relevant link” to another state.

The name Rohingya is used in reference to a group that self-identifies as belonging to an ethnic group defined by religious, linguistic, and other ethnic features. Rohingya maintained they have resided in what is now Rakhine State for generations. In 2016 the government established a policy of using “Muslims in Rakhine State” to refer to the population, although military officials and many government officials, particularly in Rakhine State, continued to use the term “Bengali,” which is considered a pejorative. This term is still used on identification documents. The government offers a citizenship verification process to Rohingya to determine who qualifies for citizenship on the basis of mechanisms in the 1982 law that provide pathways to citizenship other than being a member of a national ethnic race. The Rohingya community participated in this process in a limited manner. The government no longer requires all participants to identify as “Bengali” as a condition of participating in the process, nor does it require
applicants to list their race or religion on forms in the earliest phases of the process, although implementing officials reportedly continued to require participants to identify as “Bengali.” Those who are verified as a citizen (of whatever type) would have “Bengali” listed as their race on their citizenship scrutiny card. This process and the separate national verification process were not seen as credible by the Rohingya community, in part because many continued to be told they were required to apply as “Bengali,” because the few Rohingya who received national verification cards or citizenship through these processes did not receive significant rights and benefits, and because the government implemented the process in a coercive manner. For example, there were reported cases that a government official required Rohingya to have a national verification card to go fishing or access a bank account. The government continued to call on Rohingya to participate, but many of them expressed the need for more assurances about the results of the process. Many said they were already citizens and expressed fear the government would either not affirm their citizenship or would provide a form of lesser citizenship--naturalized rather than full--thereby formalizing their lack of rights.

According to the Citizenship Law, two lesser forms of citizenship exist: associate and naturalized. According to other legal statutes, these citizens are unable to run for political office; serve in the military, police, or public administration; inherit land or money; or pursue certain professional degrees, such as medicine and law. According to the Citizenship Law, only the third generation of associate or naturalized citizens are able to acquire full citizenship.

Rohingya experienced severe legal, economic, and social discrimination. The government required them to receive prior approval for travel outside their village of residence; limited their access to higher education, health care, and other basic services; and prohibited them from working as civil servants, including as doctors, nurses, or teachers. Authorities singled out Rohingya in northern Rakhine State to perform forced labor and arbitrarily arrested them. Authorities required Rohingya to obtain official permission for marriages and limited the registration of children to two per family, but local enforcement of the two-child policy was inconsistent. For the most part, authorities registered additional children beyond the two-child limit for Rohingya families, yet there were cases of authorities not doing so.

Restrictions impeded the ability of Rohingya to construct houses or religious buildings.

**Section 3. Freedom to Participate in the Political Process**
The constitution provides citizens the ability to choose their government through elections held by secret ballot, although certain provisions prevent it from being a fully representational system and assuring the free expression of the will of the people. Constitutional provisions grant one-quarter of all national and regional parliamentary seats to active-duty military appointees and provide the military with the authority to appoint the ministers of defense, home affairs—which has responsibility for subnational governance as well as police, prisons, and other matters—and border affairs, and indefinitely assume power over all branches of the government should the president declare a national state of emergency. A separate constitutional provision prohibits persons with immediate relatives holding foreign citizenship from becoming president. Amending the constitution requires more than 75 percent approval by members of parliament, giving the military effective veto power over constitutional amendments.

**Elections and Political Participation**

**Recent Elections:** International organizations reported the country conducted its November by-elections for 13 national- and state-level offices in accordance with generally accepted democratic principles. Observers considered the 2015 national election to be generally reflective of the will of the people, notwithstanding some structural shortcomings. Observers raised concerns that 25 percent of seats in parliament were reserved for unelected military officers; potential Muslim candidates were disqualified by their political parties on an apparently discriminatory basis; almost all members of the Rohingya community, many of whom voted in elections prior to 2015, were disenfranchised; and the government canceled voting in some conflict-affected ethnic minority areas. The NLD, chaired by Aung San Suu Kyi, won more than 77 percent of the contested 1,150 seats at the state, regional, and union levels in the 2015 election.

**Political Parties and Political Participation:** Opposition parties and civil society organizations continued to exercise their rights to assemble and protest.

**Participation of Women and Minorities:** No laws limit the participation of women and members of minorities in the political process, and they did participate. Nevertheless, women and minorities continued to be underrepresented in government. Aung San Suu Kyi was the only woman in a cabinet of 24 ministers serving at the national level. The representation of women at both the national and the state and regional levels was more than 10 percent among elected
representatives. Women led two subnational governments, including the chief ministers of Kayin State and Tanintharyi Region.

As of October, five chief ministers of the seven ethnic states belonged to the ethnic groups of their states, including the chief minister of Rakhine State; one of two union-level vice presidents belonged to the Chin ethnic minority group and one belonged to the Mon ethnic group. The representation of ethnic minority parliamentarians from ethnic minority political parties at both the national, state, and regional level was approximately 9 percent. These figures from all levels did not account for ethnic minority members of the NLD (which included numerous ethnic members) or the Union Solidarity and Development Party.

Rohingya continued to be excluded from the political process, because their political rights (whether to vote or run for office) remained severely curtailed since the vast majority are stateless. Although Rohingya comprised approximately one-third of the total population in Rakhine State and clear majorities in some voting districts at the time of the 2015 national election, there were no Rohingya representatives in the state parliament, and most Rohingya-majority areas were represented by an ethnic Rakhine nationalist party.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials, and the government continued efforts to curb corruption. Although anecdotal reports suggested corruption among elected officials declined significantly since 2016, the government’s anticorruption efforts remained limited in some parts of the government, including the General Administration Department, which falls under the authority of the Minister of Home Affairs, an active-duty general who is appointed by the military per the constitution.

Corruption: Corruption remained a problem, particularly in the judiciary. Police reportedly often required victims to pay substantial bribes for criminal investigations and routinely extorted money from the civilian population. The government took some steps to investigate and address corruption of government officials.

In May, Minister of Finance Kyaw Win resigned while under investigation by the Anticorruption Commission. The investigation did not lead to charges.
In September the Yangon Region Attorney General and five other officials, including a judge, were arrested and charged with taking 70 million kyats ($45,500) in bribes to drop charges against three men accused of killing a popular comedian in January. The case continued as of October.

In October the Anticorruption Commission chairman stated his commission has no authority to investigate corruption in the military.

Financial Disclosure: Public officials were not subject to public financial disclosure laws. The law requires the president and vice presidents to furnish a list of family assets to the speaker of the joint houses of parliament, and the law requires persons appointed by the president to furnish a list of personal assets to the president. The government did not make the reports available to the public.

Civil servants cannot accept gifts worth more than 25,000 kyats ($16). The rules also require civil servants to report all offers of gifts to their supervisors, whether or not they are accepted.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights

The government did not fully allow domestic human rights organizations to function independently. Human rights NGOs were able to open offices and operate, but there were some reports of harassment and monitoring by authorities, and that authorities sometimes pressured hotels and other venues not to host meetings by activists or other civil society groups.

Human rights activists and advocates, including representatives from international NGOs, continued to obtain short-term visas that required them to leave the country periodically for renewal. The government continued to monitor the movements of foreigners and interrogated citizens concerning contacts with foreigners.

The United Nations or Other International Bodies: As of year’s end, the government had not agreed to the opening of an Office of the UN High Commissioner for Human Rights (OHCHR). While formally allowing OHCHR staff to maintain a nominal presence in country, the government delayed visa issuance for some OHCHR staff members and continued to require travel authorization for travel to Rakhine State and conflict areas.
On September 17, the UN Fact-Finding Mission, established by the UN Human Rights Council, published its final report on the country, which detailed atrocities committed by the military in Rakhine, Kachin, and Shan States, as well as other areas, and characterized the “genocidal intent” of the military’s 2017 operations in Rakhine State. The government denied the Fact-Finding Mission permission to enter the country and publicly disavowed the report.

The government continued not to allow the UN special rapporteur on the situation of human rights in Myanmar to enter the country, but permitted UN special envoy of the Secretary-General on Myanmar Christine Schraner Burgener, who was appointed in April, to enter the country on multiple occasions and meet with officials, including Aung San Suu Kyi and Commander-in-Chief Minh Aung Hlaing.

The ICRC had full access to independent civilian prisons and labor camps. The government also allowed the ICRC to operate in ethnic-minority states, including in Shan, Rakhine, and Kachin States.

**Government Human Rights Bodies:** The Myanmar National Human Rights Commission investigated some incidents of gross human rights abuses. In some prominent cases, it called on the government to conduct investigations into abuses, and in October it called on the government to facilitate the repatriation of Rohingya from Bangladesh. It also conducted investigations into police mistreatment of detainees (see section 1.d., Arrest Procedures and Treatment of Detainees). Its ability to operate as a credible, independent mechanism remained limited. The commission supported the development of human rights education curricula, distributed human rights materials, and conducted human rights training.

On July 30, the government announced the formation of the Commission of Enquiry (COE) for Rakhine State, headed by Rosario Manalo, a former deputy prime minister of the Philippines. The four-person COE did not release any findings as of October. Previous government-led investigations into reports of widespread abuses by security services against the Rohingya in northern Rakhine State in 2016 yielded no findings of guilt or accountability and were criticized by international observers as deeply flawed.

The Advisory Commission on Rakhine State, established by Aung San Suu Kyi in 2016 and led by former UN secretary-general Kofi Annan, released its final report in August 2017, prior to the ARSA attacks in northern Rakhine State. Observers
questioned the government’s claim to have implemented 81 of 88 recommendations in the Advisory Commission’s final report as of October.

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

Women

Rape and Domestic Violence: Rape is illegal but remained a significant problem, and the government did not enforce the law effectively. Spousal rape is not a crime unless the wife is younger than 14 years. Police generally investigated reported cases of rape, but there were reports police investigations were not sensitive to victims. Civil society groups continued to report police in some cases verbally abused women who reported rape, and women could be sued for impugning the dignity of the perpetrator.

Domestic violence against women, including spousal abuse, remained a serious problem. Abuse within families was prevalent and considered socially acceptable. Spousal abuse or domestic violence was difficult to measure because the government did not maintain comprehensive statistics and victims typically did not report it, although the government attempted to document cases and stated cases were on the rise. Laws prohibit committing bodily harm against another person, but there are no laws specifically against domestic violence or spousal abuse unless the wife is younger than 14. Punishment for violating the law includes sentences ranging from one year to life in prison, in addition to possible fines. Overlapping and at times contradictory legal provisions complicated implementation of these limited protections.

The United Nations, media, and NGOs during the year documented the widespread use of rape and sexual violence by the military in Rakhine, Kachin, and Shan States since at least 2011. The military rejected all allegations that rape was an institutionalized practice in the military.

Sexual Harassment: The penal code prohibits sexual harassment and imposes a maximum of one year’s imprisonment and a fine for verbal harassment and a maximum of two years’ imprisonment and a fine for physical contact. There was no information on the prevalence of the problem because these crimes were largely unreported. Local civil society organizations reported police investigators were not sensitive to victims and rarely followed through with investigations or prosecutions.
Coercion in Population Control: There were no reports of coerced abortion or involuntary sterilization. In 2015, however, the government enacted the Population Control and Health Care Law, which contains provisions that, if enforced, could impose coercive birth-spacing requirements. Under the law the president or the national government may designate “special regions” for health care following consideration of factors such as population, natural resources, birth rates, and food availability. Once a special region is declared, the government allows the creation of special health-care organizations to perform various tasks, including establishing regulations related to family planning methods. The government has not designated any such special regions since the law’s enactment.

A two-child local order issued by the government of Rakhine State pertaining to the Rohingya population in two northern townships remained in effect, but the government and NGOs reported it was not consistently enforced (see section 1.f.).

Discrimination: By law women enjoy the same legal status and rights as men, including property and inheritance rights and religious and personal status, but it was not clear the government enforced the law. The law requires equal pay for equal work, but it was not clear the formal sector respected this requirement. NGOs reported some sectors, such as the garment industry, did not comply. Poverty affected women disproportionately. The law governing hiring of civil service personnel states nothing shall prevent the appointment of men to “positions that are suitable for men only,” with no further definition of what constitutes positions “suitable for men only.”

Customary law was widely used to address issues of marriage, property, and inheritance, and it differs from the provisions under statutory law.

Children

Birth Registration: The 1982 Citizenship Law automatically confers full citizenship status to 135 recognized national ethnic groups as well as to persons who met citizenship requirements under previous citizenship legislation. Moreover, the government confers full citizenship to second-generation children of both parents with any citizenship, as long as at least one parent has full citizenship. Third-generation children of associate or naturalized citizens can acquire full citizenship. Residents derive full citizenship through parents, both of whom must be one of the 135 officially recognized “national races.” Under the law the government does not officially recognize Rohingya as an ethnic group.
A prominent international NGO noted significant rural-urban disparities in birth registration. In major cities (e.g., Rangoon and Mandalay), births were registered immediately. In larger cities parents must register births to qualify for basic public services and obtain national identification cards. In smaller towns and villages, however, birth registration often was informal or nonexistent. For the Rohingya community, birth registration was a significant problem (see section 2.d.). The Advisory Commission on Rakhine State noted in its interim report nearly one-half of all residents in Rakhine State lacked birth documentation and recommended the government introduce a comprehensive birth registration campaign.

A birth certificate provided important protections for children, particularly against child labor, early marriage, and recruitment into the armed forces and armed groups. Sometimes a lack of birth registration, but more often a lack of availability, complicated access to public services in remote communities.

**Education:** By law, education is compulsory, free, and universal through the fourth grade. The government continued to allocate minimal resources to public education, and schools charged informal fees.

Education access for internally displaced and stateless children remained limited.

**Child Abuse:** Laws prohibit child abuse, but they were neither adequate nor enforced. NGOs reported corporal punishment was widely used against children as a means of discipline. The punishment for violations is a maximum of two years’ imprisonment or a maximum fine of 10,000 kyats ($6.30). There was anecdotal evidence of violence against children occurring within families, schools, in situations of child labor and exploitation, and in armed conflict. The Ministry of Social Welfare, Relief, and Resettlement continued its child protection programs. In Rakhine State continued violence left many families and children displaced or with restrictions on their movement, and this dislocation at times exposed them to an environment of violence and exploitation. Armed conflict in Kachin and Shan States had a similar adverse effect on children in those areas.

**Early and Forced Marriage:** The law stipulates different minimum ages for marriage based on religion and gender: The minimum age for Buddhists is 18 years, and the minimum age for Christians is 16 for boys and 15 for girls, but child marriage still occurred. According to the 2014 census, more than 13 percent of women married between ages 15 and 19. There were no reliable statistics on forced marriage. Child marriage remained a problem in rural areas.
Sexual Exploitation of Children: Children were subjected to sex trafficking in the country, and a small number of foreign child-sex tourists exploited children. The law does not explicitly prohibit child-sex tourism, but it prohibits pimping and prostitution, and the penal code prohibits sex with a minor younger than 14 years. The penalty for the purchase and sale of commercial sex acts from a child younger than 18 is 10 years’ imprisonment. The law prohibits pornography and specifies a penalty of two years’ minimum imprisonment and a fine of 10,000 kyats ($6.30). If a victim is younger than 14, the law considers the sexual act statutory rape. The maximum sentence for statutory rape is two years’ imprisonment when the victim is between 12 and 14, and 10 years’ to life imprisonment when the victim is younger than 12.

Displaced Children: The mortality rate of internally displaced children in conflict areas was significantly higher than in the rest of the country (see section 2.d.). The United Nations estimated that 53 percent of the 128,000 IDPs in Rakhine State are children; the vast majority of this population is Rohingya. The UN estimated that 46 percent of the 98,000 IDPs in Kachin State are children and 48 percent of the 8,500 IDPs in northern Shan State are children.


Anti-Semitism

There was one synagogue in Rangoon serving a small Jewish congregation. There were no reports of anti-Semitic acts.

Trafficking in Persons

See the Department of State’s Trafficking in Persons Report at www.state.gov/j/tip/rls/tiprpt/.

Persons with Disabilities

The law prohibits discrimination against persons with physical, sensory, hearing, intellectual, and mental disabilities. The law does not specifically prohibit discrimination against persons with disabilities in air travel and other forms of
transportation, but it directs the government to assure that persons with disabilities have easy access to public transportation. The government did not effectively enforce these provisions.

Civil society groups reported that children with disabilities often attended school through secondary education at a significantly lower rate than other persons, and many never attended school due to stigma and lack of any accommodation for their needs.

According to the Myanmar Physical Handicap Association, a significant number of military personnel, armed group members, and civilians had a disability because of conflict, including because of torture and landmine incidents. There were approximately 12,000 amputees in the country--two-thirds believed to be landmine survivors--supported by five physical rehabilitation centers throughout the country. Persons with disabilities reported stigma, discrimination, and abuse from civilian and government officials. Students with disabilities cited barriers to inclusive education as a significant disadvantage.

Military veterans with disabilities received official benefits on a priority basis, usually a civil service job at equivalent pay, but both military and ethnic-minority survivors in rural areas typically did not have access to livelihood opportunities or affordable medical treatment. Official assistance to nonmilitary persons with disabilities in principle included two-thirds of pay for a maximum of one year for a temporary disability and a tax-free stipend for permanent disability. While the law provides job protection for workers who become disabled, authorities did not implement it.

National/Racial/Ethnic Minorities

Ethnic minorities constituted 30 to 40 percent of the population. The seven ethnic minority states composed approximately 60 percent of the national territory, and significant numbers of minorities also resided within the country’s other regions. Wide-ranging governmental and societal discrimination against minorities persisted, including in areas such as education, housing, employment, and access to health services. International observers noted significant wage discrepancies based on religious and ethnic backgrounds were common.

Burmese generally remained the mandatory language of instruction in government schools. The government’s National Education Strategic Plan, released in April 2017, did not cover issues related to mother-tongue instruction. In schools
controlled by ethnic groups, students sometimes had no access to the national curriculum. There were very few domestic publications in indigenous-minority languages.

Tension between the military and ethnic minority populations, while somewhat diminished in areas with cease-fire agreements, remained high, and the military stationed forces in some ethnic groups’ areas of influence and controlled certain cities, towns, and highways. Ethnic armed groups, including the Kachin Independence Organization and the Karen National Union, pointed to the increased presence of army troops as a major source of tension and insecurity. Reported abuses included killings, beatings, torture, forced labor, forced relocations, and rapes of members of ethnic groups by government soldiers. Some groups also committed abuses (see section 1.g.).

The Rohingya in Rakhine State faced severe discrimination based on their ethnicity. Most Rohingya faced extreme restrictions on their ability to travel, avail themselves of health-care services, engage in economic activity (see section 7.d.), obtain an education, and register births, deaths, and marriages (see section 2.d.). Most of those displaced in 2012 remained confined to semipermanent camps with severely limited access to education, health care, and livelihoods.

The military and other security forces committed widespread atrocities against Rohingya villagers starting in August 2017 that were documented during the year, including extrajudicial killings, rape, torture, arbitrary arrest, and burning of hundreds of villages, religious structures, and other buildings. These atrocities and associated events forced more than 700,000 Rohingya to flee to Bangladesh as of September and constituted ethnic cleansing against the Rohingya.

**Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity**

Political reforms in recent years made it easier for the lesbian, gay, bisexual, transgender, and intersex (LGBTI) community to hold public events and openly participate in society, yet discrimination, stigma and a lack of acceptance among the general population persisted. Consensual same-sex sexual activity remains illegal under the penal code, which contains a provision against “unnatural offenses” with a penalty of a maximum of 10 years’ imprisonment and a fine. Laws against “unnatural offenses” apply equally to both men and women; these laws were rarely enforced. LGBTI persons reported police used the threat of prosecution to extort bribes. While the penal code is used more for coercion or
bribery, LGBTI persons, particularly transgender women, were most frequently charged under so-called shadow and disguise laws. These laws use the justification that a person dressed or acting in a way that is perceived as not being in line with their biological gender is in “disguise.” According to a report by a local NGO, transgender women reported higher levels of police abuse and discrimination than other members of the LGBTI community.

In March, authorities in Rangoon used the “unnatural offenses” law to charge an openly gay restaurant owner for allegedly sexually assaulting a male member of his staff. The case was pending at year’s end.

There were reports of discrimination based on sexual orientation and gender identity in employment. LGBTI persons reported facing discrimination from medical-care providers.

**HIV and AIDS Social Stigma**

The constitution provides for the individual’s right to health care in accordance with national health policy, prohibits discrimination by the government on the grounds of “status,” and requires equal opportunity in employment and equality before the law. Persons with HIV/AIDS could theoretically submit a complaint to the government if a breach of their constitutional rights or denial of access to essential medicines occurred, such as antiretroviral therapy, but there were no reports of individuals submitting complaints on these grounds. There are no HIV-specific protective laws or laws that specifically address the human rights aspects of HIV.

There were continued reports of societal violence and discrimination, including employment discrimination, against persons with HIV/AIDS. Negative incidents such as exclusion from social gatherings and activities; verbal insults, harassment, and threats; and physical assaults continued to occur. Laws that criminalize behaviors linked to an increased risk of acquiring HIV/AIDS remain in place, directly fueling stigma and discrimination against persons engaged in these behaviors and impeding their access to HIV prevention, treatment, and care services.

High levels of social stigma and discrimination against female sex workers and transgender women hindered their access to HIV prevention, treatment, and social protection services. Police harassment of sex workers deterred the workers from carrying condoms.
Other Societal Violence or Discrimination

There were reports of other cases of societal violence, and anti-Muslim sentiment and discrimination persisted. Members of Buddhist nationalist groups, including members of Ma Ba Tha, continued to denigrate Islam and called for a boycott of Muslim businesses.

Muslim communities complained about unequal treatment by police, pressures to practice Islam in private, difficulty in obtaining citizenship cards, close monitoring of their travel by local government, and restrictions on education opportunities. In addition some Muslims reported discrimination by private parties in renting housing. Religious groups noted the January 2017 assassination of Ko Ni had a chilling effect on Muslims fighting for improved treatment under the law (see section 1.a.).

Anti-Muslim hate speech, and in particular anti-Rohingya hate-speech, was prevalent on social media, in particular Facebook, the most popular social media platform in Myanmar. Independent reporting indicated that the military, using false accounts, was also responsible for generating and promulgating hate speech content.

Multiple sources noted restrictions against Muslims and Christians impeded their ability to pursue higher education opportunities and assume high-level government positions and that Muslims were unable to invest and trade freely.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides for the right of workers to form and join independent unions, bargain collectively, and conduct legal strikes. The law permits labor organizations to demand the reinstatement of workers dismissed for union activity, but it does not explicitly prohibit antiunion discrimination in the form of demotions or mandatory transfers, nor does it offer protection for workers seeking to form a union. The law does not provide for adequate protections for workers from dismissal before a union is officially registered.

Laws prohibit personnel of the defense services, armed forces, and police force from forming unions. The law permits workers to join unions only within their
category of trade or activity, and the definition of trade or activity lacks clarity. Basic labor organizations must have a minimum of 30 workers and register through township registrars with the chief registrar’s Office of the Ministry of Labor, Immigration, and Population (Ministry of Labor). Township labor organizations require a minimum of 10 percent of relevant basic labor organizations to register; regional or state labor organizations require a minimum of 10 percent of relevant township labor organizations. Each of these higher-level unions must include only organizations within the same trade or activity. Similarly, federations and confederations also require a minimum number of regional or state labor organizations (10 percent and 20 percent, respectively) from the next lower level in order to register formally. The law permits labor federations and confederations to affiliate with international union federations and confederations.

The law provides for voluntary registration for local NGOs, including NGOs working on labor issues. Organizations that choose to register are required to send organizational bylaws and formation documents to the government. Broader restrictions on freedom of assembly remained in place (see section 2.b.).

The law gives unions the right to represent workers, to negotiate and bargain collectively with employers, and to send representatives to a conciliation body or conciliation tribunal. The law permits unions to assist in individual disputes and individual employment agreements. The law does not contain detailed measures regarding management of the bargaining process, such as a duty to bargain in good faith, a period for bargaining, registration, or extension or enforcement of collective agreements. The National Tripartite Dialogue Forum (NTDF), with representatives of government, business, and labor, met three times during the year. The NTDF consults with parliament on revising legislation on freedom of association, collective bargaining, and dispute settlement resolution.

The law stipulates that disputes in special economic zones be settled in accordance with original contracts and existing laws. Under the law on special economic zones, the government appointed a labor inspector for each such zone and established zonal tripartite committees responsible for setting wage levels and monitoring the ratio of local and foreign labor.

The law provides for the right to strike in most sectors, with a majority vote by workers, permission of the relevant labor federations, and detailed information and three days’ advance notice provided to the employer and the relevant conciliation body. The law does not permit strikes or lockouts in essential services. For
“public utility services” (including the transport; cargo and freight; postal; sanitation; information, communication, and technology; energy; petroleum; and financial sectors), lockouts are permitted with a minimum of 14 days’ notice provided to the relevant labor organizations and conciliation body. Strikes in public utility services require generally the same measures as in other sectors, but with 14 days’ advance notice and negotiation between workers and management before the strike takes place to determine maintenance of minimum service levels. The law prohibits strikes addressing problems not directly relevant to labor issues.

The law provides for a framework for the settlement of individual and collective disputes at the enterprise, township, regional, and national levels through conciliation or arbitration, but it lacks sufficient mechanisms for enforcement. The penalty for noncompliance with the settlement agreements called for in the law can be a fine of up to one million kyats ($650).

Labor groups reported their biggest challenge remained labor organizations’ inability to register at the national level, a prerequisite for entering labor framework agreements with multinational companies, due to the registration requirements under the law. In addition the International Labor Organization (ILO), labor activists, and media continued to report concerns employers subsequently fired or engaged in other forms of reprisal for workers who formed or joined labor unions. Trade unions reported cases in which criminal charges were filed against workers for exercising their right to strike. Labor organizations also reported local labor offices imposed unnecessary bureaucratic requirements for union registration that were inconsistent with the law.

Workers and workers’ organizations continued to report they generally found the Ministry of Labor to be helpful in urging employers to negotiate, but there were consistent reports of employers ignoring the negotiated agreements or engaging in other forms of antiunion discrimination.

b. Prohibition of Forced or Compulsory Labor

Laws prohibit all forms of forced or compulsory labor and provide for the punishment of persons who impose forced labor on others, but the government did not effectively enforce the law.

The law provides for criminal penalties for forced labor violations; penalties differ depending on whether the military, the government, or a private citizen committed the violation. Prosecution of military perpetrators occurs under either the military
or penal code. Civilian perpetrators may be subject to administrative action or criminal proceedings under the penal code. The maximum penalty under the penal code is 12 months in prison; under the military code it is seven years in prison. International observers deemed the penalties sufficient to deter forced labor.

The government continued to implement some aspects of the ILO action plan to eliminate forced labor and in January extended the Supplementary Understanding with the ILO, which provides for a complaint mechanism for victims of forced labor through the end of the year. The government also signed a memorandum of understanding with the ILO in January to create an action plan to eliminate forced labor, which provides for an additional complaint mechanism as well as training and awareness-raising activities on forced labor.

The ILO reported it continued to receive complaints of forced labor, although the number was decreasing overall. Though the military and the government received complaints logged by the complaints mechanism, there was no evidence that they took enforcement action to address concerns. There was no evidence that the government prosecuted soldiers in civilian courts for recruitment or use of child soldiers.

Reports of forced labor occurred across the country, including in conflict and cease-fire areas, and the prevalence was higher in states with significant armed conflict. Forced labor reports included forced portering and activities related to the military’s “self-reliance” policy. Under the self-reliance policy, military battalions are responsible for procuring their own food and labor supplies from local villagers—a major factor contributing to forced labor and other abuses.

Prisoners in the country’s 48 labor camps engaged in forced labor (see section 1.c., Prison and Detention Center Conditions).

The ILO received reports of forced labor in the private sector, including excessive overtime with or without compensation by workers at risk of losing their jobs and also by bonded labor. Domestic workers also remained at risk of domestic servitude.

Also see the Department of State’s *Trafficking in Persons Report* at [www.state.gov/j/tip/rls/tiprpt/](http://www.state.gov/j/tip/rls/tiprpt/).

c. Prohibition of Child Labor and Minimum Age for Employment
The minimum age for work in shops, establishments, and factories is 14 years; the law establishes special provisions for “youth employment” for those older than 14. Employees from 16 to 18 must have a certificate to authorize them to carry out “work fit for an adult.” The law prohibits employees younger than 18 from working in a hazardous environment, but the government has not finalized a hazardous work list enumerating occupations in which child labor is specifically prohibited.

Trained inspectors from the Factories and General Labor Laws Inspection Department monitored the application of these regulations, including with regard to child labor, but their legal authority only extends to factories. In addition inspectors were hindered by a general lack of resources. A child-labor working group met regularly, chaired by the minister of labor with representatives from government departments, the private sector, labor unions, and civil society. On February 5 the government formed the National Committee for the Elimination of Child Labor and tasked a working group to draft a national plan of action to implement ILO Convention 182 on the Elimination of the Worst Forms of Child Labor.

The Ministry of Labor worked with other ministries to collect better data on existing child labor and continued a campaign directed at parents to raise awareness of the risks of child labor and provide information on other education options available to children. The Ministry of Labor engaged with the Ministry of Education on two programs, one aimed at bringing children out of the workplace and putting them in school, and another to support former child soldiers in pursuit of classroom education or vocational training. The labor ministry supported vocational schools to train young workers for jobs in nonhazardous environments.

The criminal penalties for recruiting child soldiers for military officials under martial law range from dismissal from service and imprisonment in civil prison to a fine of seven days’ pay (see section 1.g.). For civilians the law outlines penalties for child recruitment from a minimum 10 years’ to a maximum of life imprisonment. Penalties under the law and their enforcement for other child labor violations were insufficient to deter violations.

Child labor remained prevalent and highly visible. Children were at high risk, with poverty leading some parents to remove them from schools before completion of compulsory education. In cities children worked mostly as street vendors or refuse collectors, as restaurant and teashop attendants, and as domestic workers. Children also worked in the production of garments.
Children often worked in the informal economy, in some instances exposing them to drugs and petty crime, risk of arrest, commercial sexual exploitation, and HIV/AIDS and other sexually transmitted infections (also see section 6).

Children were vulnerable to forced labor in teashops, agriculture, and begging. In rural areas children routinely worked in family agricultural activities, occasionally in situations of forced labor.

d. Discrimination with Respect to Employment and Occupation

Labor laws and regulations do not specifically prohibit employment discrimination.

Women remained underrepresented in most traditionally male-dominated occupations (mining, forestry, carpentry, masonry, and fishing) and were effectively barred from certain professions.

There were reports government and private actors practiced anti-Muslim discrimination that impeded Muslim-owned businesses’ operations and negatively affected their ability to hire and retain labor, maintain proper working standards, and secure public and private contracts. There were reports of discrimination based on sexual orientation and gender identity in employment, including the denial of promotions and firing of LGBTI persons. Activists reported job opportunities for many openly gay and lesbian persons were limited, and they noted a general lack of support from society as a whole. Activists reported that in addition to general societal discrimination, persons with HIV/AIDS faced employment discrimination in both the public and private sectors, including suspensions and the loss of employment following positive results from mandatory workplace HIV testing.

e. Acceptable Conditions of Work

The government raised the official minimum daily wage to 4,800 kyats ($3.15) from 3,600 kyats ($2.40), effective in May. The minimum wage covers a standard eight-hour workday across all sectors and industries and applies to all workers except for those in businesses with fewer than 15 employees. The law requires the minimum wage to be revised every two years. Labor unions and activists criticized the raise in the minimum wage as too small for workers to keep up with the rising cost of living.
The law requires employers to pay employees on the date the salary is due for companies with 100 or fewer employees. For companies with more than 100 employees, the employer is required to pay employees within five days from the designated payday. Overtime cannot exceed 12 hours per workweek, should not go past midnight, and can exceed 16 hours in a workweek only on special occasions. The law also stipulates that an employee’s total working hours cannot exceed 11 hours per day (including overtime and a one-hour break). The law applies to shops, commercial establishments, and establishments for public entertainment.

The Labor Dispute Law stipulates the terms and conditions required for occupational safety, health, welfare, and productivity, but information was limited about whether workers can remove themselves from situations that endanger their health or safety without jeopardizing their employment.

The Ministry of Labor’s Factories and General Labor Laws Inspection Department oversees labor conditions in the private sector. Both resources and capacity constrained enforcement. The number of labor law inspectors and factory inspectors under the ministry was insufficient to address adequately occupational safety and health standards, wage, salary, overtime, and other issues. In certain sectors other ministries regulated occupational safety and health laws (e.g., the Ministry of Agriculture, Livestock, and Irrigation).

In January the government and the ILO held the Third Labor Stakeholders’ Forum under the auspices of the multistakeholder Initiative to Promote Fundamental Labor Rights and Practices in Myanmar. The forum brought together more than 200 participants from the public and private sectors to discuss labor rights and various labor problems, including addressing freedom of association and collective bargaining, strengthening labor dispute settlement, and strengthening local capacity and institutions.

Enforcement of the laws generally took place in the public sector, but frequent violations occurred in private enterprises. Workers continued to submit complaints to relevant government agencies and the dispute settlement mechanism. Workers’ organizations alleged government inspections were rare and often announced with several days’ notice that allowed factory owners to bring facilities--often temporarily--into compliance. Corruption and bribery of inspectors reportedly occurred.
The social security board covers all employees in companies with more than five employees, with the exception of six sectors (government, international organizations, seasonal farming and fisheries, construction, nonprofit organizations, and domestic work). In practical terms the board covered primarily industrial zones, the location of the majority of registered workers, and therefore supported less than 1 percent of individuals involved in workplace accidents or casualties. While the board provided hospitals and clinics, it did not keep independently verifiable statistics on accidents or workplace violations. Observers assumed workers in other sectors of the economy had even less support, and no statistics on accidents or workplace violations were available.
TAB 7
EXECUTIVE SUMMARY

Burma has a quasi-parliamentary system of government in which the national parliament selects the president and constitutional provisions grant one-quarter of parliamentary seats to active duty military appointees. The military also has the authority to appoint the ministers of defense, home affairs, and border affairs and one of two vice presidents, as well as to assume power over all branches of the government should the president declare a national state of emergency. In 2015 the country held nationwide parliamentary elections that the public widely accepted as a credible reflection of the will of the people. In 2016 parliament selected National League for Democracy (NLD) member Htin Kyaw as president and created the position of State Counsellor for NLD party leader Aung San Suu Kyi, formalizing her position as the civilian government’s de facto leader.

Under the constitution, civilian authorities have no authority over the security forces; armed forces Commander-in-Chief Senior General Min Aung Hlaing maintained effective control over the security forces.

Ethnic cleansing against the Rohingya minority in Rakhine State occurred during the year. In early August some security forces deployed throughout northern Rakhine State, committing enforced disappearances and arbitrary arrests and displacing villagers, the majority of whom were Rohingya. On August 25, the Arakan Rohingya Salvation Army (ARSA) claimed responsibility for coordinated attacks against 30 security outposts in northern Rakhine State, killing 12 security personnel. Augmented security forces, as well as local vigilante groups acting independently or in concert with security forces, then reportedly committed widespread atrocities against Rohingya villagers, including extrajudicial killings, disappearances, rape, torture, arbitrary arrest, and burning of tens of thousands of homes and some religious structures and other buildings. This displaced more than 655,000 Rohingya to neighboring Bangladesh as of December, as well as an unknown number within Rakhine State, and more than 20,000 villagers from other ethnic groups, many of whom were evacuated by the security forces.

In addition to the atrocities in Rakhine State, the most significant human rights issues included: arbitrary or unlawful killings; politically motivated arrests; authorities’ human rights violations against civilians in other ethnic minority areas and conflict zones, particularly in Kachin State and Shan State; continued harsh conditions in prisons and labor camps; restrictions on freedom of speech,
assembly, and association, including intimidation and arrest of journalists; restrictions on freedom of religion; continued statelessness for some populations and severe restrictions on freedom of movement; criminalization of same-sex sexual activities, although the law was rarely enforced; and trafficking in persons, including forced labor of adults and children.

Although the government took some limited actions to prosecute or punish officials responsible for abuses, the vast majority of such abuses continued with impunity.

Some nonstate groups committed human rights abuses, including extrajudicial killings, forced labor of adults and children, and failure to protect civilians in conflict zones.

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

There were many reports security forces committed arbitrary or unlawful killings (see also section 1.g.).

Security forces used excessive and sometimes lethal force against civilians. On May 17, police at a jade mine operated by military-owned Myanmar Economic Holdings Limited in Hkamti Township, Sagaing Division, reportedly opened fire without warning on a group of miners who had illegally entered the property, resulting in the deaths of four miners and injuries to additional miners.

In January, Ko Ni, a prominent Muslim lawyer, advocate for constitutional reform, and adviser to Aung San Suu Kyi, was shot and killed outside Yangon International Airport by an assassin identified as Kyi Lin. Kyi Lin also killed a taxi driver who tried to intervene. Authorities opened an investigation into the killings, which resulted in the arrest of four persons including a retired military officer, although the alleged prime conspirator, former military officer Win Khaing, reportedly remained at large. Civil society groups claimed police, who ultimately report to the military, intentionally underinvestigated the case. Civil society groups and religious groups noted Ko Ni’s death had a chilling effect on lawyers working for constitutional reform and accountability for military abuses, as well as on Muslims fighting for improved treatment.
In Rakhine State, following the August 25 coordinated attacks by ARSA, security forces, aided in some cases by vigilantes, reportedly committed arbitrary and unlawful killings against Rohingya villagers throughout northern Rakhine State. On August 30, in Tula Toli Village (also known as Min Gyi), security forces assigned to the army’s Western Command reportedly committed a massacre. One report indicated that all male Rohingya villagers who had not fled ahead of the military’s arrival, as well as some women and children, were unlawfully executed. The military and some government officials denied such abuses occurred and took no steps to seek accountability for the perpetrators.

The United Nations, media, human rights groups, and Bangladesh border authorities reported security forces planted land mines along the border of Bangladesh in northern Rakhine State in September, with some suggesting the mines were planted to prevent Rohingya refugees from returning. Sources alleged at least nine internally displaced persons (IDPs) died from wounds characteristic of landmine injuries while fleeing northern Rakhine State to Bangladesh.

The trial against the soldier who admitted to accidentally killing Gum Seng Aung in June 2016 in Myitkyina, Kachin State, continued to experience delays. There were no substantive updates during the year.

During the year there were multiple reports of alleged ARSA members killing civilians in northern Rakhine State for collaborating with the government; however, it appeared two of these reports were not credible. On August 1, the government reported “extremists” killed six ethnic Mro villagers in northern Rakhine State. Civil society organizations reported ARSA was not likely active in that village and suspected the deaths were related to methamphetamine trafficking. In September the government organized a trip for journalists to see the alleged mass graves of 45 Hindus whom the government said ARSA killed in northern Maungdaw Township on August 25, but civil society organizations and some local villagers were unable to corroborate the claim of the government, and other local villagers suggested instead they were killed by security forces or vigilante groups that were not associated with Rohingya.

Arbitrary and unlawful killings related to internal conflict also occurred (see section 1.g.).

b. Disappearance

There were many reports of disappearances by security forces.
In the weeks prior to the August 25 attacks, there were reports police arrested Rohingya men from 15 to 40 years old without charges or warrants due to purported links to ARSA, and several of those detained reportedly were not heard from since. Family members who went to police stations to inquire about their disappeared relatives’ whereabouts were not provided with any relevant information. On August 21, military soldiers and police officers reportedly arrested 10 persons from Tha Man Thar Village in Maungdaw Township. The military later released four and told family members of the other six that police knew nothing about their whereabouts. After August 25, the pace of enforced disappearances reportedly increased. The military and some government officials denied such abuses occurred and took no steps to seek accountability for the perpetrators.

Disappearances related to internal conflict also occurred (see section 1.g.).

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits torture; however, members of security forces reportedly tortured, raped, beat, and otherwise abused prisoners, detainees, and other citizens and stateless persons in incidents not related to armed conflict. Such incidents occurred, for example, in Rakhine and Kachin States.

Security forces reportedly subjected detainees to harsh interrogation techniques designed to intimidate and disorient, including severe beatings and deprivation of food, water, and sleep. Human rights groups continued to report incidents of torture in ethnic minority areas. Authorities generally took no action to investigate incidents or punish alleged perpetrators.

There were widespread reports of torture of Rohingya villagers, including children, in northern Rakhine State, including beatings, rape, and killings in front of family members. Rifle butts were allegedly used to hit Rohingya villagers’ stomachs and heads, and refugee testimonials referred to the military, sometimes jointly with ethnic Rakhine Buddhists, breaking legs, arms, and ribs of fleeing Rohingya villagers.

In January a mobile phone video taken by a member of the security forces during clearance operations in northern Rakhine State in November 2016 and posted on YouTube showed police beating civilian Rohingya. The government launched an
investigation into police misconduct. Police reportedly prosecuted four persons and demoted one officer for the abuses recorded in the video, but details regarding the results of any investigation were not made public.

There were widespread reports of rapes of Rohingya women, children, and at least one man in northern Rakhine State by military forces and Border Guard Police. Most documented rapes were gang rapes, and many were mass rapes. The UN special representative on sexual violence assessed sexual violence was used as a calculated tool of terror aimed at the extermination and removal of the Rohingya as a group. One woman from Chut Pyin Village (also known as Shoppara) reported five soldiers raped her on August 26, the day before her village was burned by security forces. She reported soldiers stabbed her in the side with a knife during the rape while threatening to shoot her. Authorities failed to conduct a credible investigation into these allegations.

Prison and Detention Center Conditions

Conditions in prisons and labor camps continued to be harsh due to overcrowding, degrading treatment, and inadequate access to medical care and basic needs, including food, shelter, and hygiene.

Physical Conditions: The Correctional Department operated an estimated 43 prisons and approximately 48 labor camps, officially called “agriculture and livestock breeding career training centers” and “manufacturing centers,” according to the government. More than 20,000 inmates were serving their sentences in these labor camps across the country, where prisoners could opt to serve a shortened period of their sentence in “hard labor,” which was considered by many as more desirable.

A human rights group and prominent international nongovernmental organization (NGO) estimated there were 60,000 prisoners--50,000 men and 10,000 women--held in separate facilities in prisons and labor camps. Juvenile detainees were estimated to be a few hundred. Overcrowding was reportedly a problem in many prisons and labor camps. Some prisons held pretrial detainees together with convicted prisoners. Authorities held some political prisoners separately from common criminals, but political prisoners who authorities arrested for problems related to land rights were generally held together with common criminals.

Medical supplies and bedding were often inadequate. Bedding sometimes consisted of a single mat, wooden platform, or laminated plastic sheet on a
concrete floor. Prisoners did not always have access to potable water. In many cases family members had to supplement prisoners’ official rations with medicine and basic necessities. Inmates reportedly paid wardens for necessities, including clean water, prison uniforms, plates, cups, and utensils.

Detainees were unable to access adequate and timely medical care. Prisoners suffered from health problems, including malaria, heart disease, high blood pressure, tuberculosis, skin diseases, and stomach problems, resulting from unhygienic conditions and spoiled food. The prevalence of HIV/AIDS and other sexually transmitted infections in prisons reportedly remained high. Former prisoners also complained of poorly maintained physical structures that provided no protection from the elements and had rodent, snake, and mold infestation.

There were reports of custodial deaths due to health problems associated with prison conditions and lack of adequate and timely medical care.

Prison conditions in Rakhine State were reportedly among the worst, with hundreds of Rohingya, including, according to one media report, children as young as 10 years arbitrarily detained in prison and nonprison facilities, denied due process, and subjected to torture and abuse by Rakhine State prison and security officials.

Administration: Some prisons prevented full adherence to religious codes for prisoners, ostensibly due to space restrictions and security concerns. For example, imprisoned monks reported authorities denied them permission to observe Buddhist holy days, wear robes, shave their heads, or eat on a schedule compatible with the monastic code. Citing security considerations, authorities denied permission for Muslim prisoners to pray together as a group, as is the practice for Friday prayers and Ramadan. Prisoners and detainees could sometimes submit complaints to judicial authorities without censorship or negative repercussions. The International Committee of the Red Cross (ICRC) followed up with relevant authorities on allegations of inappropriate conditions.

Independent Monitoring: Although the ICRC had unfettered access to prisons, prisoners, and labor camps, it did not have access to military or nonprison detention sites. The ICRC reported its findings through a strictly confidential bilateral dialogue with prison authorities. These reports were neither public nor shared with any other party.

d. Arbitrary Arrest or Detention
The law does not specifically prohibit arbitrary arrest but requires permission of a court for detention of more than 24 hours. The government continued to use the Unlawful Associations Act to arrest persons, often in ethnic and religious minority areas, on an arbitrary basis.

The law allows authorities to extend sentences after prisoners complete their original sentence. The law allows authorities to order detention without charge or trial of anyone they believe is performing or might perform any act that endangers the sovereignty and security of the state or public peace and tranquility. The civilian government and the military continued to interpret these laws broadly and used them to detain activists, student leaders, farmers, journalists, political staff, and human rights defenders.

The government generally did not allow detainees to challenge the legal basis of their detention in court prior to the two-week pretrial detention period.

**Role of the Police and Security Apparatus**

The Ministry of Home Affairs, led by an active-duty military general who is nominated by the armed forces commander-in-chief in accordance with the constitution, oversees the Myanmar Police Force (MPF), which is largely responsible for law enforcement and maintenance of order, although the Defense Services Office of the Chief of Military Security Affairs also plays a significant role in the maintenance of law and order, particularly in conflict areas. As such, lines of authority for internal security may be blurred. For example, during the operations in Rakhine State beginning in August, military commanders assumed primary control over all security arrangements and appeared to wield considerable operational influence over the Border Guard Police, which are also overseen by the Ministry of Home Affairs.

Starting in August the Border Guard Police reportedly committed atrocities against Rohingya villagers in northern Rakhine State, either as independent measures or in concert with military forces. Regional police were either unable or unwilling to protect Rohingya victims, although they reportedly offered protection to other ethnic groups and their property.

In conflict and some cease-fire areas, security forces continued to intimidate civilians through physical abuse and threats to livelihoods. Public information was unavailable about the results of any military investigations into such abuses, and
security forces generally acted with impunity. Legal mechanisms exist to investigate abuses by security forces but were seldom used and generally perceived to be ineffective.

Outside of conflict and cease-fire areas, the MPF is the primary institution charged with internal security. While the MPF continued to make some progress in developing civilian policing capacity, a severe lack of resources and its close relationship with the military presented substantial challenges to effective policing. The MPF’s investigative capacity was generally rudimentary, although some MPF commanders recognized the benefits of leveraging assistance from the international community to improve specialized units’ ability to investigate serious crimes such as narcotics, trafficking in persons, and financial crimes. Some organizations noted a significant decrease under the new government of the pervasive and threatening influence security forces previously exerted on the lives of inhabitants, while others noted an increase in police surveillance and monitoring during the year.

**Arrest Procedures and Treatment of Detainees**

While the law generally requires warrants for searches and arrests, personnel from the Office of the Chief of Military Security Affairs and police reportedly conducted searches and made arrests at will.

Except in capital cases, the law does not grant detainees the right to consult an attorney or, if indigent, to have one provided by the state. The government amended the legal aid law in May to provide the public access to fair and equal legal aid based on international standards and to ensure legal aid workers could operate independently and with legal protection.

There is a functioning bail system, but bribery was a common substitute for bail. Bail is commonly offered in criminal cases, but defendants were often required to attend numerous pretrial hearings before bail was granted. In some cases the government held detainees incommunicado and refused detainees the right to consult a lawyer promptly.

**Arbitrary Arrest:** There were reports of arbitrary arrests. In December 2016 the military detained two affiliates of the Kachin Baptist Convention, Dumdaw Nawng Lat and Langjaw Gam Seng, in Mong Ko, Shan State; however, the military did not admit to holding the men until the end of January. The military detained the two men after they assisted a group of journalists in visiting a church in Mong Ko
allegedly bombed by the military. After holding the men incommunicado for one month, the military accused them of supporting the Kachin Independence Army (KIA) and charged both men under Article 17(1) of the Unlawful Associations Act, which has historically been used to arrest arbitrarily members of ethnic minority groups. In March the military announced an additional charge of defamation based on an interview the men gave to an international media outlet alleging the military bombed civilians during the conflict. On October 27, authorities sentenced Dumdaw Nawng Lat to four years and three months’ imprisonment and Langjaw Gam Seng to two years and three months’ imprisonment.

In August authorities arrested former child soldier Aung Ko Htway for defaming the military following an August 10 interview he gave to an international media outlet detailing his experience as a former child soldier. He was detained in Insein Prison and denied bail on October 2. His trial continued at the end of the year.

In October, U Khaing Myo Htun, the Arakan Liberation Party deputy information officer who in 2016 published a statement accusing the military of forced labor and using human shields in Rakhine State, was found guilty and sentenced to 18 months in prison, leaving three months remaining from the 15 months he had already spent in detention.

**Pretrial Detention:** By law suspects may be held in pretrial detention for two weeks (with a possible two-week extension) without bringing them before a judge or informing them of the charges against them. Lawyers noted police regularly detained suspects for the legally mandated period, failed to lodge a charge, then detained them for a series of two-week periods with trips to the judge in between. Judges and police sometimes colluded to extend detentions. According to lawyers, arbitrary and lengthy pretrial detentions resulted from lengthy legal procedures, large numbers of detainees, judicial inefficiency, widespread corruption, and staff shortages. Periods of detention prior to and during trials sometimes equaled or exceeded the sentence that would result from a guilty conviction.

**Amnesty:** On May 24, President Htin Kyaw pardoned and the government released 259 prisoners, including 64 whom the Assistance Association for Political Prisoners-Burma considered political prisoners. Among those released were Muslim interfaith activists Zaw Zaw Latt and Pwint Phyu Latt; Hla Phone, who criticized the military on Facebook; and eight of the 12 men arrested in 2014 under the now repealed Emergency Provisions Act for being members of the apparently nonexistent Myanmar Muslim Army.
e. Denial of Fair Public Trial

The law calls for an independent judiciary, although there are also legal provisions that allow the government to manipulate the courts for political ends, and these provisions were sometimes used to deprive citizens of due process and the right to a fair trial, particularly with regards to the freedom of expression. Institutional corruption in the judicial system was a problem, and it sometimes appeared the judiciary was under the de facto control of the military or government. According to studies by civil society organizations, officials at all levels received extralegal payments at all stages in the legal process for purposes ranging from routine matters, such as access to a detainee in police custody to fixing the outcome of a case. The Office of the Supreme Court of the Union published a 2016 annual report on disciplinary actions taken against judges and court staff. Although no legal action was taken against judges for corruption, warnings were issued against 25 township court judges and 23 district court judges.

Trial Procedures

The law provides for the right to a fair and public trial, but it also grants broad exceptions, effectively allowing the government to violate these rights at will. In ordinary criminal cases, the court generally respected some basic due process rights such as the right to an independent judiciary, public access to the courts, and the right to a defense and an appeal. Defendants do not enjoy the rights to presumption of innocence; to be informed promptly and in detail of the charges against them; to be present at their trial; to free interpretation; or, except in capital cases, to consult an attorney of their choice or have one provided at government expense. There is no right to adequate time and facilities to prepare a defense, but defense attorneys in criminal cases generally had 15 days to prepare for trial. Defendants have the right to appeal judgments, but in most appellate hearings, the original verdicts were upheld. No legal provision allows for the compelled testimony or confessions of guilt by defendants to be used in court; nonetheless, authorities reportedly engaged in both. There were reports of coercion to plead guilty with promises of reduced sentences to defendants who did so.

Ordinary criminal cases were open to the public, but in practice members of the public with no direct involvement in a case were denied entry to courts. There is no right to confront witnesses and present evidence, although defense attorneys could sometimes call witnesses and conduct cross-examinations. Prodemocracy activists generally appeared able to retain counsel, but defendants’ access to counsel was often inadequate. There were reports of authorities not informing
family members of the arrests of persons in a timely manner, not telling them of their whereabouts, and often denying them the right to see prisoners in a timely manner. Local civil society groups noted the public was largely unaware of its legal rights, and there were insufficient lawyers to meet public needs.

The government retained the ability to extend prison sentences under the law. The minister of home affairs has the authority to extend a prison sentence unilaterally by two months on six separate occasions, for a total extension of one year.

**Political Prisoners and Detainees**

The government continued to detain and arrest journalists, activists, and critics of the government and the military during the year. According to civil society groups who use a definition of political prisoners that includes those that may have engaged in acts of violence and excludes some charges related to freedom of expression and religion, there were 45 convicted political prisoners, 49 political prisoners in pretrial detention or detained with trials in process, and 127 individuals released on bail while facing trial for political charges as of October. These numbers did not include detainees and prisoners in Rakhine State, estimated to be in the hundreds, many of whom likely meet the definition of political prisoner.

Many released political prisoners experienced significant surveillance and restrictions following their release, including an inability to resume studies undertaken prior to incarceration, secure travel documents, or obtain other documents related to identity or ownership of land. Under the code of criminal procedure, released political prisoners faced the prospect of serving the remainder of their sentences if rearrested for any reason.

**Civil Judicial Procedures and Remedies**

No specific mechanisms or laws provide for civil remedies for human rights violations; however, complainants may use provisions of the penal code and laws of civil procedure to seek civil remedies. Individuals and organizations may not appeal an adverse decision to regional human rights bodies.

**Property Restitution**

Under the constitution the state owns all land; however, the law allows for registration and sale of private land ownership rights. Authorities and private-
sector organizations perpetrated land grabs during the year, and restitution for past land grabs was very limited.

The 2016 land use policy emphasizes the recognition, protection, and registration of legitimate land tenure rights of smallholders, communities, ethnic nationalities, women, and other vulnerable groups. It also includes the recognition, protection, and ultimate registration of customary tenure rights, which previously were not legally recognized. The law allows the government to declare land unused and assign it to foreign investors or designate it for other uses. There is no provision for judicial review of land ownership or confiscation decisions under either law; administrative bodies subject to political control by the national government make final decisions on land use and registration. Civil society groups raised concerns the laws do not recognize rights in traditional collective land ownership and shifting cultivation systems, which are particularly prevalent in areas inhabited by ethnic minority groups. Acquisition of privately owned land by the government remained governed by the 1894 Land Acquisition Act, which provides for compensation when the government acquires land for a public purpose. Civil society groups criticized the lack of safeguards in the law to provide payment of fair market compensation.

Researchers had concerns that land laws, including the Farmland Law and the Vacant, Fallow, and Virgin Land Law, facilitate land confiscation without providing adequate procedural protections. Parallel legal frameworks and traditional forms of land tenure in areas controlled by ethnic groups in Kachin, Mon, Kayin, and Shan States may not have formal legal recognition under the land laws.

Parliament’s Land Acquisition Investigation Commission did not have legal authority to implement and enforce recommendations in its 2013 report to return thousands of acres of confiscated but unused land or provide compensation to farmers from whom the government took the land, and media sources reported little progress in returning confiscated lands. The law requires land be returned if not used productively within four years, but civil society groups reported land taken by the military was left unused for much longer periods.

The General Administrative Department under the Ministry of Home Affairs, one of the ministries whose minister is appointed by the military, oversees land return. During the year there were at least four cases of previously confiscated land being returned to farmers. Adequate compensation was not provided to the many farmers and rural communities whose land was confiscated without due process.
during the former military regime, including by the Myanmar Oil and Gas Enterprise, the Myanmar Ports Authority, and the military.

**f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence**

The law protects the privacy and security of the home and property, but observers said these protections were poorly enforced.

The law does not protect the privacy of correspondence or other communications of citizens, and activists reported authorities had expanded surveillance of civil society organizations’ operations. Beginning on March 31, the government enforced registration requirements for all SIM cards and consequently blocked six million unregistered SIM cards. Mobile subscribers must provide their name, a copy of their identification, date of birth, address, gender, and nationality in order to register their SIM card.

Some activists reported the government systematically monitored the travel of citizens and closely monitored the activities of politically active persons, while others reported they did not experience any such invasions of privacy. The government reportedly conducted surveillance in some circumstances by using the Special Branch police, official intelligence networks, and other administrative procedures (see section 2.d.).

A 1998 Supreme Court directive prohibits legal officials from accepting petitions for marriages and from officiating at marriages between Burmese women and foreign men. The directive was sporadically enforced.

In Rakhine State local authorities prohibited Rohingya families from having more than two children, although this prohibition was inconsistently enforced. Also in Rakhine State, local authorities required members of the Rohingya minority to obtain a permit to marry officially, a step not required of other ethnicities. Waiting times for the permit could exceed one year, and bribes usually were required. According to human rights organizations, in April 2016 Border Guard Police in Buthidaung Township issued new instructions to village administrators outlining additional requirements for members of the Rohingya community to obtain a permit to marry. The new required documents included: a letter from the district immigration authorities verifying the couple were of legal age to marry; a letter from a station commander showing the couple was free of criminal offenses; a letter from a health assistant assuring the couple was free of communicable
diseases; and a letter from village administrators confirming the individuals were single, unmarried, and that any previous marriage was dissolved at least three years prior. Unauthorized marriages could result in prosecution of Rohingya men under the penal code, which prohibits a man from “deceitfully” marrying a woman, and could result in a prison sentence or fine.

\textbf{g. Abuses in Internal Conflict}

Human rights abuses in Rakhine State outside the scope of armed conflict are noted in other sections throughout this report.

Incidents involving use of excessive force and other abuses in conjunction with long-running internal armed conflicts occurred across the country but varied widely. In Chin State and most of the southeast, widespread and systematic violent abuses of civilian populations in ethnic minority areas continued to decline, largely due to a number of bilateral cease-fire agreements reached with ethnic armed groups. These areas also broadly fall under the Nationwide Ceasefire Agreement (NCA) signed by eight ethnic armed groups in 2015. In Kachin State and parts of Shan State, clashes among NCA signatory, nonsignatory groups, and the military continued, with credible allegations of abuse of civilian populations by both the military and ethnic armed groups. The majority of such clashes occurred in northern Shan and Kachin States. In central and southern Rakhine State and southern Chin State, sporadic clashes between the Arakan Army and the military continued, and in early August, the Arakan Army clashed with the Arakan Liberation Party. In Shan State the military clashed with the Ta’ang National Liberation Army (TNLA) and the Restoration Council of Shan State (RCSS), even though the latter is an NCA signatory. Fighting between the RCSS and TNLA also continued. Both of these groups, and the military, were alleged to have abducted, tortured, and killed suspected combatants as well as burned villages.

In Kachin and Shan States, continuing armed clashes between the military and ethnic armed groups displaced thousands of persons, compounding long-term displacement of conflict-affected communities in these areas. The military blocked humanitarian access to ethnic armed group-controlled areas, where many of the displaced resided, and NGOs reported the military at times fired into IDP camps.

In mid-December the military launched air strikes against several KIA outposts in Kachin State, including around the KIA headquarters of Laiza. At least one civilian was reportedly killed in the fighting, and many IDPs were forced to flee.
On December 24, the military launched heavy artillery near Laiza that landed on nearby IDP camps and injured one woman.

The military continued to station forces in most ethnic armed groups’ areas of influence and controlled most cities, towns, and highways. Reports continued of widespread abuses by government soldiers and some ethnic armed groups, including killings, beatings, torture, forced labor, forced relocations, and the use of child soldiers. The military was also accused of rapes of members of ethnic minority groups in Shan, Kachin, and Rakhine States. Impunity for these abuses and crimes continued.

**Killings:** Military officials reportedly killed, tortured, and otherwise seriously abused civilians in conflict areas without public inquiry or accountability. Following ethnic armed groups’ attacks on the military, the military reportedly exercised a harsh form of collective punishment against civilians. The military’s use of indiscriminate force, including during aerial bombing, also resulted in civilian deaths. Some ethnic armed groups, most notably the RCSS and TNLA, allegedly killed civilians suspected of being members of rival armed groups. Clashes between government forces and ethnic armed groups broke out periodically in northern and southern Shan State during the year.

On May 25, soldiers from Battalion 319 shot and killed Nhkum Gam Awng, Maran Brang Seng, and Labya Naw Hkum, from Mai Hkawng Roman Catholic IDP camp in Mansi Township, Kachin State. According to camp officials, soldiers arrested the men while they were collecting firewood. NGOs reported villagers found the buried bodies on May 28. On September 15, the military invited villagers to observe court proceedings for six soldiers involved in the killings. Five soldiers reportedly pled guilty, while the battalion commander reportedly pled not guilty. The verdict and sentencing remained pending at year’s end.

On August 9, photographs of the dismembered bodies of Hpaukap Naw Lat and Labang Naw Bawk near a military outpost near Namti, Kachin State, circulated on social media. The men’s families contacted local military personnel, who said the men died while attempting to plant a land mine. The military accused the men of being members of the KIA. Local villagers reported, however, the men picked up the land mine to use while fishing. Several villagers reported witnessing military personnel detain the two men near Namti on the evening of August 8. Witnesses heard explosions in the morning of August 9. Authorities allegedly refused to allow family members to see the bodies before the military buried them. The police did not open an investigation.
Abductions: There were reports government soldiers abducted villagers in conflict areas. In Shan State human rights organizations alleged the military detained seven villagers, including a seven-year-old boy, on July 18, in retaliation against a village following a military confrontation with the RCSS.

Physical Abuse, Punishment, and Torture: NGO reports documented the military’s torture and beating of civilians alleged to be working with or perceived to be sympathetic to ethnic armed groups in Kachin and Shan States. There were also continued reports of forced labor and forced recruitment by the KIA.

Prominent civil society groups reported the military committed numerous crimes of sexual violence against ethnic women and girls in ethnic states.

The military continued to take steps to cease forcing civilians to serve as military porters, yet unconfirmed reports continued that the military forced civilians to carry supplies or serve in other support roles in areas with outbreaks of conflict, such as northern Shan, Rakhine, and Kachin States.

Civilians, armed actors, and NGOs operating inside the country and along the border reported continued landmine use by the military and armed groups. Although the government and ethnic armed groups continued to discuss joint demining action, the discussions did not result in any joint landmine activities. The military unilaterally undertook limited landmine clearance operations in the southeast and in northern Shan State where it cleared small numbers of improvised explosive devices and unexploded ordnance when identified.

The Department of Social Welfare (DSW) and UNICEF continued to cochair the one national and four state-level Mine Risk Working Groups (MRWG) in Kachin, Kayah, Kayin, and Shan States. In Kayin State the MRWG included representatives from the DSW, national MRWG, military, and ethnic armed groups, including the Karen National Union (KNU), Democratic Karen Benevolent Army, and Karen National Liberation Army-Peace Council. In March the DSW facilitated a meeting between the Directorate of Military Engineers and six demining NGOs to discuss support for demining activities from the international community.

The MRWG coordinated mine risk education, victim assistance, information management systems, and advocacy. MRWG members monitored and documented incidents and casualties from land mines and unexploded remnants of
war. As of September, UNICEF reported 124 casualties, including 38 children. Many incidents were not reported due to continuing conflicts in Kachin, Shan, and Rakhine States.

**Child Soldiers:** There was limited progress in implementing the 2012 joint plan of action between the government and the United Nations to end recruitment of child soldiers and to demobilize and rehabilitate those serving in the armed forces. The United Nations reported that progress on implementation had stalled since May, and there were reports that the military and its middlemen continued to recruit child soldiers from large cities such as Rangoon and Mandalay. The UN Country Task Force on Monitoring and Reporting (CTFMR)--the official mechanism for monitoring and reporting grave violations against children--continued its work with the government, as required by the memorandum of understanding between the United Nations and the government. The CFTMR met quarterly and submitted quarterly reports to the Security Council. Its last meeting was on December 15. During the year it received 15 complaints of child soldier recruitment. Normal verification procedures could take up to six months to confirm, and none of the 15 cases had yet completed verification. CFTMR monitoring was limited in part because of limitations on UN access to conflict-affected areas. During the year the government released 49 child soldiers identified within the military’s ranks. The military continued identifying suspected cases in addition to those reported by the CTFMR to the military. The CTFMR received these reports through its hotline, the forced-labor complaint mechanism, and community-based networks. Children who fled military service or received demobilization from civil society organizations rather than through the official CTFMR process continued to face arrest and imprisonment on charges of desertion while the military investigated their cases. Some children who previously were demobilized through the official CTFMR process had been re-recruited by the military once they were of legal age.

The Ministry of Defense undertook efforts to investigate and punish military personnel for recruitment of child soldiers. During the year the military punished 19 officers for previous recruitment of child soldiers. UN experts noted only low-level soldiers were held accountable, despite involvement by higher-level personnel.

The military continued enforcing its ban of all recruitment at the battalion level and continued to sanction military officers and noncommissioned personnel for complicity in child soldier recruitment and use. Former child soldiers generally did not receive meaningful reintegration support, although the military began working with the Union of Myanmar Federation of Chambers of Commerce and
Industry, the country’s national chamber of commerce, to help develop the reintegration program for child soldiers to include private-sector opportunities. The military also provided information to the CTFMR that linked specific accountability measures to the respective case(s) of child recruitment or use, allowing for verification of the military’s accountability measures. The military did not make these reports available to the public.

The United Nations reported the government continued upholding its commitment under the action plan to allow UN monitors to inspect for compliance with agreed-upon procedures, to cease recruitment of children, and to implement processes for identification and demobilization of those serving in armed conflict. Nonetheless, UN monitors complained of insufficient access, noting that travel authorizations were often not granted until three or more months after an application was submitted, which complicated the United Nation’s ability to investigate claims effectively. They also noted that access to conflict areas was generally denied.

The Ministry of Social Welfare, Relief, and Resettlement (MSWRR), UNICEF, and other partners provided social assistance and reintegration support to discharged children.

Military officials, in cooperation with the CTFMR, continued training military officers, including recruitment officers and officers up to the rank of captain, on international humanitarian law. UNICEF trained personnel assigned to the country’s four recruitment hubs and reported increased numbers of prospective child soldiers rejected at this stage.

Ethnic armed groups reportedly continued to use forced recruitment and child soldiers and sometimes demanded ransom to release child soldiers. Human rights groups reported ethnic armed groups known to recruit and use child soldiers included the KIA, Democratic Karen Benevolent Army, Karen National Liberation Army, Karen National Liberation Army-Peace Council, Karenni Army, Shan State Army South, and the United Wa State Army. The government continued to prevent ethnic armed groups from signing joint plans of action with the United Nations to end recruitment of child soldiers and to demobilize and rehabilitate those already serving.

Also see the Department of State’s *Trafficking in Persons Report* at [www.state.gov/j/tip/rls/tiprpt/](http://www.state.gov/j/tip/rls/tiprpt/).
Other Conflict-related Abuse: The government restricted the passage of relief supplies and access by international humanitarian organizations to conflict-affected areas of Rakhine, Kachin, and Shan States. The government regularly denied access to the United Nations and international NGOs, arguing the military could not assure the NGO workers’ security or claimed humanitarian assistance would benefit ethnic armed group forces. In some cases the military allowed gradual access only as government forces regained control over contested areas. Although locally based organizations generally had more access to the 46,000 IDPs in areas outside government control, primarily in northern Kachin State, the military also increasingly restricted access for local organizations as military presence and control in these areas increased. At year’s end the government had not granted UN or international organizations humanitarian access to areas in Kachin State outside of military control. More than 98,000 persons remained displaced by conflict in Kachin and Shan States. In some cases villagers driven from their homes fled into the forest, frequently in heavily mined areas, without adequate food, security, or basic medical care (see section 2.d.).

On June 5, the military dropped leaflets over Tanai Township in Kachin State announcing “clearance operations” to begin on June 15. The leaflet warned the military would assume residents who did not leave by June 15 were cooperating with the KIA and would be treated as combatants. More than 1,000 villagers fled the area to shelter in churches and monasteries near neighboring villages. Local NGOs reported restrictions on humanitarian access to these IDPs.

On August 11, the military launched a raid and fired artillery into Kasung Village, Kachin State. Two churches were reportedly damaged and more than 1,000 residents fled to nearby Namti Village. Artillery caused heavy damage to a Roman Catholic church and moderately damaged a Baptist church and several houses, and there were reports military personnel looted the Roman Catholic church. On August 17, local NGOs reported the military blocked a delivery of humanitarian assistance. On August 23, the military and the KIA withdrew and all villagers were able to return to their homes.

Three journalists--Aye Naing and Pyae Phone Aung of DVB and Lawi Weng of Irrawaddy--were arrested on June 26 after covering a public ceremony organized by the TNLA and charged under the colonial-era Unlawful Associations Act of Section 17(1). Bail was repeatedly denied. On September 1, the military withdrew cases against six local journalists it detained under Sections 17(1) and 66(d), including Aye Naing, Pyae Phone Aung, and Lawi Weng.
There were some reports of the use of civilians to shield combatants.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Expression, Including for the Press

The constitution provides that “every citizen shall be at liberty in the exercise of expressing and publishing freely their convictions and opinions,” but it contains the broad and ambiguous caveat that exercise of these rights must “not be contrary to the laws enacted for national security, prevalence of law and order, community peace and tranquility, or public order and morality.” Threats against and arrests of journalists increased.

**Freedom of Expression:** Authorities arrested, detained, convicted, and imprisoned citizens for defaming religion and expressing political opinions critical of the government, the military, and ultranationalist Buddhist groups, generally under the charges of defamation, protesting without a permit, or violating national security laws. Freedom of expression was more restricted during the year compared with 2016. This included a higher number of detentions of journalists using various laws, including laws carrying more severe punishments than those used previously.

The criminal defamation clause under the Telecommunications Law, known as Section 66(d), was frequently used to restrict freedom of expression and press. There was a dramatic increase in Section 66(d) cases compared with prior years. According to the Research Team of Telecommunication Law, an activist group whose aim is to abolish Section 66(d), 93 cases were enforced under the law, including seven cases brought by members of the NLD and another seven cases brought by members of the military from March 2016 to mid-November. Fifteen cases had already reached a verdict. At least 11 cases against 19 journalists under this law were pending as of October.

In August parliament amended Section 66(d), reducing the maximum sentence to three years, restricting third parties from filing charges without written consent from the offended party, and allowing judges to authorize bail in most cases (see section 1.d.). Civil society organizations and journalists noted the amendment as a positive step but expressed concern the law could still be used to restrict freedom of expression and the press. Several journalists, as well as critics of the government and the military, continued to face charges under this law. Other problematic laws that remained on the books, including the Unlawful Associations Act, Habitual Offenders Act, Electronic Transactions Law, Television and Video
Act, Official Secrets Act, Law on Safeguarding the State from the Danger of Subversive Elements, and Section 505(b) of the penal code, were used to censor or prosecute public dissent. The Law Protecting the Privacy and Security of Citizens, enacted in March, was also used to prosecute a critic of the NLD-appointed chief minister of Mon State.

In March, Swe Win, editor of Myanmar Now news agency, was arrested following charges filed against him by Kyaw Myo Shwe, a supporter of the Association for the Protection of Race and Religion (Ma Ba Tha), an ultranationalist Buddhist organization, under Section 66(d) of the Telecommunications Law. Kyaw Myo Shwe alleged Swe Win shared a Facebook post suggesting the monk Wirathu, a prominent Ma Ba Tha figurehead, violated the monastic code of conduct by making statements commending the January 28 assassination of well-known Muslim constitutional lawyer Ko Ni (see section 1.a.). Swe Win was released on bail the next day by Mandalay Region’s Maha Aung Myay Township Court but was rearrested on July 30 at Yangon International Airport. Police stated he was arrested for trying to leave the country while a case was pending against him. He was later released. As of September the court had postponed the trial of Swe Win, declaring permission had not yet been granted for plaintiff Kyaw Myo Shwe--detained in Obo Prison for organizing a protest against the government in Mandalay--to attend court proceedings.

On April 12, NLD official Myo Yan Naung Thein, who was charged with Section 66(d) of the Telecommunication Law and arrested in October 2016 for posting comments critical of the military’s response in northern Rakhine State, was sentenced to six months in prison and released by a presidential pardon a few weeks prior to completing the sentence.

Some persons remained wary of speaking openly about politically sensitive topics due to monitoring and harassment by security services and ultranationalist Buddhist groups. Police continued to monitor politicians, journalists, writers, and diplomats. Journalists continued to complain about the widespread practice of government informants attending press conferences and other events, which they said intimidated reporters and the events’ hosts. Informants demanded lists of hosts and attendees.

Press and Media Freedom: Independent media were active and able to operate, despite some restrictions. The government continued to permit the publication of privately owned daily newspapers. As of September authorities approved 28 dailies; however, press freedom declined compared with 2016, and the security
forces detained journalists under laws carrying more severe sentences than those it used in previous years.

Local media could cover human rights and political issues, including democratic reform, although stories critical of political figures and the security forces sometimes resulted in criminal charges. The government generally permitted the media to cover protests and civil conflict, topics not reported widely in state-run media. Nonetheless, during the year the government detained three journalists related to their coverage of civil conflict, and two related to their coverage of the situation in Rakhine State. In June an Irrawaddy journalist, two DVB journalists, and their support staff were detained under the Unlawful Associations Act, which had not been used against journalists in recent years, for their coverage of a drug-burning ceremony by the TNLA. In December, two Reuters reporters were detained and charged under the Official Secrets Act related to their investigation of security forces’ activities in northern Rakhine State.

Self-censorship continued, particularly on issues related to Buddhist extremism, the military, the situation in Rakhine State, and the peace process. The government ordered the media to use certain terms and themes to describe the situation in northern Rakhine State and threatened penalties against journalists who did not follow the government’s guidance, which exacerbated already high levels of self-censorship on this topic. Authorities prevented journalists from accessing northern Rakhine State, with the exception of several government-organized trips that participants reported to be tightly controlled and designed to advance the government’s narrative. The government continued to use visas to control foreign journalists, who reported visa validities ranged from 28 days to six months. The government barred the entry to the country by a journalist from Pakistan because of alleged security concerns regarding the situation in Rakhine State.

The military continued to practice zero tolerance of perceived critical media commentary. Editor Kyaw Min Swe of The Voice and satire columnist Kyaw Zwa Naing (pen name “British Ko Ko Maung”) were charged with defamation under Section 66(d) of the Telecommunications Law and detained in June for writing and publishing a satirical story of a military film. As in similar cases, the court did not provide bail for Kyaw Min Swe, although the satirist was released based on the Telecommunications Ministry’s comment he did not break the law. Kyaw Min Swe’s case was one of the five cases withdrawn by the military in early September.

Radio and television were the primary mass communication media. Circulation of independent news periodicals remained stable outside of urban areas. Several print
publications maintained online news websites that were popular among those with access to the internet. The military, government, and government-linked businesspersons controlled the content of the eight privately or quasi-governmentally owned FM radio stations.

The government loosened its monopoly and control on domestic television broadcasting. It offered six public channels--five controlled by the Ministry of Information and one by the military; the ministry channels regularly showed the military’s content. The government allowed the general population to register satellite television receivers for a fee, but the cost was prohibitive for most persons outside of urban areas. The ministry announced it would allow five media outlets to apply for television channel licenses as private broadcasters. In April the ministry selected five media companies, including formerly exiled media groups DVB and Mizzima Media, to broadcast their content in a landmark public-private broadcasting partnership. The five companies planned to use state-owned broadcaster Myanmar Radio and Television’s transmission infrastructure, but would develop their own content. Many media outlets, however, reported the cost of applying for and maintaining a television channel was prohibitive.

**Violence and Harassment:** Nationalist groups continued to target journalists who spoke out regarding intercommunal and Rakhine State issues. Businesspersons engaged in illegal enterprises, sometimes together with local authorities, also harassed and threatened journalists reporting on their activities. Officials continued to monitor journalists in various parts of the country.

In December 2016 Eleven Media reporter Soe Moe Tun’s body was found on the side of a road in Monywa, Sagaing Region. He was investigating illegal logging and wood smuggling there at the time of his death. Police reported Soe Moe Tun was attacked and beaten in the back of the head with a stick. His friends and relatives expressed frustration at the police’s perceived lack of effort to investigate the case, and at year’s end, no one had been charged. Police claimed their investigation continued.

**Censorship or Content Restrictions:** Although generally not enforced, laws prohibit citizens from electronically passing information about the country to media located outside the country, exposing journalists who reported for or cooperated with international media to potential harassment, intimidation, and arrest. There were no reports of overt prepublication censorship of press publications, and the government allowed open discussion of some sensitive political and economic topics, but incidents of legal action against publications that
criticized the military or the government continued to raise concern among local journalists and led to some self-censorship.

Instances of media self-censorship and suppression continued in connection with violence in northern Rakhine State. Reporters and media executives were reportedly fired for printing stories critical of the military’s actions in Rakhine State. In one instance after the August 25 attacks on security forces in Rakhine State, state television station MNTV temporarily cut broadcasts of BBC coverage of Rakhine State.

The organizer of the annual Human Rights, Human Dignity International Film Festival told reporters the government required him to submit all films to the government censorship board prior to screening them at the festival. This process resulted in the censorship of one film.

**Libel/Slander Laws:** Elements of the military sued journalists on multiple occasions for what they perceived as defamation or inaccurate reporting. The military sometimes dropped the cases after a lengthy court process.

Individuals, including political figures, also used the Telecommunications Law to sue reporters for perceived defamation. On May 26, Ma Sandi Myint Aung, a Union Solidarity and Development Party (USDP) supporter from Bago, was sentenced to six months in prison under the Telecommunications Law for sharing Facebook posts deemed insulting to State Counsellor Aung San Suu Kyi; the charges were pressed by another Bago local. The 2016 defamation suit by the chief minister of Rangoon, Phyo Min Thein, against Eleven Media Group chief executive U Than Htut Aung and the editor in chief Wai Phyo was pending as of September. The chief minister had argued that an article insinuating he was corrupt because he wore an expensive wristwatch amounted to defamation.

**Internet Freedom**

The government generally did not restrict or disrupt access to the internet or censor online content, although some NGOs reported the government blocked access to their web content on intercommunal dialogue. The government reportedly monitored internet communications under questionable legal authority and used defamation charges to intimidate and detain some individuals using social media to criticize the military. There were also instances of authorities intimidating online media outlets and internet users. Social media continued to be a popular forum to exchange ideas and opinions without direct government censorship. According to
the International Telecommunication Union, approximately 25 percent of the population had access to the internet in 2016, but estimated mobile phone penetration was 90 percent, and other experts noted the majority of mobile handsets in the country could connect to the internet. The most recent Freedom on the Net report issued by international NGO Freedom House rated internet freedom in the country not free, and the rating worsened slightly from previous years.

Section 66(d) of the Telecommunications Act limited freedom of expression online. For example, on February 28, a social media user named Zaw Zaw was sentenced to six months’ imprisonment under Section 66(d) for posting text and photographs on Facebook that were considered defamatory toward leaders of the civilian government.

**Academic Freedom and Cultural Events**

There were similar government restrictions on academic freedom and cultural events as in 2016. The Ministry of Education in some cases demonstrated willingness to collaborate with international institutions to host educational and cultural events, as well as to expand educational opportunities for undergraduate students.

Although the government restricted political activity and freedom of association on university campuses, it generally allowed the informal establishment of student unions. Nonetheless, there are no laws that allow student unions to register officially with the government, and among university rectors and faculty there was considerable fear and suspicion of student unions. The office of the Students’ Union of Myanmar opened at Yangon University in July, and the Yangon University of Foreign Languages also opened a student union office. As in previous years, the All Burma Student’s Union was unable to register but participated in some activities through informal networks.

There were reported incidents of the government restricting cultural events. In January the military sued a group of nine high school and college students from Pathein under Article 500 of the criminal code for allegedly defaming the armed forces by performing an antiwar play. In June the Motion Picture Classification Board banned the showing of a film entitled *Sittwe*, which was due to open at an international human rights festival in Rangoon. The board cited concerns the film, which is a documentary about Buddhist and Muslim youth affected by conflict and forced segregation in northwestern Rakhine State, could have “festered” religious tensions.
b. Freedoms of Peaceful Assembly and Association

The constitution provides for the freedoms of peaceful assembly and association, but the government restricted these rights.

**Freedom of Peaceful Assembly**

The constitution provides the right to peaceful assembly, and peaceful protests were generally permitted around the country, although in November, the Rangoon region security and border affairs minister instructed police in 11 Rangoon townships to temporarily deny all applications for processions or assemblies, and sometimes the law was used to restrict peaceful protests if prior notification had not been granted or if conducted on private property. Farmers and social activists continued to hold protests over land rights and older cases of land confiscation throughout the country, and human rights groups continued to report cases in which the government arrested groups of farmers and those supporting them for demanding the return of confiscated land. Many reported cases involved land seized by the military under the former military regime and given to private companies or persons with ties to the military. The government also arrested some peaceful ultranationalist protesters. In September, four Burmese nationalists were sentenced to seven months in prison for staging an anti-Rohingya protest outside an embassy in April 2016. The four persons were sentenced for “inciting public unrest” and for violating the Peaceful Assembly and Peaceful Processions Act. The court justified the verdict on the basis that Kamayut Township had authorized the rally to take place in another location far from the embassy.

Common charges used to convict peaceful protesters included criminal trespass, violation of the Peaceful Assembly and Processions Act, and violation of Section 505(b) of the penal code, which criminalizes actions the government deemed likely to cause “an offence against the State or against the public tranquility.”

**Freedom of Association**

Although the constitution and laws allow citizens to form associations and organizations, the government sometimes restricted this right.

On May 23, the State Sangha Maha Nayaka Committee ordered that no group or individual would be allowed to operate under the banner of Ma Ba Tha, some of whose members, including Wirathu, had been sanctioned earlier in the year for
inflaming tensions towards the Muslim community using ultranationalist rhetoric. The formal name of the organization is the Association for the Protection of Race and Religion. Responding to the ban, Ma Ba Tha leaders rebranded the organization under the name Buddha Dhamma Parahita Foundation.

The law on registering organizations stipulates voluntary registration for local NGOs and removes punishments for noncompliance for both local and international NGOs. Some NGOs that tried to register under this law found the process extremely onerous.

Activists reported civil society groups, community-based organizations, and informal networks operated openly and continued to discuss openly human rights and other political problems. They also reported, however, state surveillance of such operations and discussions was common.

c. Freedom of Religion

See the Department of State’s International Religious Freedom Report at www.state.gov/religiousfreedomreport/.

d. Freedom of Movement

The law does not explicitly and comprehensively protect freedom of internal movement, foreign travel, emigration, and repatriation. Laws provide rights for citizens to settle and reside anywhere in the country “according to law.” Laws related to noncitizens empower the president to make rules for requiring registration of foreigners’ movements and authorize officials to require registration for every temporary change of address exceeding 24 hours.

Abuse of Migrants, Refugees, and Stateless Persons: The government committed widespread and systematic abuses against the Rohingya population (see Stateless Persons).

In-country Movement: Regional and local orders, directives, and instructions restricted freedom of movement.

The government restricted the ability of IDPs and stateless persons to move. While a person’s possession of identification documents primarily related to their freedom of movement, authorities also considered race, ethnicity, religion, and place of origin as factors in enforcing these regulations. Residents of ethnic-
minority states reported the government restricted the travel of, involuntarily confined, and forcibly relocated IDPs and stateless persons.

Restrictions on in-country movement of Muslims in Rakhine State were extensive. Authorities required the Rohingya, a largely stateless population, to carry special documents and travel permits for internal movement in five areas in Rakhine State where the Rohingya ethnic minority primarily resides: Buthidaung, Maungdaw, Rathedaung, Kyauktaw, and Sittwe. Township officers in Buthidaung and Maungdaw Townships continued to require Rohingya to submit a “form for informing absence from habitual residence” for permission to stay overnight in another village and to register on the guest list with the village administrator. Obtaining these forms and permits often involved extortion and bribes.

Restrictions governing the travel of foreigners, Rohingya, and others between townships in northern Rakhine State varied, depending on township, and generally required submission of a document known as “Form 4.” A traveler could obtain this form only from the township Immigration and National Registration Department (INRD) and only if that person provided an original copy of a family list, temporary registration card, and two guarantors. Travel authorized under Form 4 is valid for 14 days. The cost to obtain the form varied from township to township, with payments required to village administrators or to the township INRD office in amounts ranging from 50,000 to 100,000 kyats ($38 to $76). Change of residency from one village or township to another in northern Rakhine State required permission from the INRD or the township, district, and state officials. While Rohingya could change residency, the government would not register them on a new household registration list in that new location. This practice effectively prevented persons from changing residency.

International and local humanitarian staff required travel authorizations from the union and state level in order to operate in Rakhine State. Local staff had to submit travel applications two weeks in advance, and they were often denied. Humanitarian access to northern Rakhine State was suspended entirely in August; however, by the end of the year, the Red Cross Movement, World Food Program, and several other organizations had regained some degree of access. Media and human rights professionals were routinely denied access to Rakhine State.

Travel restrictions effectively prevented Rohingya from northern Rakhine State from traveling outside the state. There were reports the government prevented Rohingya living outside Rakhine State from traveling into the northern part of the state.
There were reports of regular, unannounced nighttime household checks in northern Rakhine State and in other areas.

In October the Kayin State government reportedly issued a letter calling on Muslim travelers to request and receive authorization from village officials. This letter was reportedly rescinded by the chief minister a few days later. Similarly, in Thandwe in southern Rakhine State in October, local officials reportedly required registration of Muslim travelers arriving at the airport, although no official restriction was in place.

Foreign Travel: The government maintained restrictions preventing foreign travel of political activists, former political prisoners, and some local staff of foreign embassies. While some administrative restrictions remained, local organizations reported encountering far fewer delays and restrictions. Stateless persons, particularly Rohingya, were unable to obtain documentation necessary for foreign travel.

Exile: There was a sizeable diaspora, with some citizens choosing to remain outside the country after years of self-imposed exile. During the year the government encouraged exiles to help rebuild their country, and some returned home; however, the government appeared to maintain an opaque “black list” of individuals, including some from the exile community, who were prohibited from entering the country.

Internally Displaced Persons (IDPs)

An estimated 220,000 persons remained internally displaced by violence in Kachin, Rakhine, and northern Shan States at the end of the year. As of September the UN Office of Coordination for Humanitarian Affairs estimated more than 98,000 persons remained displaced because of continued armed conflict in Kachin and Shan States. Camps housing more than half of the IDPs were located in areas beyond government control where government forces restricted humanitarian access. Some IDPs also found refuge with hosting families, and others hid in forested areas straddling the border with China. Approximately 120,000 Rohingya had been confined to IDP camps in Rakhine State since 2012 intercommunal violence. A small number of Kaman and Rakhine had also lived in IDP camps since 2012. This figure did not include an additional unknown number, estimated between 30,000 and 100,000, who were internally displaced following atrocities
beginning in August in northern Rakhine State. Accurate figures were difficult to determine due to poor access to affected areas.

Fighting between government forces and ethnic armed groups continued in Kachin, Shan, Kayin, and Rakhine States. Ethnic armed groups also clashed among themselves in northern Shan State. Access to displaced persons in or near conflict zones continued to be a challenge, with the government restricting access by humanitarian actors to provide aid to affected communities.

Nearly 90,000 Rohingya IDPs lived in Sittwe’s rural camps, displaced since 2012, where they relied on assistance from aid agencies. Humanitarian agencies provided access to clean water, food, shelter, and sanitation in most IDP camps. The government limited health and education services and livelihood opportunities through severe and systematic restrictions on movement. Conditions in Aung Mingalar, the sole remaining Muslim quarter in Sittwe, remained poor, with Rohingya allowed to leave the fenced and guarded compound only to shop for necessities at nearby markets or to visit outside health clinics if they paid a fee to security services.

During the year humanitarian agencies received travel authorizations to provide assistance sporadically, and international humanitarian staff were not allowed to travel outside of urban areas in Kachin, northern Shan, and northern Rakhine States for much of the year. Humanitarian access to Rakhine State was irregular and restricted. Humanitarian workers continued to be under pressure from local communities to reduce assistance to Muslim IDPs and villages, despite limited access to meet humanitarian needs.

Following the August attacks in northern Rakhine State, security forces launched security operations consisting of atrocities against civilians, and the government temporarily restricted all humanitarian access to central Rakhine State and the three townships of northern Rakhine State--Maungdaw, Buthidaung, and Rathedaung. The government allowed sporadic access to some parts of central Rakhine State to some organizations in September. In northern Rakhine State the government authorized only Red Cross Movement organizations to provide emergency assistance in that area, and humanitarian access remained severely limited at year’s end. Beginning in August local staff of humanitarian organizations, many of whom lived among affected populations, had to apply for travel permits in order to provide services.
The Office of the UN High Commissioner for Refugees (UNHCR) noted some small-scale, spontaneous IDP returns in the southeast of the country.

Protection of Refugees

Access to Asylum: The country’s laws do not provide for the granting of asylum or refugee status, and the government has not established a system for providing protection to refugees. UNHCR did not register any asylum seekers during the year.

 Stateless Persons

The Myanmar Population and Housing Census reported in 2016 there were an estimated 1.09 million persons in Rakhine State who were not enumerated in the census. According to UNHCR, this number reflected an accurate estimate of the Rohingya population in Rakhine State, the vast majority of whom were stateless. Following the forced displacement of approximately 700,000 Rohingya to Bangladesh, an estimated 300,000 to 400,000 Rohingya remained in Rakhine State. There were likely significant numbers of stateless persons and persons with undetermined nationality throughout the country, including persons of Chinese, Indian, and Nepali descent.

Provisions of the Citizenship Law contributed to statelessness. Following the entry into force of the 1982 law and procedures, the government released a list of 135 recognized “national ethnic groups” whose members are automatically “citizens.” This list excluded the Rohingya, and subsequent actions by the government rendered the vast majority of the Rohingya ethnic minority stateless. The law defines “national ethnic group” only as a racial and ethnic group that can prove origins in the country dating back to 1823, the year prior to British colonization. Several ethnic minority groups, including the Chin and Kachin, criticized the classification system as inaccurate. While the majority of the country’s inhabitants automatically acquired citizenship under these provisions, some minority groups, including the Rohingya; persons of Indian, Chinese, and Nepali descent; and “Pashu” (Straits Chinese), some of whose members had previously enjoyed citizenship in the country, are not included on the government’s list. The Rohingya and others are technically eligible for full citizenship via standard mechanisms unrelated to ethnicity, but they were made to go through a special scrutiny process that generally resulted in naturalized citizenship and did not result in provision of rights generally associated with citizenship. The law does not provide protection for children born in the country who do not have a “relevant
“Burma” to another state. UNHCR, the Advisory Commission on Rakhine State, and a number of human rights and humanitarian organizations continued to advocate amendment of the Citizenship Law to bring it in line with the country’s international human rights obligations and commitments (see section 6, Children).

The name Rohingya is used in reference to a group that self-identifies as belonging to an ethnic group defined by religious, linguistic, and other ethnic features. Rohingya hold that they have resided in what is now Rakhine State for generations. In May 2016 the government established a policy of using “Muslims in Rakhine State” to refer to the population, although military officials and many government officials, particularly in Rakhine State, continued to use the pejorative term “Bengali,” and the term was still used on identification documents. The government offers a citizenship verification process to Rohingya to determine who qualifies for citizenship on the basis of mechanisms in the 1982 law that provide pathways to citizenship other than being a member of a national ethnic race. This process met with limited participation from the Rohingya community. The government no longer requires all participants to identify as “Bengali” as a condition of participating in the process, nor does it require applicants to list their race or religion on forms in the earliest phases of the process, although implementing officials reportedly continued to require participants to identify as “Bengali.” Those who are verified as a citizen (of whatever type) would have “Bengali” listed as their race on their citizenship scrutiny card. This process and the separate national verification process was not seen as credible by the Rohingya community, in part because many continued to be told they were required to apply as “Bengali,” because the few Rohingya who received national verification cards or citizenship through these processes did not receive significant rights and benefits, and because the government implemented the process in a coercive manner, for example, by requiring a national verification card to go fishing or access a bank account. The government continued to call on Rohingya to participate, but many of them expressed the need for more assurances about the results of the process. Many said they were already citizens and expressed fear the government would either not affirm their citizenship or would provide a form of lesser citizenship--naturalized rather than full--thereby formalizing their lack of rights.

According to the Citizenship Law, two lesser forms of citizenship exist: associate and naturalized. According to other legal statutes, these citizens are unable to run for political office; serve in the military, police, or public administration; inherit land or money; or pursue certain professional degrees, such as medicine and law.
According to the Citizenship Law, only the third generation of associate or naturalized citizens are able to acquire full citizenship.

Rohingya experienced severe legal, economic, and social discrimination. The government required them to receive prior approval for travel outside their village of residence; limited their access to higher education, health care, and other basic services; and prohibited them from working as civil servants, including as doctors, nurses, or teachers. Authorities singled out Rohingya in northern Rakhine State to perform forced labor and arbitrarily arrested them. Authorities required Rohingya to obtain official permission for marriages and limited the registration of children to two per family, but local enforcement of the two-child policy was inconsistent. For the most part, authorities registered additional children beyond the two-child limit for Rohingya families, yet there were cases of authorities not doing so.

Restrictions impeded the ability of Rohingya to construct houses or religious buildings.

Local security officials in Rakhine State committed violent crimes and arbitrarily arrested an unknown number of Rohingya, according to reports. Many of these reports cited events from August to December.

**Section 3. Freedom to Participate in the Political Process**

The constitution provides the ability for citizens to choose their government through elections held by secret ballot, although certain provisions prevent it from being a fully representational system and assuring the free expression of the will of the people. Constitutional provisions grant one-quarter of all national and regional parliamentary seats to active-duty military appointees and provide the military authority to appoint the ministers of defense, home affairs—which has responsibility for subnational governance as well as the police, prisons, and other matters--and border affairs, and indefinitely assume power over all branches of the government should the president declare a national state of emergency. A separate constitutional provision prohibits persons with immediate relatives with foreign citizenship from becoming president. Amending the constitution requires more than 75 percent approval by members of parliament, giving the military veto power over constitutional amendments.

**Elections and Political Participation**
Recent Elections: International organizations reported the country conducted its April by-elections in accordance with generally accepted democratic principles. Observers considered the 2015 national election to be generally reflective of the will of the people, notwithstanding some structural shortcomings. Observers raised concerns a large number of unelected seats in parliament were reserved for military officers; some candidates were disqualified on a discriminatory basis; almost all members of the Rohingya community, many of whom voted in elections prior to 2015, were disenfranchised; and the government canceled voting in some conflict-affected ethnic minority areas. The NLD, chaired by Aung San Suu Kyi, won more than 77 percent of the contested 1,150 seats at the state, regional, and union levels in the 2015 election.

Political Parties and Political Participation: Opposition parties and civil society organizations continued to exercise their rights to assemble and protest.

Participation of Women and Minorities: No laws limit the participation of women and members of minorities in the political process, and they did participate. Nevertheless, women and minorities continued to be underrepresented in government. Aung San Suu Kyi was the only woman in a cabinet of 22 ministers serving at the national level. The representation of women at both the national and the state and regional levels was more than 10 percent among elected representatives. Women led two subnational governments, including the chief ministers of Kayin State and Tanintharyi Region.

As of October, five chief ministers of the seven ethnic states belonged to the ethnic groups of their states, including the chief minister of Rakhine State, and one of two union-level vice presidents belonged to the Chin ethnic minority group. The representation of ethnic minority parliamentarians from ethnic minority political parties at both the national, state, and regional level was approximately 9 percent. These figures from all levels did not account for ethnic minority members of the NLD or USDP, the former of which included numerous ethnic members, although no clear statistics existed.

Rohingya continued to be excluded from the political process, because their political rights (whether to vote or run for office) remained severely curtailed since the vast majority are stateless. Although Rohingya comprised approximately one-third of the population in Rakhine State, there were no Rohingya representatives in the state parliament, and most Rohingya-majority areas were represented by an ethnic Rakhine nationalist party.
Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials, and the government continued efforts to curb corruption. Although anecdotal reports suggested corruption among elected officials declined significantly since April 2016, the government’s anticorruption efforts remained limited in some parts of the government, including the General Administration Department, which falls under the authority of the minister of home affairs, who is appointed by the military per the constitution.

Corruption: Corruption remained a problem, particularly in the judiciary. Police reportedly often required victims to pay substantial bribes for criminal investigations and routinely extorted money from the civilian population. The government launched a new code of ethics for judges and prosecutors implementing reforms to better address corruption in the legal system. The government took some steps to investigate and address corruption of government officials.

In July, four senior officials from the Ministry of Home Affairs were prosecuted for a scandal involving returning confiscated land to its rightful owner. The Ministry of Home Affairs transferred the case to the Anti-Corruption Commission, and the defendants awaited trial at year’s end.

Financial Disclosure: Public officials were not subject to public financial disclosure laws. The law requires the president and vice presidents to furnish a list of family assets to the speaker of the joint houses of parliament, and the law requires persons appointed by the president to furnish a list of personal assets to the president. The government did not make the reports available to the public.

Civil servants cannot accept gifts worth more than 25,000 kyats ($19). The rules also require civil servants to report all offers of gifts to their supervisors, whether or not they are accepted.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights

The government did not fully allow domestic human rights organizations to function independently. Human rights NGOs were able to open offices and operate, but there were very few reports of harassment by authorities, although
surveillance was common, and there were reports authorities sometimes pressured landlords to not do business with activists or former political prisoners.

Human rights activists and advocates, including representatives from international NGOs, continued to obtain short-term visas that required them to leave the country periodically for renewal. The government continued to monitor the movements of foreigners and interrogated citizens concerning contacts with foreigners.

The United Nations or Other International Bodies: As of year’s end, the government had not agreed to the opening of an Office of the UN High Commissioner for Human Rights (OHCHR). While formally allowing OHCHR staff to maintain a nominal presence in country, the government delayed visa issuance for some OHCHR staff members and continued to require travel authorization for travel to Rakhine State and conflict areas.

On March 24, the UN Human Rights Council established an independent international fact-finding mission to “establish the 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.” The government dissociated itself from the relevant resolution and did not grant the Fact Finding Mission permission to enter the country. The Human Rights Council extended the Fact Finding Mission’s mandate for an additional year at the Human Rights Council meeting in September.

Unlike in past years, the government announced in December it would not allow the UN special rapporteur for the situation of human rights in Myanmar to enter the country. Earlier in the year, the government allowed the special rapporteur to enter but limited her access to parts of Kachin State and prevented her from meeting with some prisoners.

Following a 2012 government pledge to allow the ICRC prison access, the ICRC had full access to independent civilian prisons and labor camps. The government also allowed the ICRC to operate in ethnic-minority states, including in Shan, Rakhine, and Kachin States.
Government Human Rights Bodies: The Myanmar National Human Rights Commission investigated some incidents of gross human rights abuses. In some instances it called on the government to hold accountable members of the police force or military implicated in the crimes, and in others, it denied abuses occurred. Its ability to operate as a credible, independent mechanism remained limited. At the end of September, a commissioner from the Human Rights Commission visited northern Rakhine State and declared that security forces had not used disproportionate force or committed any human rights abuses. The commission supported the development of human rights education curricula, distributed human rights materials, and conducted human rights training.

The Advisory Commission on Rakhine State, established by Aung San Suu Kyi in 2016 and led by former UN secretary-general Kofi Annan, released its final report on August 24, immediately preceding the ARSA attacks in northern Rakhine State. The government established a commission to implement the recommendations held in the final report headed by the MSWRR union minister. In her September 19 public address, Aung San Suu Kyi committed to implementing the recommendations as expediently as possible.

Multiple government-led investigations into reports of widespread abuses by security forces against Rohingya in northern Rakhine State in October and November 2016 did not result in prosecutions or accountability. The Investigation Commission on Maungdaw, headed by military-appointed Vice President Myint Swe, released its interim report on January 3, stating there was “insufficient evidence to take legal action” regarding allegations of rape, and the unrest was due to foreign-funded “extremists.” The military and police led separate investigations into security force abuses in northern Rakhine State, which fed into the Investigation Commission on Maungdaw’s final report released in August. In its final report, the government-led commission stated there was no credible basis for allegations of human rights abuses in northern Rakhine State. International experts pointed to serious flaws in the commission’s methodology, including interrupting alleged victims of abuses to assert that their testimony was false and then broadcasting the exchange on national television.

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

Women

Rape and Domestic Violence: Rape is illegal but remained a significant problem, and the government did not enforce the law effectively. Spousal rape is not a
crime unless the wife is younger than 13 years. Police generally investigated reported cases of rape, but there were reports police investigations were not sensitive to victims. Civil society groups continued to report police in some cases verbally abused women who reported rape, and women could be sued for impugning the dignity of the perpetrator.

Domestic violence against women, including spousal abuse, remained a serious problem. Abuse within families was prevalent and considered socially acceptable. Spousal abuse or domestic violence was difficult to measure because the government did not maintain statistics and victims typically did not report it. Laws prohibit committing bodily harm against another person, but there are no laws specifically against domestic violence or spousal abuse unless the wife is younger than 14. Punishment for violating the law includes sentences ranging from one year to life in prison, in addition to possible fines. Overlapping and at times contradictory legal provisions complicated implementation of these limited protections.

The United Nations, media, and NGOs reported continued allegations of rape by military and security officials in Kachin, Shan, and Rakhine States. The military rejected all allegations rape was an institutionalized practice in the military but admitted in 2014 its soldiers had committed 40 known rapes of civilian women since 2011.

**Sexual Harassment:** The penal code prohibits sexual harassment and imposes fines or a maximum of one-year’s imprisonment for verbal harassment and a maximum of two years’ imprisonment for physical contact. There was no information on the prevalence of the problem because these crimes were largely unreported. Local civil society organizations reported police investigators were not sensitive to victims and rarely followed through with investigations or prosecutions.

**Coercion in Population Control:** Coerced abortion or involuntary sterilization did not occur. In 2015, however, the government enacted the Population Control and Health Care Law, which contains provisions that, if enforced, could undermine protections for reproductive and women’s rights, including imposing birth-spacing requirements. Under the law the president or the national government may designate “special regions” for health care following consideration of factors such as population, natural resources, birth rates, and food availability. Once a special region is declared, the government allows the creation of special health-care organizations to perform various tasks, including establishing regulations related to
family planning methods. The government has not designated any such special regions since the law’s enactment.

A two-child local order issued by the government of Rakhine State pertaining to the Rohingya population in two northern townships remained in effect, but the government and NGOs reported it was not consistently enforced (see section 1.f.).


**Discrimination:** By law women enjoy the same legal status and rights as men, including property and inheritance rights and religious and personal status, but it was not clear if the government enforced the law. The law requires equal pay for equal work, but it was not clear if the formal sector respected this requirement. NGOs reported sectors such as the garment industry did not comply. Poverty affected women disproportionately. The law governing hiring of civil service personnel states nothing shall prevent the appointment of men to “positions that are suitable for men only,” with no further definition of what constitutes positions “suitable for men only.”

Customary law was widely used to address issues of marriage, property, and inheritance, and it differs from the provisions under statutory law.

**Children**

**Birth Registration:** The 1982 Citizenship Law automatically confers full citizenship status to 135 recognized national ethnic groups as well as to persons who met citizenship requirements under previous citizenship legislation. Moreover, the government confers full citizenship to second-generation children of both parents with any citizenship, as long as at least one parent has full citizenship. Third-generation children of associate or naturalized citizens can acquire full citizenship. Residents derive full citizenship through parents, both of whom must be one of the 135 officially recognized “national races.” Under the law the government does not officially recognize Rohingya as an ethnic group.

A prominent international NGO noted significant rural-urban disparities in birth registration. In major cities (for example, Rangoon and Mandalay), births were registered immediately. In larger cities parents must register births to qualify for basic public services and obtain national identification cards. In smaller towns and
villages, however, birth registration often was informal or nonexistent. For the 
Rohingya community, birth registration was a significant problem (see section 
2.d.). The Advisory Commission on Rakhine State noted in its interim report 
nearly half of all residents in Rakhine State lacked birth documentation and 
recommended the government introduce a comprehensive birth registration 
campaign.

A birth certificate provided important protections for children, particularly against 
child labor, early marriage, and recruitment into the armed forces and armed 
groups. Sometimes a lack of birth registration, but more often a lack of 
availability, complicated access to public services in remote communities.

Education: By law education is compulsory, free, and universal through the fourth 
grade. The government continued to allocate minimal resources to public 
education, and schools charged informal fees. Many child rights activists in 
Rangoon noted such fees were decreasing and were less often mandatory.

Education access for internally displaced and stateless children remained limited.

Child Abuse: Laws prohibit child abuse, but they were neither adequate nor 
enforced. NGOs reported corporal punishment was widely used against children 
as a means of discipline. The punishment for violations is a maximum of two 
years’ imprisonment or a maximum fine of 10,000 kyats ($7.50). There was 
anecdotal evidence of violence against children occurring within families, schools, 
in situations of child labor and exploitation, and in armed conflict. The MSWRR 
expanded its child protection pilot programs. In Rakhine State continued violence 
left many families and children displaced or with restrictions on their movement, 
which in turn exposed them to an environment of violence and exploitation. 
Armed conflict in Kachin and Shan States had a similar adverse effect on children 
in those areas.

Early and Forced Marriage: The law stipulates different minimum ages for 
marrige based on religion and gender: the minimum age for Buddhists is 18 
years, and the minimum age for Christian boys is 16 and 15 for girls, but child 
marrige still occurred. According to the 2014 census, more than 13 percent of 
women married between ages 15 and 19. There were no reliable statistics on 
forced marrige. A review conducted by a UN organization in February found 
child marrige remained an important and underaddressed problem in rural areas.
Sexual Exploitation of Children: Children were subjected to sex trafficking in the country, and a small number of foreign child sex tourists exploited children. The law does not explicitly prohibit child sex tourism, but it prohibits pimping and prostitution, and the penal code prohibits sex with a minor younger than 14 years. The penalty for the purchase and sale of commercial sex acts from a child younger than 18 is 10 years’ imprisonment. The law prohibits pornography and specifies a penalty of two years’ minimum imprisonment and a fine of 10,000 kyats ($7.50). If a victim is younger than 14, the law considers the sexual act statutory rape. The maximum sentence for statutory rape is two years’ imprisonment when the victim is between 12 and 14, and 10 years’ to life imprisonment when the victim is younger than 12.

Displaced Children: The mortality rate of internally displaced children in conflict areas was significantly higher than in the rest of the country (see section 2.d.).


Anti-Semitism

There was one synagogue in Rangoon serving a small Jewish congregation. There were no reports of anti-Semitic acts.

Trafficking in Persons

See the Department of State’s Trafficking in Persons Report at www.state.gov/j/tip/rls/tiprpt/.

Persons with Disabilities

The law prohibits discrimination against persons with physical, sensory, hearing, intellectual, and mental disabilities. The law does not specifically prohibit discrimination against persons with disabilities in air travel and other forms of transportation, but directs the government to assure that persons with disabilities have easy access to public transportation. The government did not effectively enforce these provisions.
The Ministry of Health is responsible for medical rehabilitation of persons with disabilities, and the MSWRR is responsible for vocational training, education, and social protection strategies. The government recognized the Myanmar Federation of Persons with Disabilities to serve as an umbrella group for organizations that serve persons with disabilities. The National Committee for the Rights of Persons with Disability is the ministerial committee formed to monitor the implementation of the law; for the second consecutive year, it did not convene.

Civil society groups reported that often children with disabilities attended school through secondary education at a significantly lower rate than other persons, and many never attended school due to stigma and lack of any accommodation for their needs.

According to the Myanmar Physical Handicap Association, a significant number of military personnel, armed group members, and civilians had a disability because of conflict, including because of torture and landmine incidents. There were approximately 12,000 amputees in the country--two-thirds believed to be landmine survivors--supported by five physical rehabilitation centers throughout the country. Persons with disabilities reported stigma, discrimination, and abuse from civilian and government officials. Students with disabilities cited barriers to inclusive education as a significant disadvantage.

Military veterans with disabilities received official benefits on a priority basis, usually a civil service job at equivalent pay, but both military and ethnic-minority survivors in rural areas typically did not have access to livelihood opportunities or affordable medical treatment. Official assistance to nonmilitary persons with disabilities in principle included two-thirds of pay for a maximum of one year for a temporary disability and a tax-free stipend for permanent disability. While the law provides job protection for workers who become disabled, authorities did not implement it.

**National/Racial/Ethnic Minorities**

Ethnic minorities constituted 30 to 40 percent of the population. The seven ethnic minority states composed approximately 60 percent of the national territory, and significant numbers of minorities also resided within the country’s other regions. Wide-ranging governmental and societal discrimination against minorities persisted, including in areas such as education, housing, employment, and access to health services. International observers noted significant wage discrepancies based on religious and ethnic backgrounds were common.
Burmeses generally remained the mandatory language of instruction in government schools. Civil society organizations expressed disappointment the government’s National Education Strategic Plan, which was released in April, did not cover issues related to mother tongue instruction and was not adequately informed by consultations with ethnic stakeholders. In schools controlled by ethnic groups, students sometimes had no access to the national curriculum. There were very few domestic publications in indigenous-minority languages.

Tension between the military and ethnic minority populations, while somewhat diminished in areas with cease-fire agreements, remained high, and the military stationed forces in some ethnic groups’ areas of influence and controlled certain cities, towns, and highways. Ethnic armed groups, including the Kachin Independence Organization and the KNU, pointed to the increased presence of army troops as a major source of tension and insecurity. Reported abuses included killings, beatings, torture, forced labor, forced relocations, and rapes of members of ethnic groups by government soldiers. Some groups also committed abuses (see section 1.g.).

The Rohingya in Rakhine State faced severe discrimination based on their ethnicity. Most Rohingya faced severe restrictions on their ability to travel, avail themselves of health-care services, engage in economic activity (see section 7.d.), obtain an education, and register births, deaths, and marriages (see section 2.d.). Most of those displaced in 2012 remained confined to semipermanent camps with severely limited access to education, health care, and livelihoods.

In early August the military deployed in parts of northern Rakhine State reportedly committed serious human rights violations and abuses, including enforced disappearances and arbitrary arrests. On August 25, ARSA claimed responsibility for coordinated attacks against 30 security outposts in northern Rakhine State. The security forces, as well as vigilante groups acting in concert with security forces, then reportedly committed widespread atrocities against Rohingya villagers, including extrajudicial killings, rape, torture, arbitrary arrest, and burning of hundreds of villages, religious structures, and other buildings. These atrocities and associated events forced more than 655,000 Rohingya to flee to Bangladesh as of December and constituted ethnic cleansing against the Rohingya.

Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity
Political reforms in recent years made it easier for the lesbian, gay, bisexual, transgender, and intersex (LGBTI) community to hold public events and openly participate in society, yet discrimination, stigma and a lack of acceptance among the general population persisted. Consensual same-sex sexual activity remains illegal under the penal code, which contains a provision against “unnatural offenses” with a penalty of a maximum of 10 years’ imprisonment and a fine or “transportation for life.” Laws against “unnatural offenses” apply equally to both men and women; these laws were rarely enforced. LGBTI persons reported police used the threat of prosecution to extort bribes. While the penal code is used more for coercion or bribery, LGBTI persons, particularly transgender women, were most frequently charged under so-called shadow and disguise laws. These laws use the justification that a person dressed or acting in a way that is perceived as not being in line with their biological gender is in “disguise.” According to a report by a local NGO, transgender women reported higher levels of police abuse and discrimination than other members of the LGBTI community.

There were reports of discrimination based on sexual orientation and gender identity in employment. LGBTI persons reported facing discrimination from medical-care providers.

**HIV and AIDS Social Stigma**

The constitution provides for the individual’s right to health care in accordance with national health policy, prohibits discrimination by the government on the grounds of “status,” and requires equal opportunity in employment and equality before the law. Persons with HIV/AIDS could theoretically submit a complaint to the government if a breach of their constitutional rights or denial of access to essential medicines occurred, such as antiretroviral therapy, but there were no reports of individuals submitting complaints on these grounds. There are no HIV-specific protective laws or laws that specifically address the human rights aspects of HIV.

There were continued reports of societal violence and discrimination, including employment discrimination, against persons with HIV/AIDS. Negative incidents such as exclusion from social gatherings and activities; verbal insults, harassment, and threats; and physical assaults continued to occur. Laws that criminalize behaviors linked to an increased risk of acquiring HIV/AIDS remain in place, directly fueling stigma and discrimination against persons engaged in these behaviors and impeding their access to HIV prevention, treatment, and care services.
Law enforcement practices contributed to high levels of stigma and discrimination against female sex workers and transgender women that in turn hindered their access to HIV prevention, treatment, and social protection services. Police harassment of sex workers deterred the workers from carrying condoms.

**Other Societal Violence or Discrimination**

There were reports of other cases of societal violence, and anti-Muslim sentiment and discrimination persisted. Members of Bamar Buddhist nationalist groups, including members of Ma Ba Tha, continued to denigrate Islam and called for a boycott of Muslim businesses.

Muslim communities complained about unequal treatment by police, pressures to practice Islam in private, difficulty in obtaining citizenship cards, close monitoring of their travel by local government, and restrictions to education opportunities. Religious groups noted the January assassination of Ko Ni had a chilling effect on Muslims fighting for improved treatment under the law (see section 1.a.).

In April, 12 nationalist monks and dozens of local residents in Rangoon forced two madrassahs to be chained shut. The group alleged the structures were illegal and demanded local officials close them. Muslim leaders noted the madrassahs had been used for prayers for many years and told local media they believed nationalists bullied them because of their religion.

In May nationalist monks claimed Rohingya were hiding illegally in Mingala Taungnyunt Township in Rangoon. Media reports indicated the monks informed local police about their suspicions, and when local police investigated and found no one to be living illegally in the neighborhood, the monks and Buddhist laypersons instigated violence against the Muslim community in the neighborhood. Media also reported two Muslim residents were injured before police intervened by firing warning shots into the air. Police arrested eight persons for their involvement in the violence.

On October 30, Buddhist leader Sitagu Sayadaw gave a sermon to soldiers, live-streamed on Facebook to more than 250,000 persons, at a military training school in Kayin State, where he quoted a parable in which a Buddhist king is told by his advisors that the killing of millions of Hindu Tamils only added up to one and a half real human beings. In his sermon the Sitagu Sayadaw also noted the need for Buddhist leaders and the military to work together for national unity. The remarks
were generally interpreted as condoning the military’s abuses against members of religious minority groups and suggesting that in the course of battle, it is less of a sin for soldiers to kill non-Buddhists than to kill Buddhists.

Multiple sources noted that restrictions against Muslims and Christians impeded their ability to pursue higher education opportunities and assume high-level government positions and that Muslims were unable to invest and trade freely.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides for the right of workers to form and join independent unions, bargain collectively, and conduct legal strikes. The law permits labor organizations to demand the reinstatement of workers dismissed for union activity, but it does not explicitly prohibit antiunion discrimination in the form of demotions or mandatory transfers, nor does it offer protection for workers seeking to form a union. The law does not provide for adequate protections for workers from dismissal before a union is officially registered.

Laws prohibit personnel of the defense services, armed forces, and police force from forming unions. The law permits workers to join unions only within their category of trade or activity, and the definition of trade or activity lacks clarity. Basic labor organizations must have a minimum of 30 workers and register through township registrars with the Chief Registrar’s Office of the Ministry of Labor, Immigration, and Population (Ministry of Labor). Township labor organizations require a minimum of 10 percent of relevant basic labor organizations to register; regional or state labor organizations require a minimum of 10 percent of relevant township labor organizations. Each of these higher-level unions must include only organizations within the same trade or activity. Similarly, federations and confederations also require a minimum number of regional or state labor organizations (10 percent and 20 percent, respectively) from the next lower level in order to register formally. The law permits labor federations and confederations to affiliate with international union federations and confederations.

The law provides for voluntary registration for local NGOs, including NGOs working on labor issues. Organizations that choose to register are required to send organizational bylaws and formation documents to the government. Broader restrictions on freedom of assembly remained in place (see section 2.b.).
The law gives unions the right to represent workers, to negotiate and bargain collectively with employers, and to send representatives to a conciliation body or conciliation tribunal. The law permits unions to assist in individual disputes and individual employment agreements. The law does not contain detailed measures regarding management of the bargaining process, such as a duty to bargain in good faith, a period for bargaining, registration, or extension or enforcement of collective agreements. The National Tripartite Dialogue Forum, with representatives of government, business, and labor, met quarterly during the year, with frequent meetings of two technical working groups to negotiate specific issues in the development of revised legislation on collective bargaining and dispute settlement resolution.

The law stipulates that disputes in special economic zones be settled in accordance with original contracts and existing laws. Under the law on special economic zones, the government appointed a labor inspector for each such zone and established zonal tripartite committees responsible for setting wage levels and monitoring the ratio of local and foreign labor.

The law provides for the right to strike in most sectors, with a majority vote by workers, permission of the relevant labor federations, and detailed information and three days’ advance notice provided to the employer and the relevant conciliation body. The law does not permit strikes or lockouts in essential services. In “public utility services” (including the transport; cargo and freight; postal; sanitation; information, communication, and technology; energy; petroleum; and financial sectors), lockouts are permitted with a minimum of 14 days’ notice provided to the relevant labor organizations and conciliation body. Strikes in public utility services require generally the same measures as in other sectors, but with 14 days’ advance notice and negotiation between workers and management before the strike takes place to determine maintenance of minimum service levels. The law prohibits strikes addressing problems not directly relevant to labor issues.

The law provides for a framework for the settlement of individual and collective disputes at the enterprise, township, regional, and national levels through conciliation or arbitration, but it lacks sufficient mechanisms for enforcement. Penalties for noncompliance with the settlement agreements called for in the law are low: 100,000 kyats ($75) and/or a maximum of one year in prison.

Labor groups reported their biggest challenge remained labor organizations’ inability to register at the national level, a prerequisite for entering labor
framework agreements with multinational companies, due to the registration requirements under the law. In addition, the International Labor Organization (ILO), labor activists, and media continued to report concerns employers subsequently fired or engaged in other forms of reprisal for workers who formed or joined labor unions, and trade unions reported cases in which criminal charges were filed against workers for exercising their right to strike. Labor organizations also reported local labor offices imposed unnecessary bureaucratic requirements for union registration that were inconsistent with the law.

Workers and workers’ organizations continued to report they generally found the Ministry of Labor to be helpful in urging employers to negotiate, but there were consistent reports of employers ignoring the negotiated agreements or engaging in other forms of antiunion discrimination.

Media outlets reported far fewer allegations of dismissal, imprisonment, and beatings of workers for organizing activity than in previous years.

b. Prohibition of Forced or Compulsory Labor

Laws prohibit all forms of forced or compulsory labor and provide for the punishment of persons who impose forced labor on others, but the government did not effectively enforce the law.

The law provides for criminal penalties for forced labor violations; penalties differ depending on whether the military, the government, or a private citizen committed the violation. Prosecution of military perpetrators occurs under either the military or penal code. Civilian perpetrators may be subject to administrative action or criminal proceedings under the penal code. The maximum penalty under the penal code is 12 months in prison; under the military code it is seven years in prison. International observers deemed the penalties sufficient to deter forced labor.

The government continued to implement some aspects of the ILO action plan to eliminate forced labor but did not renew it despite its expiration in 2015. Both the military and the government responded to complaints logged by the complaints mechanism on an ad hoc basis during the lapse in the ILO mechanism, closing out 34 cases during the year, some of which were initiated in previous years. The ILO reported it continued to receive a significant number of complaints of forced labor, although the number was decreasing overall. Moreover, it noted the government’s and military’s use of forced or compulsory labor of adults and children and the failure to hold perpetrators accountable remained a problem (see section 7.c.). As
of August the ILO received an average of 36 complaints monthly. The ILO attributed the continuing high rates of reporting to increasing awareness of the illegality of forced labor along with strong support networks provided by the ILO and civil society organizations and the continued low levels of public trust and confidence in the national justice system. The government extended the ILO framework in November 2016, but it expired in December 2017.

Reports of forced labor occurred across the country, including in conflict and cease-fire areas, and the prevalence was higher in states with significant armed conflict. Forced labor reports included forced portering and activities related to the military’s “self-reliance” policy. Under the self-reliance policy, military battalions are responsible for procuring their own food and labor supplies from local villagers—a major contributing factor to forced labor and other abuses.

The ILO received reports of forced labor in the private sector, including excessive overtime with or without compensation by workers at risk of losing their jobs and also by bonded labor. Domestic workers also remained at risk of domestic servitude.

Also see the Department of State’s Trafficking in Persons Report at www.state.gov/j/tip/rls/tiprpt/.

**c. Prohibition of Child Labor and Minimum Age for Employment**

In January 2016 the government raised the minimum age for work in shops, establishments, and factories to 14 years and set out special provisions for “youth employment” for those older than 14. Employees from 16 to 18 must have a certificate to authorize them to carry out “work fit for an adult.” The law prohibits employees younger than 18 from working in a hazardous environment.

Trained inspectors monitored the application of these new regulations, including with regard to child labor, but a general lack of resources hindered inspectors throughout the country. Inspectors from the MSWRR monitored child-related cases at 25 Township Community on the Rights of the Child projects throughout the country. The Ministry of Labor worked with UNICEF on problems related to child protection and minimum age and worked with the ILO to address child labor. Since 2014 a child labor working group met regularly, chaired by the minister of labor with representatives from government departments, the private sector, labor unions, and civil society. The government tasked a working group with drafting a
national plan of action to implement ILO Convention 182 on the Elimination of the Worst Forms of Child Labor.

The Ministry of Labor worked with other ministries to collect better data on existing child labor and started a campaign directed at parents to raise awareness of the risks of child labor and provide information on other education options available to children. The Ministry of Labor engaged with the Ministry of Education on two programs, one aimed at bringing children out of the workplace and putting them in school, and another to support former child soldiers in pursuit of classroom education or vocational training. The labor ministry launched vocational schools to train young workers for jobs in nonhazardous environments. The government coordinated its efforts with the ILO in an effort to benefit directly 3,600 children and 1,000 households with education, worker safety, and support services in Mon State, Ayeyarwady Region, and Rangoon target areas.

The criminal penalties for recruiting child soldiers for military officials under martial law range from dismissal from service and imprisonment in civil prison to a fine of seven days’ pay (see section 1.g.). For civilians the law outlines penalties for child recruitment from a minimum 10 years’ to a maximum of life imprisonment. Penalties under the law and their enforcement for other child labor violations were insufficient to deter violations.

Child labor remained prevalent and highly visible. Children were at high risk, with poverty leading some parents to remove them from schools before completion of compulsory education. In cities children worked mostly as street vendors or refuse collectors, as restaurant and teashop attendants, and as domestic workers.

Children often worked in the informal economy, in some instances exposing them to drugs and petty crime, risk of arrest, commercial sexual exploitation, and HIV/AIDS and other sexually transmitted diseases (also see section 6).

Children were vulnerable to forced labor in teashops, agriculture, and begging. In rural areas children routinely worked in family agricultural activities, occasionally in situations of forced labor.

d. Discrimination with Respect to Employment and Occupation

Labor laws and regulations do not specifically prohibit employment discrimination based on race, color, sex, religion, gender, political opinion, national origin or
citizenship, social origin, disability, sexual orientation or gender identity, age, language, HIV-positive status or other communicable diseases, or social status.

Women remained underrepresented in most traditionally male occupations (mining, forestry, carpentry, masonry, and fishing) and were effectively barred from certain professions.

There were reports government and private actors practiced anti-Muslim discrimination that impeded Muslim-owned businesses’ operations and negatively affected their ability to hire and retain labor, maintain proper working standards, and secure public and private contracts. There were reports of discrimination based on sexual orientation and gender identity in employment, including the denial of promotions and firing of LGBTI persons. Activists reported job opportunities for many openly gay and lesbian persons were limited, and they noted a general lack of support from society as a whole. Activists reported that in addition to general societal discrimination, persons with HIV/AIDS faced employment discrimination in both the public and private sector, including suspensions and the loss of employment following positive results from mandatory workplace HIV testing.

e. Acceptable Conditions of Work

The official minimum daily wage was 3,600 kyats ($2.70). The minimum wage covers a standard eight-hour workday across all sectors and industries and applies to all workers except for those in businesses with fewer than 15 employees. In December the government announced a committee of government, labor, and business representatives had agreed on increasing the minimum wage by 33 percent, subject to a 60-day comment period. The law requires the minimum wage to be revised every two years.

The law requires employers to pay employees on the date the salary is due for companies with 100 or fewer employees. For companies with more than 100 employees, the employer is required to pay employees within five days from the designated payday. Overtime cannot exceed 12 hours per workweek, should not go past midnight, and can exceed 16 hours in a workweek only on special occasions. The law also stipulates that an employee’s total working hours cannot exceed 11 hours per day (including overtime and a one-hour break). The law applies to shops, commercial establishments, and establishments for public entertainment.
The Labor Dispute Law stipulates the terms and conditions required for occupational safety, health, welfare, and productivity, but information was limited about whether workers can remove themselves from situations that endanger their health or safety without jeopardizing their employment.

The Ministry of Labor’s Factories and General Labor Laws Inspection Department oversees labor conditions in the private sector. Both resources and capacity constrained enforcement. During the year the number of labor law inspectors and factory inspectors under the ministry was insufficient to address adequately occupational safety and health standards, wage, salary, overtime, and other issues. In certain sectors other ministries regulated occupational safety and health laws, for example the Ministry of Agriculture, Livestock, and Irrigation.

The government and ILO announced plans for the country’s third labor stakeholders’ forum under the auspices of the multistakeholder Initiative to Promote Fundamental Labor Rights and Practices in Myanmar to take place in January 2018. As in previous years, the forum would invite more than 200 participants from the public and private sectors to discuss labor rights and various labor problems, including addressing freedom of association and collective bargaining, strengthening labor dispute settlement, and strengthening local capacity and institutions.

Enforcement of the laws generally took place in the public sector, but frequent violations occurred in private enterprises. Workers continued to submit complaints to relevant government agencies and the dispute settlement mechanism. Workers’ organizations alleged government inspections were rare and often announced with several days’ notice that allowed factory owners to bring facilities--often temporarily--into compliance. Corruption and bribery of inspectors reportedly occurred.

The social security board covers all employees in companies with more than five employees, with the exception of six sectors (government, international organizations, seasonal farming and fisheries, construction, nonprofit organizations, and domestic work). In practical terms the board covered primarily industrial zones, the location of the majority of registered workers, and therefore supported less than 1 percent of individuals involved in workplace accidents or casualties. While the board provided hospitals and clinics, it did not keep independently verifiable statistics on accidents or workplace violations. Observers assumed workers in other sectors of the economy had even less support, and no statistics on accidents or workplace violations were available.
TAB 8
Human Rights Council
Forty second session
9-27 September 2019
Agenda item 4
Human Rights situations that require the Council’s attention

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

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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, 2011

13. In its report to the Human Rights Council in September 2018 (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.”

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

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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”.
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

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\(^6\) 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

11 See HRC resolution 12/2 on “Cooperation with the United Nations, its representatives and
mechanisms in the field of human rights”.
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.\textsuperscript{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.\textsuperscript{15}

27. Sexual violence is conduct of a sexual nature that is perpetrated without a person’s genuine consent\textsuperscript{16} 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).\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{20} Myanmar’s obligations under the CEDAW do not cease in periods of armed conflict.\textsuperscript{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.\textsuperscript{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


\textsuperscript{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)-I (War crime of rape).

\textsuperscript{17} See e.g. ICC Elements of Crimes, art. 7(1)(g).

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

\textsuperscript{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.

\textsuperscript{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/30), para. 34; “General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19” (CEDAW/C/GC/35), para. 21.

\textsuperscript{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.

\textsuperscript{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.

24. 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

29. 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

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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.")


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/36/36, 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 conditions\textsuperscript{38} 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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{43} For example, Myanmar has not criminalised male rape or rape in marriage.\textsuperscript{44}

33. Penal Code provisions criminalising “kidnapping, abduction, slavery and forced labour” are piecemeal.\textsuperscript{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.\textsuperscript{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 2013\textsuperscript{47} 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.\textsuperscript{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.

\textsuperscript{38} ICESCR, art. 7.
\textsuperscript{40} Concluding observations of the Committee on the Elimination of Discrimination against Women, 7 November 2008, CEDAW/C/MMR/CO/3, para.8
\textsuperscript{41} Concluding observations of the Committee on the Elimination of Discrimination against Women, 7 November 2008, CEDAW/C/MMR/CO/3, para. 9
\textsuperscript{42} Constitution of Myanmar, s. 358.
\textsuperscript{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.
\textsuperscript{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.
\textsuperscript{45} Penal Code of Myanmar, s. 359-377.
\textsuperscript{46} Penal Code of Myanmar, s. 366B.
\textsuperscript{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, 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,

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).
57 Common Article 3
58 Common Article 3(1)(d).
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.”

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.”

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.

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 genocide and must prevent and punish genocide. It must also enact the necessary legislation to give effect to the convention and, in particular, provide effective penalties for persons guilty of genocide. 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.

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.” 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.” 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.

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 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.
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)(xxi) 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-ENG, Judgment pursuant to article 74 of the Statute, 7 March 2014, para. 976.
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

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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.
87 See paras. 235-237 in Impunity and Accountability.
89 ICTY, Prosecutor v. Kvocka 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. Furundzija, 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. 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.

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. Military rule between 1962 and 2011 all but banished women from positions of authority, and the military itself had no women in leadership roles. 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.

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.

51. While there is close to parity with respect to literacy rates between men and women and within formal education, 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. 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.

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, entrenching impunity and the

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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).
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.\(^\text{101}\)

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.\(^\text{102}\)

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 childbearing,\(^\text{103}\) attending to household chores, and some to farming.\(^\text{104}\) 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.\(^\text{105}\)

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.\(^\text{106}\)

58. Rohingya women do not have equal access to register births. The Government controls the number and spacing of children they can have.\(^\text{107}\) 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,\(^\text{108}\) 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).


\(^{103}\) CEDAW/C/MMR/CO/37, p. 3; See also, Yen Saining; “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 Rights’ 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).

to sexual and reproductive health care.\textsuperscript{109} The Mission received reports of women who were raped during the “clearance operations” having to flee to Bangladesh without receiving medical assistance.\textsuperscript{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 medical facilities.\textsuperscript{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.”\textsuperscript{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.”\textsuperscript{113} Even when people needed to go to the hospital, they stayed home and bought medicine at the pharmacy instead.\textsuperscript{114} One woman told the Mission she only went for treatment at a clinic in Maungdaw because it was run by a Rohingya doctor.\textsuperscript{115} It is reported that most hospitals are staffed by non-Rohingya, increasing the level of distrust.\textsuperscript{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.\textsuperscript{117} Abortion is prohibited under Myanmar’s domestic law, even in cases of rape, except to save the life of the woman.\textsuperscript{118}

Women and girls in northern Myanmar

61. Similar to Rohingya women and girls in Rakhine, ethnic women and girls in Kachin and Shan States\textsuperscript{119} 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.\textsuperscript{120} Around 40 per cent of the displaced people in Kachin are located in areas beyond

\textsuperscript{110} EI-074, EI-081, EI-083, EI-090.
\textsuperscript{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.
\textsuperscript{112} DI-053.
\textsuperscript{113} DI-054.
\textsuperscript{114} DI-009.
\textsuperscript{115} DI-001, DI-004, CI-073, DI-006, DI-004, DI-009, DI-053, DI-054.
\textsuperscript{117} The Penal Code of Myanmar, articles 312-316.
\textsuperscript{118} 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, Ruwing, Lisu, Zaiwa, Lawnggwaw, Lachyt, Rakhine and Bamar. Many of the ethnic minority groups have substantial numbers of Christians among their members. Some groups are predominantly Christian.
\textsuperscript{119} 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.\textsuperscript{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.\textsuperscript{122}

63. In Kachin, the ratio of girls to boys attending primary level education is 0.95 of the gender parity index.\textsuperscript{123} Overall half of both boys and girls do not complete primary level education in Kachin State.\textsuperscript{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.\textsuperscript{125} In Shan, the ratio of girls to boys is 1.04. However the overall school attendance is low compared to the national average.\textsuperscript{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.\textsuperscript{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.\textsuperscript{128}

64. Ethnic women and girls in Kachin and Shan States, face challenges in accessing healthcare. Government healthcare is perceived as unreliable\textsuperscript{129} since services are offered in Myanmar language often not understood by ethnic women and children in northern Myanmar.\textsuperscript{130} In addition, heath 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.\textsuperscript{131} In addition, contraceptives are often unavailable in non-government controlled areas.\textsuperscript{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.\textsuperscript{133} Kachin and Shan are two of the four poorest States in Myanmar.\textsuperscript{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.\textsuperscript{135} Prevailing insecurity and poverty have exposed women and girls to

\begin{thebibliography}{99}
\bibitem{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.
\bibitem{122} Ibid.
\bibitem{123} Ministry of Education (2014).
\bibitem{124} Gender Profile for Humanitarian Action, and across the Humanitarian-Peace-Development Nexus (Rakhine, Kachin and Northern Shan Myanmar) January 2019.
\bibitem{125} Ibid.
\bibitem{126} Myanmar Gender Situation Analysis (2016) Asian Development Bank, UNDP, UNFPA, UN Women.
\bibitem{127} Ibid.
\bibitem{128} Gender Profile for Humanitarian Action, and across the Humanitarian-Peace-Development Nexus (Rakhine, Kachin and Northern Shan Myanmar) January 2019.
\bibitem{129} Ibid.
\bibitem{130} A/HRC/39/CRP.2, para. 112.
\bibitem{131} Gender Profile for Humanitarian Action, and across the Humanitarian-Peace-Development Nexus (Rakhine, Kachin and Northern Shan Myanmar) January 2019.
\bibitem{132} PM-011.
\bibitem{133} Myanmar Gender Situation Analysis (2016) Asian Development Bank, UNDP, UNFPA, UN Women.
\bibitem{134} Ibid.
\bibitem{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.
\end{thebibliography}
trafficking for forced marriage and childbearing into China. 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.  

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. Women in IDP camps also have limited access to decision-making structures and camp management committees. 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. 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. 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.

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. 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).


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).


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.  

**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. 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. Security forces responded within hours in a grossly disproportionate manner. The Government announced their completion on 5 September 2017 but in fact the violence lasted for more than two months.

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. 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. 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. Rohingya women and girls were the main victims, although there were instances involving men and boys. Young women

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150 A/HRC/39/CRP.2, paragraph 1374.
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.\textsuperscript{152}

74. Between 25 August and mid-September 2017,\textsuperscript{153} mass gang rapes, involving multiple perpetrators and multiple victims in the same incident, constituted a notable pattern in at least ten village tracts.\textsuperscript{154} Mass gang rapes were commonly perpetrated in open public spaces, within forested areas near the village\textsuperscript{155} in large houses within the village\textsuperscript{156} and during detention in military and police compounds.\textsuperscript{157} They were often perpetrated in front of the victims’ children and other family members and neighbours.\textsuperscript{158} Women and girls were commonly raped by multiple perpetrators.\textsuperscript{159} Often, mass gang rape took place after the separation of women and girls from men and boys.\textsuperscript{160} At times, the rapes and sexual violence took place in houses where Tatmadaw soldiers were waiting,\textsuperscript{161} including men in camouflage and with helmets.\textsuperscript{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.\textsuperscript{163} Some women were violated while strung naked to trees by their hands or by hair in forested areas.\textsuperscript{164} Perpetrators commonly scarred survivors through biting on their cheeks, thighs and other body parts in what appeared to be attempts of “branding”.\textsuperscript{165} Many victims were killed after being raped.\textsuperscript{166} Some girls were “raped to death”\textsuperscript{167} because of the unusual amount of blood in the genital area. In some instances, the genital area or the breasts were mutilated.\textsuperscript{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,\textsuperscript{169} Koe Tan Kaung,\textsuperscript{170} and Chein Khar Li (Ku Lar)\textsuperscript{171} in Rathedaung Township, Min Gyi (Tu Lar Tu Li),\textsuperscript{172} in Maungdaw Township, Maung Nu,\textsuperscript{173} and Gu Dar Pyin,\textsuperscript{174} in Buthidaung Township and areas in Southern Maungdaw.

77. The Mission documented two brutal attacks in Chut Pyin\textsuperscript{175} in Northern Rathedaung and Maung Nu in Buthidaung Township on 27 August 2017. In both villages women and

\textsuperscript{152} EI-075, EI-083, EI-084, EI-088, EI-093, EI-098.

\textsuperscript{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), Chin Tha Mar (Hang Sar Para), Gu Dar Pyin (Gudam Para).


\textsuperscript{155} EI-021, EI-027, EI-030, EI-064, YI-030.

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

\textsuperscript{157} EI-023, EI-028, EI-064, EI-066, EI-086, EI-094, EI-097, K-151, K-127.

\textsuperscript{158} EI-027, EI-029, EI-057, EI-071, EI-083.

\textsuperscript{159} EI-007, EI-014, EI-057, EI-096, EI-102.

\textsuperscript{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.

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

\textsuperscript{162} EI-057, EI-065, EI-080, EI-081.

\textsuperscript{163} EI-007, EI-029, EI-057, EI-083.

\textsuperscript{164} EI-096, EI-098, LI-105.

\textsuperscript{165} EI-011, EI-014, EI-022, EI-076, EI-094, XI-001.

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

\textsuperscript{167} EI-064, EI-067, EI-092, LI-081, LI-105, WI-006, WI-027.

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

\textsuperscript{155.1} Known as Shuap Praung in Rohingya.

\textsuperscript{170} Known as Dun Shay Para in Rohingya.

\textsuperscript{171} Known as Shil Kha Li in Rohingya.

\textsuperscript{172} Known as Tula Toli in Rohingya.

\textsuperscript{173} Known as Monu Para in Rohingya.

\textsuperscript{174} Known as Gudam Para in Rohingya.

\textsuperscript{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, they separated the women and children into different groups and locked them inside smaller houses within the compound. Women and girls were subsequently gang raped, killed and mutilated. 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.

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.

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. 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. The Tatmadaw killed the women’s children and set houses on fire, burning many of the victims to death.

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.”

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. 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.

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.”
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 rapes 191 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

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194 EI-054.
195 EI-094.
196 EI-055.
197 EI-094.
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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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”.\textsuperscript{204} The Government failed to condemn any of the sexual violence or the hate speech demonizing the Rohingya.

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.\textsuperscript{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.\textsuperscript{206} The first factor was the utterances of Myanmar officials and others. One member of the Tatmadaw said to a gang

\textsuperscript{198} A/HRC/39/CRP.2, para. 625.
\textsuperscript{199} A/HRC/39/CRP.2, para. 645.
\textsuperscript{200} A/HRC/39/CRP.2, paras 662-668.
\textsuperscript{201} K-076.19
\textsuperscript{202} DI-038.
\textsuperscript{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.
\textsuperscript{205} A/HRC/39/CRP.2, para. 438-441
\textsuperscript{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.”\footnote{A/HRC/39/CRP.2, para. 927.} 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”.\footnote{A/HRC/39/CRP.2, para. 928.} 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.\footnote{A/HRC/39/CRP.2, para. 929.} The third factor was the Tatmadaw’s extreme brutality, including attacks on pregnant mothers and on babies.\footnote{A/HRC/39/CRP.2, para. 930.}

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,\footnote{A/HRC/39/CRP.2, para. 931.} attacks on pregnant women and on babies,\footnote{A/HRC/39/CRP.2, para. 932.} the mutilation and other injuries to their reproductive organs,\footnote{A/HRC/39/CRP.2, para. 933.} the physical branding of their bodies by bite marks on their cheeks, neck, breast and thigh,\footnote{A/HRC/39/CRP.2, para. 934.} 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.\footnote{A/HRC/39/CRP.2, para. 935.} Injuries were exacerbated by lack of access to healthcare \textit{en route} to Bangladesh and on arrival. The Mission received information of women and girls who died \textit{en route} due to the severity of injuries and lack of medical care.\footnote{A/HRC/39/CRP.2, para. 936.}

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 on 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
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. 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.

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. 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. Incidents of sexual and gender-based violence have primarily taken place in the context of forced labour or in heavily militarized areas. 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.

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. 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.”

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. For example, a Rakhine woman reported that, when she was 17 years old, she had been

See Section on Accountability.

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.

A/HRC/42/50, para. 41
DI-044, QI-072, QI-075.
DI-014, DI-036, DI-041, QI-073.
DI-044, QI-072, QI-075.
QI-072.
QI-072.
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.\textsuperscript{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.\textsuperscript{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)\textsuperscript{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.\textsuperscript{230}

105. The Mission received secondary accounts from villagers who said they had heard that women were abducted by Tatmadaw soldiers and raped.\textsuperscript{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.\textsuperscript{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”.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{236}

\textsuperscript{227} DI-036.
\textsuperscript{228} DI-036, DI-044, QI-072.
\textsuperscript{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 MNDA, the KIA and the TNLA collaborate as the Northern Alliance; A/HRC/39/CRP.2, para. 108.
\textsuperscript{230} A/HRC/42/50, para. 39.
\textsuperscript{231} CI-274, CI-276, LI-167.
\textsuperscript{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.
\textsuperscript{233} A/HRC/42/50, para. 51.
\textsuperscript{234} A/HRC/42/50, para. 40.
\textsuperscript{235} LI-166, CI-274.
\textsuperscript{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 EAOs and by EAOs fighting each other. Attempts to sign an inclusive peace agreement with all EAOs operating in Kachin and Shan States have failed. Despite a unilateral ceasefire declared by the Tatmadaw from December 2018 to 31 August 2019, the Mission found that hostilities continue with adverse effects on the civilian populations, including continued sexual and gender-based violence.

109. The populations of Kachin and Shan States comprise various ethnic and religious groups. 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. 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. 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. 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. 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

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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).


242 The peoples of Shan State include the Shan, Pa-O, Intha, Lahu, Lisu, Taungyo, Danu, Ta’ang, Akha 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.


245 A/HRC/42/50, para. 61.

slurs during the commission of these violations 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, during forced labour or as a result of heavy militarization 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. 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

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).
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.
in northern Shan and Kachin States. 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). 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?”

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”.

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 report described the Tatmadaw conducting indiscriminate attacks, including by airstrikes, and committing extrajudicial killings, torture and rape of civilians, among other violations. The Tatmadaw attacked several mining operations in KIO/KIA areas of control with an apparent purpose of taking control of economic and natural resources. During various Tanai offensives, Tatmadaw soldiers subjected women to rape, gang rape, attempted rape, forced nudity and sexual humiliation.

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. 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.

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”.

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263 PI-023, PI-066, QI-084.
264 PI-066.
265 PI-117.
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).
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. 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.

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

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. 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. 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.

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.

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. 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. The incident took place in an area bordering TNLA-controlled territory where the Tatmadaw has been fighting since 2011 and where clashes took place after the December 2018 unilateral ceasefire. 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. The two men ripped off some of her clothes and took turns raping her. According to another source, the Tatmadaw said it would “take responsibility” if the gang rape resulted in a pregnancy. The woman lodged an official complaint before the Namsan police shortly after the incident, after which the police collected the survivor’s clothing as

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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.

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. 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. The area has a population of about 6,000 civilians. Such a large military-civilian ratio produces constant fear among local residents, particularly women. 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). 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.

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. 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.

(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. 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...
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

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293 PI-144, 2400.
294 PI-141, 2400.
295 PI-141, PI-145, 2400.
296 PI-141, PI-145, 2400.
298 QI-084, PI-143, PI-175.
301 PI-096, QI-078.
302 PI-068, QI-072, QI-082, QI-086, QI-089.
304 A/HRC/39/CRP.2, para 258; PI-175.
305 PI-029, PI-143, PI-155.
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.  

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.  

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.  

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. 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. 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.”  

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.  

(vi.) Sexual slavery

138. The Mission received three credible accounts from survivors and other accounts from secondary sources 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
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...
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 on 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

323 PI-003, PI-004, PI-146.
324 See Chapter IX: Impunity and accountability
325 GI-002, GI-014, PI-136, PI-142.
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 mutilation\(^{329}\) 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

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\(^{327}\) A/HRC/39/CRP.2, paras. 188, 675-676920, 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-07; QI-107, QI-108.

\(^{328}\) K-130, V-134.

\(^{329}\) EI-092, EI-096, LI-022.

\(^{330}\) EI-092, EI-096.


\(^{332}\) 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).
Su Kyi, as leader of the political opposition and before becoming State Counsellor, called for the decriminalization of homosexuality. Three years later, oppressive laws are yet to be changed, even though the State Counsellor’s National League for Democracy controls the Parliament.

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, genital mutilation, forced nudity and other forms of sexual violence, sometimes leading to death, and called for further investigation of sexual violence against men and boys.

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.

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

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

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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 discriminate 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.

assumptions of invulnerability to such violence. 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. 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, leaving victims without any redress, such as reparations, health care, psychosocial care and legal aid for the sexual violence suffered. 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. 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. “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.”

161. Sexual violence was also used to humiliate and shame detainees and to provide the perpetrators with sexual gratification. 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.

162. The Mission received reports that some male detainees were killed or “disappeared” by prison officials after suffering multiple rapes in Buthidaung prison. 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)


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.”

352 CI-136.  
354 NI-008.  
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.  

163. Forced nudity was another form of sexual humiliation used against Rohingya men and boys in detention. 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. At times, detainees were forced to remain naked until they dried. Prison officials kept their clothes. 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. 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. 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.

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, Kyauk Pyu Township and in NaSaka cells and military camps or bases. 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. 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.

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. 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.

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

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359 FI-047.
361 K-076.3, K-076.4, QI-108, QI-109
362 K-076.3, K-076.4, QI-076.5.
363 CI-136.
364 QI-108.
365 NI-008.
366 DL-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.
frequently officials took boys to small room to rape them.\textsuperscript{374} One witness saw prison guards rape boys on numerous occasions.\textsuperscript{375}

167. Sexual violence against boys also reportedly took place during the clearance operations.\textsuperscript{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.\textsuperscript{377}

\textit{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.\textsuperscript{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.\textsuperscript{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 Buthiduang prison in Rakhine State, where many of these and other crimes against the Rohingya were committed.\textsuperscript{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

\textsuperscript{374} QI-108, LJ-22 ; FI-052, FI-053
\textsuperscript{375} QI-108.
\textsuperscript{376} K-130, V-134.
\textsuperscript{378} FI-230, DI-037, QI-105, CI-136, DI-037, QI-107, QI-108.
\textsuperscript{379} See para. 30.
\textsuperscript{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. 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. 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. The Mission found that the Tatmadaw has targeted men with rape, forced nudity, and other forms of sexual violence and debasing treatment, often for the purpose of obtaining information or confessions from detainees.

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. 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. One of the male survivors, a Christian, was made to imitate Jesus on a cross like the crucifixion.

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).

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.
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 Myanmar\(^{397}\) 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.
\(^{395}\) GI-027.
\(^{396}\) GI-027.
\(^{397}\) A/HRC/39/CRP.2, para. 164 \textit{et s.}
\(^{398}\) PI-052, PI-055, PI-056.
\(^{399}\) PI-052, PI-056, PI-055.
International Covenant on Economic, Social and Cultural Rights.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{403} One survivor stated that she was a woman in a man’s body.\textsuperscript{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.”\textsuperscript{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 survivor\textsuperscript{406} recounted her experience of police arrests in Taung Bazar, Buthidaung, where she was detained more than three times because of her gender. She stated:

“\textit{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.}”\textsuperscript{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.\textsuperscript{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

\textsuperscript{400} See para. 30
\textsuperscript{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]
\textsuperscript{402} NI-001, NI-002, NI-003, NI-004, NI-005.
\textsuperscript{403} NI-001, NI-002, NI-003, NI-005.
\textsuperscript{404} NI-003.
\textsuperscript{405} NI-001.
\textsuperscript{406} NI-005.
\textsuperscript{407} NI-005.
\textsuperscript{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.\footnote{NI-001, NI-005, NI-002, NI-003, NI-004, N-005, NI-005, NI-003, NI-002, NI-003, NI-004, NI-005, NI-002, NI-003, NI-004, N-005.}

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.”\footnote{NI-001, NI-005, NI-002, NI-003, NI-004, N-005, NI-005, NI-003, NI-002, NI-003, NI-004, NI-005, NI-002, NI-003, NI-004, N-005.}

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.\footnote{NI-001, NI-005, NI-002, NI-003, NI-004, N-005, NI-005, NI-003, NI-002, NI-003, NI-004, NI-005, NI-002, NI-003, NI-004, N-005.}

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.\footnote{NI-001, NI-005, NI-002, NI-003, NI-004, N-005, NI-005, NI-003, NI-002, NI-003, NI-004, NI-005, NI-002, NI-003, NI-004, N-005.}

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.\footnote{NI-001, NI-005, NI-002, NI-003, NI-004, N-005, NI-005, NI-003, NI-002, NI-003, NI-004, NI-005, NI-002, NI-003, NI-004, N-005.}

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.\footnote{NI-001, NI-005, NI-002, NI-003, NI-004, N-005, NI-005, NI-003, NI-002, NI-003, NI-004, NI-005, NI-002, NI-003, NI-004, N-005.} 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.\footnote{NI-001, NI-005, NI-002, NI-003, NI-004, N-005, NI-005, NI-003, NI-002, NI-003, NI-004, NI-005, NI-002, NI-003, NI-004, N-005.} 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.\footnote{NI-001, NI-005, NI-002, NI-003, NI-004, N-005, NI-005, NI-003, NI-002, NI-003, NI-004, NI-005, NI-002, NI-003, NI-004, N-005.}

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,
sisters and other female or male Rohingya by Tatmadaw soldiers and other security forces.\footnote{FI-047, LI-052, LI-111, QI-114, LI-094, CI-109, FI-049, LI-094, FI-037 Y1-002.}  

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 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”.\footnote{LI-052.}  

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.\footnote{FI-047; FI-017; QI-108; CI-136.} A 55 year-old Rohingya man\footnote{FI-047.} 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.\footnote{CI-109, FI-047.} 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.\footnote{FI-047.}  

193. The sexual violence that Rohingya have been forced to see has left an indelible mark on the Rohingya social fabric.\footnote{NM-002, K-122, K-124 Confidential forensic report for the FFM, (9 June 2018).} For example, the Mission heard from Rohingya men who blamed themselves for failing to protect women and girls from their community.  

194. The Mission in 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.\footnote{NM-002, FI-047, Confidential forensic report for the FFM, (9 June 2018).}  

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.\footnote{https://www.apt.ch/content/files_res/jurisprudenceguide.pdf, p. 173. See also para. 47 in this report.} 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.\footnote{For a more detailed discussion, see para. 30} 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
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.\footnote{FI-037.} 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.\footnote{PM-010.} 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.\footnote{PM-010, PM-011.}

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.\footnote{PM-010, PM-011.} 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.\footnote{PM-010, PM-011, PM-012.} 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.\footnote{A/HRC/39/CRP.2, pp. 30-79; A/HRC/42/50 para. 61.} 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.\footnote{A/HRC/39/CRP.2, para. 333-354.} They are also particularly targeted for recruitment by EAOs.\footnote{Gender Profile for Humanitarian Action, and across the Humanitarian-Peace-Development Nexus (Rakhine, Kachin and Northern Shan Myanmar) January 2019.} As a result, women and children are further marginalized and displaced in a situation of humanitarian crisis with limited access to humanitarian relief.\footnote{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.}

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

200. Women bear the brunt of the conflict and humanitarian crisis.\textsuperscript{437} They care for the land and children left behind.\textsuperscript{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-N\textsuperscript{439} and KIA recruit women and girls, sometimes forcibly.\textsuperscript{440} They are often required to perform roles seen as ‘women’s work’, such as cooks, cleaners or nurses.\textsuperscript{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.\textsuperscript{442} The SSA-N recruits female soldiers but the Mission is unaware of the extent to which they are assigned combat functions.\textsuperscript{443} Combat experience has been a de facto prerequisite for high-ranking political positions in non-government controlled areas.\textsuperscript{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.\textsuperscript{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.\textsuperscript{446} The brides are often children and, even where adults, it is unclear whether they provide informed consent.\textsuperscript{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.\textsuperscript{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.\textsuperscript{449} The Mission did not receive information about sexual or gender-


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

\textsuperscript{438} PM-011.

\textsuperscript{439} Shan State Army-North.

\textsuperscript{440} PI-123, PI-027, DL-070.


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

\textsuperscript{443} PM-010.

\textsuperscript{444} PM-011, Jenny Hedstrom, Gender and Myanmar’s Kachin Conflict, New Mandala, (27 July 2015).

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

\textsuperscript{446} PM-010, PM-011.

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

\textsuperscript{448} PM-010, PM-011.

\textsuperscript{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.\footnote{LI-187.}

**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.\footnote{PI-110.} 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.\footnote{PM-010.}

205. The Mission received unverified reports of KIA men being tried by the KIA’s internal justice system for raping women in Kachin State.\footnote{PM-010.} 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.\footnote{PM-010.}

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.\footnote{PM-011, 2160.} When survivors decide to present their grievances before traditional community leaders, who are generally men, cases are commonly resolved by imposing “bunglat hkaa” or “blood money” to compensate the female victim for the harm committed and to restore peace in the community.\footnote{PM-007, 2161.}

207. The Mission was also informed that there are no female judges in EAO-run courts in northern Myanmar.\footnote{PM-007, 2161.} 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.\footnote{PM-011, 2160.}

208. Some EAOs still use the death penalty.\footnote{PM-010.} 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.\footnote{PM-011, 2160.}

**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

\begin{footnotes}
\footnotetext{LI-187.}{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.}
\footnotetext{PM-010.}{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.}
\end{footnotes}
committed sexual and gender-based violence with the same intent of targeting the civilian population.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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”.\textsuperscript{467} Other victims terminated their pregnancies using traditional abortifacients or through medical interventions, with a rise in requests after November 2017.\textsuperscript{468}

\textsuperscript{461} A/HRC/39/CRP.2, para. 370; PM-012.
\textsuperscript{462} EI-089, EI-031, EI-097.
\textsuperscript{463} NI-008, NM-002.
\textsuperscript{464} A/HRC/34/67, para. 56. Access is particularly limited in conflict areas and those highly militarized areas in Rakhine State.
\textsuperscript{465} United Nations International Children’s Emergency Fund “More than 60 Rohingya babies born in Bangladesh refugee camps every day” -- (17 May 2018).
\textsuperscript{467} NI-013, K-124.
\textsuperscript{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

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
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.\textsuperscript{481}

\section*{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.\textsuperscript{482} It found a case of rape that resulted in death caused by contracting HIV.\textsuperscript{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.\textsuperscript{484}

222. In several cases, women did not have access to medical attention after rape.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{488} 

"Why didn’t he just kill me, I would rather die than be raped. I should not live with this kind of shame."\textsuperscript{489}

224. In male-dominated societies of northern Myanmar, women are often held responsible for sexual and gender-based violence inflicted on them.\textsuperscript{486} 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."\textsuperscript{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”.\textsuperscript{492}
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.\footnote{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.\footnote{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.”\footnote{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.”\footnote{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.”\footnote{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.\footnote{498} Investigations into allegations of violations and crimes must be

\footnote{493}{PI-144, PI-166, PI-173.} \footnote{494}{GI-036, PI-070, PI-073, PI-074.} \footnote{495}{GI-036.} \footnote{496}{PI-069.} \footnote{497}{EI-090.} \footnote{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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."

234. An additional inadequacy is that the Constitution of Myanmar extends human rights protections to “citizens” only,\textsuperscript{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.


\textsuperscript{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)).

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

\textsuperscript{502} BM-007.

\textsuperscript{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.\textsuperscript{504} The right to the truth is recognized by the Human Rights Council\textsuperscript{505} and is an established principle of international human rights law.\textsuperscript{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.\textsuperscript{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.\textsuperscript{508} Governments are obliged to establish mechanisms to facilitate the revelation of the truth about gross human rights violations.\textsuperscript{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.\textsuperscript{510} Victims are entitled to full and effective reparations, entailing restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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

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\textsuperscript{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.

\textsuperscript{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”.

\textsuperscript{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 Yugoslav Republic of Macedonia, Grand Chamber Judgment, Application no. 39630/09, 13 December 2012.

\textsuperscript{507} Principles to Combat Impunity, principle 2.

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


\textsuperscript{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.

\textsuperscript{511} Basic Principles and Guidelines on the Right to a Remedy, principle 18.

\textsuperscript{512} Ibid., principle 21.

\textsuperscript{513} Ibid., principle 22.

\textsuperscript{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.  

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. 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. 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. 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. 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. 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
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%28%29%29.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).
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, Ql-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. In another case, Tatmadaw soldiers destroyed a survivor’s parents’ kitchen, beat her parents and took them away for forced labour for a week. 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. In this climate of fear, many survivors decided to leave the country after sexual violence.

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. 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.”

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. 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. This includes one case of a soldier sentenced to 10 years in prison with hard labour for the rape of a child Kachin State.

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.

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.

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

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546 PI-037.
547 PI-139, PI-140.
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”.

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

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.
TAB 9
Myanmar

NOT FREE

<table>
<thead>
<tr>
<th>Political Rights</th>
<th>14/40</th>
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<td>Civil Liberties</td>
<td>16/60</td>
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LAST YEAR’S SCORE & STATUS

30/100 Partly Free

Global freedom statuses are calculated on a weighted scale. See the methodology.
Status Change Explanation

Myanmar’s status declined from Partly Free to Not Free due to worsening conflicts between the military and ethnic minority rebel groups that reduced freedom of movement in the country.

Overview

Myanmar’s transition from military dictatorship to democracy has stalled under the leadership of the National League for Democracy (NLD), which came to power in relatively free elections in 2015. Since then, it has failed to uphold human rights and to prioritize peace and security in areas affected by armed conflict. The military retains significant influence over politics, and the country faces increased international pressure regarding a 2017 military operation that forced around 740,000 members of the Rohingya minority, a mostly Muslim ethnic group, to seek refuge in Bangladesh, where they remain. Journalists, demonstrators, and ordinary people risk legal charges and detention for voicing dissent.

Key Developments in 2019

- Tensions remained high in Rakhine State due to fighting between the ethnic Arakan Army and government forces. Fighting between the Myanmar military and ethnic minority rebels in Chin, Kachin, Karen, and Shan States increased during the year, displacing numerous civilians and limiting free movement. More than 900,000 Rohingya refugees from Myanmar’s Rakhine State remained in Bangladesh.
- In July, the International Criminal Court (ICC) chief prosecutor requested authorization to begin an investigation into alleged crimes against humanity against the Rohingya; it was granted in November.
- The UN Independent International Fact-Finding Mission on Myanmar released its final report in September, finding that the 600,000 Rohingya still in Rakhine State remain “under threat of genocide.”
• At the behest of The Gambia, the International Court of Justice (ICJ) initiated a case against Myanmar in November; Aung San Suu Kyi went to The Hague to personally defend the country against accusations of genocide in December.
• In May, following months of international pressure on their behalf, Reuters journalists Wa Lone and Kyaw Soe Oo—who were entrapped by police and subjected to an unfair trial in reprisal for their work—were released as part of a mass presidential amnesty and left the country shortly thereafter. However, dozens of other individuals continued to be prosecuted as a result of their expression or activism.

Political Rights

A. Electoral Process

A1 0-4 pts

Was the current head of government or other chief national authority elected through free and fair elections?

The legislature elects the president, who is chief of state and head of government. Military members of the legislature have the right to nominate one of the three presidential candidates, and the elected members of each chamber nominate the other two. The candidate with the largest number of votes in a combined parliamentary vote wins the presidency; the other two candidates become vice presidents, ensuring that a military nominee is always either president or vice president. Htin Kyaw, the NLD candidate, won the presidency in the 2016 election. He resigned in March 2018 and was replaced by Win Myint, one of NLD leader Aung San Suu Kyi’s aides.

Aung San Suu Kyi holds the powerful position of state counselor, a post akin to that of a prime minister, which was created for her in 2016 through legislation designed to circumvent provisions in the 2008 military-drafted constitution that had barred her
from running for president because members of her immediate family hold foreign citizenship.

The commander in chief of the armed forces holds broad powers, including control over security-related cabinet ministries, and is selected through an opaque process by the military-dominated National Defense and Security Council (NDSC).

**A2  o-4 pts**

Were the current national legislative representatives elected through free and fair elections?

2/4

The bicameral Assembly of the Union consists of the 440-seat lower House of Representatives and the 224-seat upper House of Nationalities. Representatives serve five-year terms. A quarter of the seats in both houses are reserved for the military and filled through appointment by the commander in chief of the armed forces.

International electoral observers concluded that the 2015 legislative polls were generally credible and that the outcome reflected the will of the people, despite a campaign period marked by anti-Muslim rhetoric, the exclusion of Muslim candidates, and the disenfranchisement of hundreds of thousands of Rohingya. The NLD, with 57 percent of the overall popular vote in a first-past-the-post system, won 135 of the 168 elected seats in the upper house, 255 of 330 elected seats in the lower house, and 496 of 659 seats across 14 state and regional legislatures. The military-backed Union Solidarity and Development Party (USDP) placed second with 28 percent of the popular vote, 12 seats in the upper house, 30 in the lower house, and 76 in the states and regions. The remaining seats were captured by ethnic minority and other parties as well as independents.

**A3  o-4 pts**

Are the electoral laws and framework fair, and are they implemented impartially by the relevant election management bodies?

TOP 1/4
Various features of the electoral framework undermine the democratic nature of the country’s elections. These include the military’s role in presidential nominations and appointments to both chambers of parliament, as well as rigid citizenship laws and excessive residency requirements that prevent large numbers of people from voting or standing for office.

The Union Election Commission (UEC), which is responsible for electoral administration, is empowered to adjudicate complaints against itself. Its members are appointed by the president and confirmed by the legislature, which has only limited authority to reject nominees. Election monitors have expressed concern about the potential for early voting procedures to facilitate fraud.

**B. Political Pluralism and Participation**

**B1  0-4 pts**

| Do the people have the right to organize in different political parties or other competitive political groupings of their choice, and is the system free of undue obstacles to the rise and fall of these competing parties or groupings? | 3/4 |

New political parties were generally allowed to register and compete in the 2015 elections, and only sporadic interference from government officials was reported. Ninety-one parties competed in the elections, and many of them convened meetings and large rallies throughout the country. Political parties have enjoyed relative freedom in their preparations for the 2020 elections, with several groups announcing their formation or merging to improve their competitive potential. Former junta leader and lower house speaker Shwe Mann announced the formation of a new political party in February 2019, as did former NLD member Thet Thet Khine in November.
However, competition remains skewed in part by the USDP’s systematic support from the military. The constitution contains a requirement that political parties be loyal to the state, which carries the potential for abuse. Laws allow for penalties, including deregistration, against political parties that accept support from foreign governments or religious bodies, or that are deemed to have abused religion for political purposes or disrespected the constitution.

**Score Change:** The score improved from 2 to 3 because political parties have enjoyed relative freedom in their preparations for the 2020 elections.

**B2  0-4 pts**

| Is there a realistic opportunity for the opposition to increase its support or gain power through elections? | 3/4 |

As evidenced by both the NLD’s overwhelming parliamentary victory in 2015 and losses in the 2018 by-elections, there is a realistic opportunity for the opposition to increase its support and gain power through competitive balloting. However, the military’s constitutional prerogatives, as well as its close ties to the USDP, limit the degree to which any opposition force can secure control over the executive or the legislature through elections.

**B3  0-4 pts**

| Are the people’s political choices free from domination by forces that are external to the political sphere, or by political forces that employ extrapoliical means? | 2/4 |

The results of the 2015 elections and subsequent transition talks suggested that the military had a waning ability or determination to influence electoral outcomes. Nevertheless, the military retains considerable power over political affairs, particularly in conflict areas where it has a dominant presence, and in 2015 the USDP reportedly benefited from pressure on public employees and students to attend rallies and cast ballots for the party.
In an effort to lessen direct pressure on members of the military and their families, in November 2019 the election commission announced a proposal to end the practice of casting ballots from inside military barracks.

**B4  0-4 pts**

| Do various segments of the population (including ethnic, religious, gender, LGBT, and other relevant groups) have full political rights and electoral opportunities? |
|---|---|
| 1/4 |

Members of minority groups face restrictions on their political rights and electoral opportunities. In particular, citizenship, residency, and party registration laws disadvantage ethnic and religious minorities, particularly the mainly Muslim Rohingya, the majority of whom were rendered stateless by the 1982 citizenship law. In 2015, under pressure from Buddhist nationalists, the president issued a decree revoking the temporary identification cards, or “white cards,” that had allowed Rohingya to vote in previous elections. A Constitutional Tribunal ruling later in 2015 then found that voting by white-card holders was unconstitutional. Nearly all Rohingya were consequently left off the voter rolls for the 2015 elections. In addition, a sitting Rohingya lawmaker from the USDP was barred from running in the polls. Under the 1982 citizenship law, only those who are descended from ethnic groups deemed to be indigenous to the country prior to 1823 are considered full citizens who can run for public office.

Muslims with citizenship documents were able to vote in 2015, but of more than 6,000 candidates on the final list, only about 28 were Muslim. No Muslim sits in the current parliament.

While ethnic parties generally fared poorly in the 2015 legislative elections, the Shan Nationalities League for Democracy (SNLD) and the Arakan National Party (ANP) performed well in their respective states.

Women remain underrepresented in the government and civil service, due largely to societal biases that discourage their political participation. Notwithstanding the
prominence of Aung San Suu Kyi, whose father led Myanmar’s independence struggle, few women have achieved ministerial-level appointments.

C. Functioning of Government

C1 0-4 pts

Do the freely elected head of government and national legislative representatives determine the policies of the government? 2/4

Although elected officials are able to set policy in some subject areas, the military is guaranteed control over the Defense, Home Affairs, and Border Affairs Ministries. The military also effectively controls at least six seats on the powerful 11-member NDSC. In December 2018, the NLD announced that the General Administration Department—fundamental to Myanmar’s public administration—would move from a military to a civilian-controlled ministry.

The 2008 constitution allows the military to dissolve the civilian government and parliament and rule directly if the president declares a state of emergency. The military also retains its veto on amendments to the constitution; despite this, in January 2019 the NLD announced the formation of a parliamentary committee on constitutional change. Governance is contested in some areas between the armed forces and ethnic minority rebel groups.

C2 0-4 pts

Are safeguards against official corruption strong and effective? 1/4

Despite government initiatives aimed at curbing official corruption, it remains rampant at both the national and local levels. An Anti-Corruption Commission (ACC), established in 2014 and reformed in 2017 with 12 members appointed by the president, has brought a number of cases against high-ranking officials, including charges against the former chief minister of Tanintharyi Region in March 2019.
Privatization of state-owned companies and other economic reforms in recent years have allegedly benefited family members and associates of senior officials. The government has ignored tax evasion by the country’s wealthiest companies and individuals.

### C3 0-4 pts

**Does the government operate with openness and transparency?**

The government does not operate with openness and transparency. A draft Right to Information Law was developed in 2016, and a new draft was released in December 2017, but the measure remained stalled in the parliament during 2019. A proposed law on access to government archives publicized in July included heavy financial penalties and potential prison time for unauthorized access to certain information.

Some information about the budget has been released in recent years, but it receives limited parliamentary scrutiny. The military owns an extensive network of “crony companies,” the revenues from which enable it to avoid accountability and public scrutiny and engage in human rights violations, according to a UN report released in August 2019.

### ADDITIONAL DISCRETIONARY POLITICAL RIGHTS QUESTION

**Is the government or occupying power deliberately changing the ethnic composition of a country or territory so as to destroy a culture or tip the political balance in favor of another group?**

-4

The central government has long used violence, displacement, and other tactics to alter the demographics of states with ethnic unrest or insurgencies. The Rohingya in Rakhine State have faced particularly harsh restrictions for decades, including limits on family size and the ability and right to marry, the denial of legal status and social services, and disenfranchisement and loss of citizenship. Human rights experts and the United Nations have labeled the abuses against the Rohingya as crimes against
humanity and ethnic cleansing, and some analysts have argued that they constitute either genocide or a precursor to genocide.

Repression of the Rohingya escalated in 2017, after rebels from the Arakan Rohingya Salvation Army (ARSA) attacked multiple police posts with rudimentary weapons. The military launched a severe counteroffensive against Rohingya communities across the northern part of the state, leading to reports of torture, rape, indiscriminate killings, and the burning of villages, worsening already-dire humanitarian conditions and causing an outflow of 740,000 Rohingya refugees to Bangladesh. Those refugees joined another 200,000 who had crossed into Bangladesh to escape previous rounds of persecution. Aung San Suu Kyi has drawn sharp criticism from international observers for her reluctance to explicitly condemn state violence against Rohingya civilians. The two governments have sporadically announced plans for a repatriation system to return refugees to Myanmar—in August 2019 they agreed on a list of 3,450 Rohingya to be returned out of a possible list of 22,000 identified by Bangladeshi authorities—but as conditions in Myanmar remain dire, these plans are unlikely to be implemented.

The UN Independent International Fact-Finding Mission on Myanmar released its final report in September 2019, finding that living conditions for the 600,000 Rohingya still in Rakhine State have worsened and they remain “under threat of genocide.” In July 2019, the ICC chief prosecutor requested authorization to begin an investigation into alleged crimes against humanity, including deportation, against the Rohingya, which was granted in November. At the behest of The Gambia, the ICJ initiated a case against Myanmar in November; Aung San Suu Kyi went to The Hague to personally defend the country against accusations of genocide in December.

Civil Liberties

D. Freedom of Expression and Belief
D1  0-4 pts

Are there free and independent media?

1/4

Media freedom is restricted. Existing laws allow authorities to deny licenses to outlets whose reporting is considered insulting to religion or a threat to national security, and the risk of prosecution under criminal defamation and a range of other restrictive laws encourages self-censorship. While internet access has expanded in recent years, online activity is also subject to criminal punishment under several broadly worded legal provisions, and an increasing number of journalists and social media users faced defamation and incitement cases filed by the military and politicians during 2019, according to local watchdog Athan. Separately, in June, authorities shut down the internet in parts of Rakhine and Chin states, citing security concerns, leading to a months-long blanket blackout of digital services and information flows.

Surveillance of journalists by the military-controlled Home Affairs Ministry remains a common practice, and reporters covering sensitive topics risk harassment, physical violence, and imprisonment. In the most prominent case, Wa Lone and Kyaw Soe Oo, two Reuters journalists who had investigated a 2017 massacre of Rohingya at Inn Din village in Rakhine State, were arrested after a police set-up; after a deeply flawed trial, they were sentenced in September 2018 to seven years in prison for violating the Official Secrets Act. The Supreme Court upheld the verdict on appeal in April 2019, but in early May, after 511 days behind bars, the pair were freed as part of a mass presidential amnesty of prisoners.

D2  0-4 pts

Are individuals free to practice and express their religious faith or nonbelief in public and private?

1/4

The constitution provides for freedom of religion. It distinguishes Buddhism as the majority religion, but also recognizes Christianity, Islam, Hinduism, and animism. The
government occasionally interferes with religious assemblies and attempts to control the Buddhist clergy. Authorities discriminate against minority religious groups in practice, refusing to grant them permission to hold gatherings and restricting educational activities, proselytizing, and construction and repair of houses of worship.

Anti-Muslim hate speech and discrimination have been amplified by social media, and by some state institutions and mainstream news websites. The officially illegal Buddha Dhamma Parahita Foundation, formerly known as Ma Ba Tha, agitates for the protection of Buddhist privileges, urges boycotts against Muslim-run businesses, and disseminates anti-Muslim propaganda; respected mainstream monks such as Sitagu Sayadaw have also allegedly stoked religious hatred. Reports have detailed systematic discrimination against Muslims in obtaining identity cards, as well as the creation of “Muslim-free” villages with the complicity of officials.

**D3** 0-4 pts

| Is there academic freedom, and is the educational system free from extensive political indoctrination? | 1/4 |

Political activity on university campuses is generally restricted, and universities are not autonomous. Student unions are discouraged, have no formal registration mechanisms, and are viewed with suspicion by authorities. The Ministry of Education issued a directive in May 2018 that required students to get permission from their universities and the ministry itself to hold events on campus, obliging them to submit names and biographies of speakers, titles of public talks, and the number of people expected to attend. In February 2019, seven student union leaders at Yadanabon University in Mandalay received five-month sentences for organizing peaceful protests at which participants demanded increased security at their campus.

**D4** 0-4 pts

| Are individuals free to express their personal views on political or other sensitive topics without fear of surveillance or retribution? | 2/4 | TOP |
Private discussion and personal expression are constrained by state surveillance and laws that inhibit online speech. Dozens of defamation cases involving online commentary have been filed under Section 66(d) of the 2013 Telecommunications Law, which includes bans on online activity deemed to be threatening or defamatory.

Social media users and those quoted in the media have faced prosecution for expressing their views on particular topics, particularly when they entail criticism of the authorities. In August 2019, prominent filmmaker Min Htin Ko Ko Gyi, who was arrested in April and has serious health concerns, was sentenced to a year in prison on charges of “undermining the military” for a Facebook post. Members of the Peacock Generation satirical poetry troupe were detained in April for performances posted on Facebook that were critical of the military, and five were sentenced in October to a year in prison.

**E. Associational and Organizational Rights**

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<tr>
<th>E1</th>
<th>0-4 pts</th>
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<tr>
<td><strong>Is there freedom of assembly?</strong></td>
<td>2/4</td>
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Unauthorized demonstrations are punishable with up to six months in prison under the Peaceful Assembly and Peaceful Procession Law; a variety of other vaguely defined violations can draw lesser penalties. Among a range of cases in 2019, two Kachin youth activists were sentenced to 15 days in jail under the law in September. Protesters no longer have to ask permission for assemblies, but they do need to notify authorities 48 hours in advance, and local officials often treat this process as a request for permission in practice. Separately, a blanket ban on protests in 11 townships of central Yangon has been in place since November 2017, though it is selectively enforced.
Authorities occasionally employ excessive force against peaceful protestors; in February 2019, police fired rubber bullets into a crowd demonstrating against a statue in Kayah State, injuring around 10; dozens of others were arrested and charged with incitement and defamation in protests earlier that month.

**E2 0-4 pts**

<table>
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<tr>
<th>Is there freedom for nongovernmental organizations, particularly those that are engaged in human rights- and governance-related work?</th>
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Local NGOs are generally able to comment on human rights issues and engage in governance work, although some barriers to their interaction with government ministries have increased. The Home Affairs Ministry issued implemented regulations in 2015 that require NGOs to obtain government approval prior to registration.

**E3 0-4 pts**

<table>
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<tr>
<th>Is there freedom for trade unions and similar professional or labor organizations?</th>
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A ban on independent trade unions was lifted in 2011, and union activity has taken root in Myanmar. Strikes by workers protesting labor conditions or the denial of rights take place regularly, including a protest by around 300 garment factory workers in September 2019. However, trade unionists continue to face retaliation for their efforts, and legal protections against abuse by employers are weak.

**F. Rule of Law**

**F1 0-4 pts**

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<th>Is there an independent judiciary?</th>
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https://freedomhouse.org/country/myanmar/freedom-world/2020
The judiciary is not independent. Judges are nominated by the president, and lawmakers can reject the choice only if it is clearly proven that the nominee does not meet the legal qualifications for the post. The courts generally adjudicate cases in accordance with the government’s interests, particularly in major cases with political implications.

**F2  0-4 pts**

| Does due process prevail in civil and criminal matters? | 1/4 |

Administrative detention laws allow individuals to be held without charge, trial, or access to legal counsel for up to five years if they are deemed a threat to state security or sovereignty.

Although the parliament in 2016 repealed several provisions used to imprison dissidents, numerous individuals who are considered political prisoners continue to be held in the country. According to the Assistance Association for Political Prisoners (Burma), as of December 2019 there were a total of 74 political prisoners serving sentences in Myanmar, and 164 in pretrial detention.

**F3  0-4 pts**

| Is there protection from the illegitimate use of physical force and freedom from war and insurgencies? | 0/4 |

Peace efforts by the NLD government remained stymied in 2019 by military offensives against various ethnic rebel groups, particularly in Shan and Kachin States, as well as by attacks from such groups against security forces and continued divisions among signatories and nonsignatories to a 2015 national cease-fire agreement. NLD’s own approach to dealing with ethnic minorities has also been faulted for inhibiting peace efforts.

Indiscriminate shelling, extrajudicial killings, forced disappearances, and other abuses by the military continue to be reported, while rebel groups engage in forced
disappearances and forced recruitment. Areas in the north remain riddled with landmines planted by both rebels and the army. Authorities at times prevent aid groups from reaching populations affected by violence. Civilians continued to flee fighting in Shan, Kachin, Karen, and Chin States in 2019, leaving tens of thousands displaced at year’s end. An intensification of military action in northern Rakhine State, in response to attacks on police posts by the ethnic Rakhine Arakan Army (AA) in January 2019, led to the killing of dozens and displacement of more than 30,000; the AA has also conducted indiscriminate attacks on civilians.

Prisons in Myanmar are severely overcrowded, and conditions for inmates are sometimes life-threatening.

F4  0-4 pts

Do laws, policies, and practices guarantee equal treatment of various segments of the population? 0 / 4

Some of the country’s worst human rights abuses, commonly committed by government troops, are against ethnic and religious minorities. The government’s failure to protect victims, conduct investigations, and punish perpetrators is well documented.

The 1982 Citizenship Law does not allow for anyone who entered the country or is descended from someone who entered the country after 1948 to become a full citizen. Naturalization of spouses is only allowed if the spouse holds a Foreigner’s Registration Certificate from before the law’s enactment.

In addition to conflict-related violence, women are subject to discrimination in employment, against which there are no explicit legal protections. A number of laws create a hostile environment for LGBT+ residents. Same-sex sexual conduct is criminalized under the penal code, and police subject LGBT+ people to harassment, extortion, and physical and sexual abuse. In June 2019, a gay librarian committed suicide following harassment from university colleagues, brining renewed attention to societal discrimination against LGBT+ individuals.
G. Personal Autonomy and Individual Rights

G1 0-4 pts

Do individuals enjoy freedom of movement, including the ability to change their place of residence, employment, or education? 1/4

Freedom of internal travel is generally respected outside of conflict zones for Myanmar citizens. However, Myanmar’s large population of stateless residents have significant restrictions on their travel, particularly the 600,000 Rohingya who remain in Rakhine State who are confined to camps and villages, and subject to arrest and detention for domestic travel attempts. Due to an intensification of the country’s internal armed conflicts in recent years, internal travel in a number of states has been further restricted.

Numerous exiled activists who returned to the country after the transition to partial civilian rule have experienced substantial delays and evasion from government authorities when attempting to renew visas and residency permits. Illegal toll collection by state and nonstate actors remains a problem in some areas.

Score Change: The score declined from 2 to 1 due to an intensification of the country’s internal armed conflicts in recent years, which has further restricted internal travel in the affected areas and for certain populations.

G2 0-4 pts

Are individuals able to exercise the right to own property and establish private businesses without undue interference from state or nonstate actors? 1/4

Contentious disputes over land grabbing and business projects that violate human rights continued in 2019. Myanmar’s property-transfer laws prohibit transfers to or
from a foreigner except in certain state-approved cases of inheritance, and require registration of foreign-owned property. Stateless residents, including the Rohingya, cannot legally buy or sell property or set up a business.

Instances of forced eviction and displacement, confiscation, lack of sufficient compensation, and direct violence against landholders by state security officials abound. Court cases are frequently brought against farmers for trespassing on land that was taken from them. A 2018 amendment to the Vacant, Fallow, and Virgin Lands Management Law required anyone living on land thus categorized (about 30 percent of Myanmar’s land, predominantly in ethnic states and regions) to apply by March 2019 for a permit to continue using it; violators can also face two-year prison terms.

Multiple sources continued to report that Rohingya land and property have been either razed, confiscated, appropriated, or built on, often with the direct involvement of the military, and sometimes under the guise of development assistance.

**G3 0-4 pts**

| Do individuals enjoy personal social freedoms, including choice of marriage partner and size of family, protection from domestic violence, and control over appearance? | 1/4 |

Men and women formally enjoy equal rights on personal status issues, though there are restrictions on marriages of Buddhist women to non-Buddhist men. Laws that might protect women from domestic abuse, workplace sexual harassment, and rape are weak and poorly enforced, and such violence is an acute and persistent problem. The army has a record of using rape as a weapon of war against ethnic minority women, and security personnel typically enjoy impunity for sexual violence.

**G4 0-4 pts**

| Do individuals enjoy equality of opportunity and freedom from economic exploitation? | TOP 1/4 |

https://freedomhouse.org/country/myanmar/freedom-world/2020
Human trafficking, forced labor, child labor, and the recruitment of child soldiers all remain serious problems in Myanmar, and the government’s efforts to address them are inadequate. Child soldiers are enlisted by the military and ethnic rebel groups, which also recruit civilians for forced labor. Various commercial and other interests continue to use forced labor despite a formal ban on the practice since 2000. Trafficking victims include women and girls subjected to forced sex work and domestic servitude, as well as the expanding practice in several ethnic states of being sold as brides to men in China. People displaced by conflict are especially vulnerable to exploitation.
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TAB 10
HIV and AIDS in Myanmar

**Myanmar (2019)**

- **240,000** people living with HIV
- **0.7%** adult HIV prevalence (ages 15-49)
- **10,000** new HIV infections
- **7,700** AIDS-related deaths
- **77%** adults on antiretroviral treatment*
- **73%** children on antiretroviral treatment*

*All adults/children living with HIV

Source: UNAIDS Data 2020

**KEY POINTS**

- Although sustained and focused efforts to reach key populations have led to major reductions in HIV infections between 2010 and 2017, Myanmar continues to display a high incidence of new HIV infections.

- People who inject drugs are the group most affected by HIV in Myanmar. This is largely due to the endemic use of drugs, which are farmed, manufactured and distributed, in the northern regions of the country.

- Although access to HIV treatment is expanding, the country's low financial investment in public health appears to be a major barrier to the success of HIV programmes.

Explore this page to find out more about populations most affected by HIV in Myanmar, testing and counselling, prevention programmes, antiretroviral treatment availability, civil society's role, HIV and TB coinfection, barriers to the response, funding and the future of HIV in Myanmar.

Around 240,000 people were living with HIV in Myanmar (Burma) in 2019. In the same year, an estimated 7,700 people died from AIDS-related illnesses. The increased antiretroviral treatment coverage has seen the number of people dying of AIDS-related illnesses fall by a third between 2010-2018. The number of new HIV infections has also fallen by a similar proportion during this time.

After Thailand, Myanmar has the second-highest HIV prevalence in Southeast Asia at 0.7%. Myanmar is one of 35 countries that together account for 90% of new infections globally. The
severity of the country’s HIV epidemic resulted in UNAIDS classifying it as a ‘fast-track’ country in 2014 in order to help catalyse the rapid scale-up of its HIV prevention, testing and treatment programmes, although progress in these areas has been uneven.5

In 2018, Myanmar reported 10,000 new infections.6 Although this number remains steady compared to the years before, observations show the annual rate of infections is no longer declining at the same rate it did between 2000 and 2010.7

Although official testing, treatment and viral suppression target data for UNAIDS’ 90-90-90 targets is incomplete, current estimates suggest around 76% of all people living with HIV in Myanmar were on treatment as of 2019. Of those on treatment, 95% are virally suppressed, equivalent to 72% of all people living with HIV.8

Myanmar’s HIV epidemic is concentrated among certain key populations, most notably people who inject drugs (sometimes referred to as PWID), but also men who have sex with men (sometimes referred to as MSM), transgender people and sex workers. More than 70% of new infections in the country each year occur among these groups.9 Approximately 65% of all key populations are estimated to be living in five regions and states (Mandalay, Yangon, Sagaing, Kachin and Shan North), largely in urban areas, which is where the majority of new infections occur.10

Key affected populations in Myanmar

People who inject drugs (PWID)

In 2018, 93,000 people in Myanmar were estimated to inject drugs, 19% of whom were living with HIV. This makes people who inject drugs the population group most affected by HIV in the country.11
Analysis suggests that HIV infection occurs at an early age among people who inject drugs in Myanmar, with 17% of injecting drug users under the age of 25 testing positive. These findings have bolstered the case for developing more youth-targeted programmes.

Although urban areas in Myanmar report the highest HIV prevalence rates in the country, prevalence is also high in the more rural northern and north-eastern areas where injectable opium is produced and its use is endemic. Distribution of drugs from this region has also contributed to new HIV infections developing in more remote areas of the country, providing additional challenges to expanding the coverage of harm reduction and HIV services.

Only around a third (34%) of people who inject drugs have access to HIV prevention programmes. As a result, under a quarter of injecting drug users (22%) are estimated to use condoms and only a third (28%) of people who inject drugs who are HIV positive are aware of their status.

Men who have sex with men (MSM)

In 2018, 6.4% of gay men and other men who have sex with men in Myanmar were estimated to be living with HIV.

Rates are particularly high in cities and urban areas such as Yangon, where HIV prevalence is estimated to be 26.6% among this population group. This the highest recorded prevalence rate for this group in the Southeast Asia region, even higher than Bangkok in Thailand where prevalence is estimated to be 24.4%.

Myanmar’s National Strategic Plan on HIV and AIDS 2016-2020 recognises that these rates are alarming and has presented a plan to scale up targeted services for men who have sex with men in geographical locations where HIV prevalence is high.

Stigma and discrimination continues to contribute to low levels of access to HIV services, with between half and three quarters of men who have sex with men estimated to have taken an HIV test in 2015. Consequently, in 2017, just over half (52.4%) of men who have sex with men who were living with HIV were aware of their status.

Most recent statistics suggest 77% of men who have sex with men use condoms. However, male-to-male sexual dynamics are complex in Myanmar, and risk behaviours can vary between self-categorised groups of men who have sex with men. Although Myanmar has a relatively visible LGBT community, existing laws criminalise same-sex behaviour and keep many people hidden from the reach of healthcare providers. Moreover, a lack of legal gender-identity recognition in the country often results in transgender people being wrongly categorised as men who have sex with men and provided with inappropriate HIV services.

These observations have resulted in the National Strategic Plan including a more appropriate framework for effectively responding to the needs of gay men, men who have sex with men and transgender people. By 2020 the new strategy aims to reach more ‘non-disclosed’ men who have sex with men by expanding services through innovative social media activity, test-and-treat campaigns and proactive community-led outreach, linked to services that are friendly towards gay men, men who have sex with men and transgender people.
Sex workers

In 2018, HIV prevalence among sex workers stood at 5.6%. Around 45% of HIV positive sex workers were aware of their status.\textsuperscript{24}

In Myanmar’s major cities, HIV prevalence among sex workers is much higher, estimated at 24.6% and 13.7% in Yangon and Mandalay respectively, representing some of the highest HIV prevalence locations in the Southeast Asia and Pacific region.\textsuperscript{25}

Sex work is criminalised in Myanmar and so presents a major obstacle to scaling up HIV and other essential healthcare services for this group. Sex worker networks and civil society organisations report police-related violence and abuse towards sex workers, something that deters many sex workers from accessing HIV services, including HIV testing and lifesaving antiretroviral treatment. Incarceration can cause sex workers living with HIV to disrupt treatment, which can result in drug resistance, treatment failure and the progression to advanced HIV infection or AIDS.\textsuperscript{26}

The criminalisation of sex work also worsens stigma and discrimination towards them, which also drives sex workers away from healthcare services.\textsuperscript{27}

Young people

In 2018, young people (aged 15-24 years) accounted for 26% of new infections in the region but a higher proportion in Myanmar at around 55%.\textsuperscript{28}

Because Myanmar’s HIV epidemic is concentrated among certain groups, 15 to 24-year-olds from
these key populations are most affected. For example, HIV prevalence among young men who have
sex with men is five times that of the general population. Social norms concerning same-sex
relationships and the criminalisation of homosexuality, coupled with taboos regarding young people’s
sexuality, combine to result in poor access to essential HIV services and information.29

As a result of a lack of access to HIV and sexual health services, young people from key populations
are at high risk of acquiring HIV and other STIs. A study with young female sex workers and young
men who have sex with men based in Yangon and Mandalay found 30% had a sexually transmitted
infection (STI) and around 40% had accessed treatment. Those that sought treatment did so from
NGO-run clinics rather than public health facilities as they were seen as more welcoming. Adolescent
men who have sex with men and brothel-based young sex workers were found to be the least likely to
access any form of sexual health service. 30

Migrants

Myanmar is home to over 100 different ethnic groups and shares its borders with two of the most
populated countries in the world, India and China, in addition to Bangladesh, Laos and Thailand.

The last census (2014) estimated that over 11 million residents (approximately 20% of the
population) have migrated internally or externally.31 Some critics are concerned that increasingly
open borders make Myanmar more vulnerable to HIV incidence with the increase of migrants coming
from bordering high-prevalence countries.32

As HIV testing is not a condition for entry, work or residence in Myanmar, there is little comprehensive
information available on HIV prevalence or risk behaviours associated with the migrant population.
Nevertheless, in 2014, the UN’s International Organization for Migration’s data project found that 18%
of people identifying as migrants in Mon and Kayin states were HIV positive – although it is difficult to
assess if the point of infection happened within the country.33 However, it is broadly assumed that
migrants might face residency and social restrictions that limit their access to HIV programming
services, as well as other forms of healthcare.34

Since 2014, HIV awareness campaigns that target large migrant populations have been created to
address these issues.35 NSP III proposes developing specific packages for people near transit points
in addition to cross-border referral mechanisms and agreements to strengthen access to health
services in destination countries.36

Since August 2017 almost a million Rohingya people have migrated to neighbouring Bangladesh,
fleeing from mass atrocities in Myanmar, their homeland. Most are now living in the Cox’s Bazar
district of Bangladesh where they are particularly vulnerable to HIV and other STIs due to multiple and
overlapping forms of discrimination and abuse.37 Sexual violence and exploitation is common and the
area is also a drug trafficking route, meaning heroin is widely available, all of which increases
people’s vulnerability to HIV. As of March 2019, around 320 in the Cox’s Bazar refugee camp had
been diagnosed with HIV and it is likely more people are living with HIV but are undiagnosed. Of those
diagnosed, 277 are on treatment and 19 have died.38

HIV testing and counselling (HTC) in Myanmar

There has been no new behavioural data on HIV testing among the general population in Myanmar
since 2007 when it was recorded at 11.3%.39 As such, there is an urgent need to strengthen the
involvement of community networks in the planning and monitoring of testing services.40

The National Strategic Plan aims to promote early HIV testing and counselling, in line with World Health Organization (WHO) recommendations. It also aims to close the testing gap by prioritising high HIV prevalence areas and decentralising HIV counselling and testing so that it is provided by the local public health sector.41

Current strategies to increase HIV testing include mobile and community-based testing in places where people from key populations can be found, working with people from key populations to become peer educators, who then link other people from their communities to NGO-run testing and treatment services.42 Provider-initiated HIV testing, whereby medical professionals offer HIV testing to patients who they deem to be at risk, has also been integrated into general practices, antenatal clinics and tuberculosis services.43

HIV self-testing is not yet widely available but a self-testing policy is being developed, and a handful of self-testing trials focusing on transgender women and men who have sex with men have been conducted.44

CASE STUDY: Attitudes towards self-testing for out-of-reach key affected populations in Myanmar

A 2017 study by the Johns Hopkins University School of Public Health and the International HIV/AIDS Alliance in Myanmar conducted focus groups and in-depth interviews with transgender women and gay men in Myanmar to examine their attitudes towards HIV self-testing.

The confidentiality and privacy that comes with self-testing for HIV were seen as significant benefits by both groups. People taking part in the study saw self-testing as a way to avoid uncertainty and worry about who will be there when seeking facility-based HIV testing, as it can be done at home. The fact that self-testing is conducted through a saliva-based test and is therefore pain-free was also seen as an advantage.

Although participants were generally optimistic about self-testing some concerns were raised, particularly around the lack of counselling associated with self-testing. They feared this might lead to poor mental health outcomes among those who test positive, which could prevent them from disclosing their status and linking to care.

The fact that self-testing is conducted orally also raised concerns. Participants highlighted how this may lead people to incorrectly believe that saliva can transmit HIV, which could further stigmatise people living with HIV. The use of community education, peer networks, social media and mass media to inform people about self-testing was suggested by participants as a way to combat this.

Concerns around the introduction of compulsory self-testing by employers or others in positions of power, which could result in further stigma, were also raised.45
HIV prevention programmes in Myanmar

Myanmar’s National Strategic Plan sets the target of reaching 90% of sex workers, men who have sex with men, people who inject drugs, prisoners and migrants with combination prevention services by 2020. Unfortunately, current data suggests this target will be missed.46

The strategy sets out a number of key focus areas to reduce new infections:

- expanding combination prevention interventions for priority populations
- maximising HIV testing and linkages to treatment for priority populations
- integrating service delivery into maternal and child health and sexual and reproductive health
- providing pre-exposure prophylaxis (PrEP) for at-risk populations
- working towards the elimination of mother-to-child transmission of HIV.47 A number of these focus areas are examined in more detail below.

Harm reduction

Research consistently shows that harm reduction programmes, such as needle and syringe exchange programmes (NSPs) and opioid substitution therapy, are the most effective way of reducing the spread of HIV among people who inject drugs.48 49

Myanmar has one of the best NSPs in the region, and has increased the number of needle and syringe exchanges available in recent years. In 2018, around 270 NSP sites were operating in the country, providing an average of 350 clean needles and syringes for every person who injects drugs. As a result, the use of sterile injecting equipment is high, with around 90% of people who inject drugs reporting that they used clean equipment at last injection.51

However, because the scale of drug use in Myanmar is particularly extensive, existing harm reduction services are failing to meet the escalating demand by people who inject drugs.52 In particular, OST sites need to be scaled up. Currently only around 50 OST sites are in operation, reaching around 17% of people who inject drugs.53 54

The government has recognised the need to scale up its commitment to strengthening harm reduction services, allocating an additional US$1 million (as part of the US$11 million domestic funding commitment towards HIV services) for methadone as a form of opioid substitution in 2016.55 However, critics suggest that this sum will not be enough to curtail the growing dependency on drug use within the country.56

People ask us why we are helping people who use drugs, since they think these people are not good. People who use drugs are also human. If we, the community, do not change how we think and our attitudes towards them, our region and our country will not be able to develop.
- Saw Yu Htwe, AIDS Committee member in Kachin state where two out of five people who inject drugs are estimated to be living with HIV.57

Preventing mother-to-child transmission (PMTCT)

HIV counselling and testing services for all pregnant women have been integrated into antenatal services across the country, which presents a much more successful model of implementation compared to other countries within the region.58 59 As a result, 95% of pregnant women took an HIV test in 2018, and 80% of those testing HIV positive accessed treatment.60

Routine monitoring continues to be an area of weakness – as it is across most testing, prevention and treatment services in Myanmar. Only a quarter of infants who had been exposed to HIV were tested within the first six weeks of life (known as early infant diagnosis).61 Myanmar’s National Strategic Plan suggests that there is a critical need for better collaboration between health services to integrate early infant diagnosis into post-birth care, in order to establish a fully comprehensive PMTCT cascade.62

Pre-exposure prophylaxis (PrEP)

Although Myanmar has included PrEP in the National Strategic Plan, the country has no PrEP programmes in place.

A 2016 study carried out to test the acceptability of PrEP among men who have sex with men in Myanmar found 39% of participants would be willing to use it, with the cost of PrEP a key barrier to access. The study also suggested that, because sex between men is illegal in Myanmar, it is unlikely that men who have sex with men would access PrEP from government-run clinics.63
Antiretroviral treatment availability (ART) in Myanmar

According to UNAIDS, in 2018 70% of adults and 80% of children living with HIV in Myanmar were on antiretroviral treatment (ART). It is worth noting that this figure has more than doubled (from 24%) in 2012, and has seen the country achieve higher treatment coverage than the regional average (54%). As a result, the country has witnessed the number of AIDS-related deaths fall by 30% since 2010, to 7,800 in 2018 as ART coverage has expanded.

Despite men being more affected by HIV than women in the country, HIV positive women in Myanmar are more likely to be on treatment than their male counterparts. In 2018, 81% of all women living with HIV in the country were on treatment, compared to 63% of men. This is largely due to Myanmar’s successful PMTCT programme.

For those on treatment, HIV treatment services are generally of good quality, with 86% of people starting ART still engaged in care after 12 months (as of 2018). Overall, 92% of people on treatment were virally suppressed in 2018, meaning they are likely to be in good health and will be unable to transmit HIV to others. High levels of viral load suppression have particularly been achieved among women. Due to a continued lack of access to testing and treatment for many HIV positive people, this equates to 65% of all people living with HIV in Myanmar being virally suppressed overall.

Nevertheless, despite improvements in treatment access, there is limited availability of viral load testing and HIV drug resistance testing for people on first-line as well as second-line ART.

The testing gap also creates a situation in which many people access treatment at a late stage of infection. For example, a study of around 2,600 people living with HIV in Yangon found 77% began treatment with HIV categorised at WHO stage 3 or 4.

Historically, the majority of healthcare facilities in Myanmar have been privately funded or supported by NGOs. It is also estimated that at least 25% of people in Myanmar live below the poverty line and that those living with HIV may struggle to source the funds for necessary ARV treatment. As such there have been strong arguments for a transition from private and NGO-run services to public sector delivery, with the hope of making treatment more readily available to vulnerable groups across the country.

CASE STUDY: Long-term outcomes of second-line ART in Myanmar

Second-line ART has been available in Myanmar since 2008, however until recently there has been no published data about the outcomes of patients on second-line treatment. A 2017 study followed a cohort of 824 adults and adolescents over seven years in which time 11% of patients died and the overall incidence rate of unfavourable outcomes of those who moved onto second-line treatment was 7.9%.

Those who fared worse on second-line treatment included patients with a history of injecting drug use, those lost to follow-up and those with a higher baseline viral load. Comparatively, patients with higher baseline CD4 counts, those who had taken first-line ART at a private clinic or received ART at decentralised sites all seemed to have a lower risk of unfavourable outcomes.
Though these results indicate relatively good long-term outcomes of patients on second-line ART treatment, there was a strong emphasis on making viral load monitoring routine and third-line ART drugs available for cases of virological failure.73

Civil society’s role and HIV in Myanmar

The legacy of military rule and restrictions on the financing and operations of civil society in Myanmar hinder efforts to provide support to people living with HIV and populations at risk of HIV. In 2018 the government increased its use of the law to arrest and imprison people for peaceful expression deemed critical of the government or military.74

Despite this, civil society continues to grow and is playing an increasingly important part in the country’s HIV response. The Myanmar Positive Group-MPG, a national network of people living with HIV, promotes networking between individuals and self-help groups, works to reduce stigma and discrimination, and advocates for peoples’ rights to access treatment and quality services. In 2015, there were 177 networked self-help groups of people living with HIV; there was no update as of December 2019.

HIV and tuberculosis (TB) coinfection in Myanmar

Myanmar is one of 14 countries that carry a high burden of TB/HIV coinfection (of 30 countries globally) as well as multi-drug resistant TB and TB infection.75

In 2018, 3,700 people with HIV died as a result of TB. In the same year, 15,000 people with HIV developed active TB, of whom 10,500 were diagnosed or notified.76 In 2017, 12% of people beginning treatment for HIV also had active TB.77 TB preventative therapy remains widely unavailable in Myanmar, with only 17% of people on HIV treatment accessing it as of 2017.78

In 2016 the WHO and UNAIDS carried out an in-depth review of the status of tuberculosis and HIV coinfection in Myanmar. The key recommendations of the review, which was shared with Myanmar’s Ministry of Health, focused on the importance of strengthening collaboration between HIV and TB national programmes, through improved information sharing, joint procurement and adequate deployment of human resources.

Furthermore, increasing and decentralising the number of health facilities which provide joint screenings and treatment of patients for HIV and TB at all levels of the health system (through scaling up of services and employing mobile teams, particularly in high burden areas) are central to ensuring that these diseases and coinfections are detected early, properly treated and further reduced.79

HELP US HELP OTHERS

Avert.org is helping to prevent the spread of HIV and improve sexual health by giving people trusted, up-to-date information.
Barriers to the HIV response in Myanmar

Financial barriers

Total health expenditure in Myanmar (2-2.4% of its GDP) is among the lowest in the Southeast Asia and Western Pacific regions, which goes some way to explaining the country’s HIV incidence. Likewise, an analysis of countries from different regions, and with varying epidemic patterns, found that Myanmar was among the countries where funding of effective and focused primary HIV prevention was insufficient.

Structural barriers

There are plans to move HIV treatment services to government-run facilities but as yet critical supply chain and human resource needs that would make such a transition viable have not been addressed. This means that key affected populations, such as people who inject drugs, are being left behind in terms of service reach.

As well as these limitations, service delivery and supply chains are set up to operate separately within the healthcare system. This means human resources such as community health workers and service delivery at health facilities remain distinct from one another.

Legal barriers for sex workers

Sex work in Myanmar is illegal and fear of prosecution, harassment and blackmail all reduce access to services such as HIV testing. In 2016, only 50% of sex workers in the country accessed testing. Until 2011, even carrying a condom could be used as circumstantial evidence if a sex worker was detained by the police. More recent records from 2017 indicate that around 80% of sex workers use condoms with clients.

One day, the police detained me and I had to pay a MMK 50,000 fine for my release next day. If I did not pay, I could be detained, sued and jailed.

- Sex worker, Myanmar
Legal penalties for commercial sex work are just one of many social and structural barriers – alongside cultural stigma, discrimination and violence – preventing sex workers from accessing necessary HIV prevention and treatment services.87

Same-sex sexual activity is also illegal, punishable with up to 14 years in prison.88 In addition, a host of other laws are used to persecute people for their sexual orientation, gender identity or expression, helping to create a hostile environment for men who have sex with men and other LGBT people. Many LGBT people are further isolated by physical, verbal and sexual assault they experience at the hands of police, health workers and others in authority, as well as members of the general public, which keeps them away from essential HIV prevention, testing and treatment services.89

Stigma and discrimination

There is currently no welfare or job support for people living with HIV in Myanmar, and many face family or community rejection as a result of their status. Stigma within communities largely appears to stem from a lack of public health education and misconceptions on how HIV is spread.

We've seen cases where if someone looking after a patient with HIV dies while the patient is unwell, other people don't want to take care of the person with HIV anymore.

- Soe Yadanar, Medecins Sans Frontieres (MSF)90

This stigma also persists within healthcare systems themselves, with reports of institutional neglect by nurses and doctors also being cited by patients living with HIV.

For example, a 2015 report assessing hospital conditions of people living with HIV in Myanmar and Cambodia found some patients were relegated to segregated waiting areas and bed spaces after their status was discovered.91

The same report also presented more serious allegations, made by women living with HIV, who were forced by healthcare providers into making sterilisation a condition for accessing pregnancy-related services. In one instance in the city of Yangon, they also found that one woman was sterilised without her knowledge or consent.92

The stigma surrounding HIV in Myanmar causes many HIV positive people to stay away from treatment services until their health declines. This not only increases their risk of serious illness and death, something effective antiretroviral treatment prevents, it also increases the likelihood of onward transmission.93

Funding for HIV in Myanmar

Myanmar remains largely dependent on international sources to fund its HIV response.94 Although domestic funding for HIV has increased in recent years, the country's low overall investment in public health remains a major barrier to the success of HIV testing, prevention and treatment programmes.
Historically, the private sector – through international and local NGOs – has played a major role in service delivery. Myanmar’s National Strategic Plan is focused on the development of sustainable partnerships which call for the public and private sector and communities to collaborate to design, deliver, monitor and evaluate services.

The National Strategic Plan estimated that US$460 million was needed to fund Myanmar’s HIV response between 2016 and 2020. This is a 16% decrease from the previous plan and has been achieved by reducing the number of organisations and agencies implementing HIV services.

The single largest financing source of the HIV response in Myanmar remains the Global Fund to Fight AIDS, Tuberculosis and Malaria. In 2017, of a total of US$106.5 million available for the country’s HIV response, the Global Fund provided around US$51 million. Domestic funds provided around US$22 million (US$20 million from public funds, US$2 million from private sources), other international donors provided a further US$20.5 million and the US President’s Emergency Plan for AIDS Relief (PEPAR) provided around US$12 million.

Despite the reliance on external funds, international donor support for Myanmar’s HIV response is decreasing. In 2015 the Government of Australia withdrew support and in 2017 the 3MDG Fund wound up, leaving a large gap in resources for HIV prevention, particularly for people who inject drugs, one of the most key affected populations.

In 2018, the government’s increased financial commitments and management responsibility to a more integrated HIV response and a rapid expansion of services also raised concerns about how to optimise resources and bridge gaps in service quality. Successful implementation requires an increase in national resources that is beyond the capacity of the government and donor commitments.

The future of HIV in Myanmar

Like many other low- and middle-income countries, there is a long way to go if Myanmar is to come close to the UNAIDS targets for ending the epidemic by 2030. However, there is some optimism that targets for reducing transmission and increasing treatment can be achieved with increased national and international funding and support.

To control the epidemic, preventing new infections among people from key populations must be prioritised. To this end, the government of Myanmar is looking to adopt new biomedical solutions, such as introducing PrEP. However, some critics suggest that treatment access for those living with HIV should be prioritised first before implementing new methods in prevention:

[Myanmar is] a country where only 60% of people living with HIV can access treatment; WHO describe universal access to treatment as minimum 80% coverage. It’s a heavily resource-constrained setting and there isn’t the capacity to deliver PrEP appropriately.

- Associate Professor Mark Stoove from the Burnet Institute
What is clear is that biomedical solutions alone will not end Myanmar’s HIV epidemic. While people from key population groups remain criminalised and discriminated against they will continue to avoid publicly-run HIV services. The high proportion of new infections among young people from key population groups is also of grave concern. Unless addressed through the provision of prevention, testing and treatment services designed to meet vulnerable young people’s needs, this worrying trend could see some of the gains made in recent years begin to reverse.

1. UNAIDS ‘AIDSinfo’ (accessed August 2020)
2. ibid
3. ibid
4. UNAIDS ‘AIDSinfo’ (accessed August 2020)
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17. UNAIDS ‘AIDSinfo’ (accessed December 2019)
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64. UNAIDS ‘AIDSinfo’ (accessed December 2019)
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Last full review:
15 January 2020
Next full review:
15 January 2023
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Co-Secretaries’ General Foreword

By Luz Elena Aranda¹ and Ymania Brown²

This year has been a heavy blow for most members of our communities and has left many of us struggling to survive, and trying to make a living amidst hostile contexts that became even more explosive, unequal and violent.

The COVID-19 global pandemic has affected our communities and our organising capacity deeply. Resilience and creativity have allowed many of us to remain connected and find new ways of advocating for our rights. But in numerous places, lockdowns meant the abrupt and complete interruption of activities, gatherings became impossible, events and Prides got suspended, and safe spaces dramatically shrunk overnight with extremely little to no notice.

Uncertainty suddenly is the new normal for the whole world and will continue to be the case for a while. As we write these lines, numerous organisations are struggling to survive financially, logistically and spiritually and staff and activists/defenders also have mental health and remote working burnout to contend with.

The physical distancing required to curb the spread of the virus meant that our interactions had to move into the virtual world and that our connection with our chosen families and our friends now depended on technology. Under these circumstances, the millions of members of our communities who still cannot access the Internet have experienced the highest levels of isolation and vulnerability. So much so, that they will may never ever get to read these lines.

In this context of increasing restrictions carried out in discriminatory manners, explicit legal protections against violence and discrimination have become—more than ever—a key tool to prevent further harm, to demand respect for our rights and human dignity, and to repair the violations we suffer. Hence, the importance of keeping up with our work of tracking and updating the state of law in all countries around the globe. Indeed, this update of the Global Legislation Overview attests to the fact that our quest for equality goes on—even amid this global pandemic—and, equally important, that our detractors may use (and are in fact using) these circumstances as an excuse to continue to oppress, persecute, scapegoat, and to violently discriminate against us, often with little to no regard for our human rights and with lethal consequences.

Despite the difficulties that we are all going through, we are glad to share that ILGA World’s Research Program has redoubled its efforts to widen the depth and scope of its work to better reflect the current state of sexual orientation law in all 193 UN Member States and, as of now, in non-independent territories around the world as well.

Thousands of valued members of our communities live in these territories and are engaged in activism at the local and regional level. At the international level, however, many of their victories are not as publicised as the ones taking place in UN Member States, so we are really excited that, for the first time, they will find themselves among the list of jurisdictions for which we track legal progress,
rollbacks and backtracking. As a global family, we are committed to our members regardless of the official status of their territory.

This new update to the Global Legislation Overview of State-Sponsored Homophobia shows how our global community has, against all odds, collectively achieved progress in every single legal category that we track. From the death penalty to “conversion therapies”, in times when the future looks particularly gloomy and uncertain, in each section of this report, it is our hope that you, our members, our stakeholders, researchers, States and readers will find hope for a better tomorrow.

A tomorrow in which we will come out again in full strength and solidarity to reclaim each one of the human rights that belong to us as members of the human family, because we, we are “born free and equal in dignity and rights”\(^3\), and these rights should have never been taken away from us.

\textit{To all those involved in the production of this update, our sincere appreciation.}

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Is there more in Latin America and the Caribbean?

**Dominican Republic**
Even though consensual same-sex sexual acts between adults in private are legal for the general population, Article 210 of the Police Justice Code (1966) still outlaws sodomy (defined as a “sexual act between persons of the same-sex”) among members of police forces.

**Venezuela**
Even though consensual same-sex sexual acts between adults in private are legal for the general population, same-sex sexual activity continues to be criminalised in the military under Article 565 of the Military Justice Code that prohibits “sexual acts against nature”.

**Asia**
21 out of 42 UN Member States (52%). Additionally, 1 UN Member State with de facto criminalisation (Iraq) (+1), several subnational jurisdictions in 1 UN Member State (Indonesia) and one region within 1 non-UN Member jurisdiction (Gaza in Palestine).

| Country   | Last Amended | In April 2018 a new Penal Code (2017) explicitly criminalising same-sex sexual conduct came into force. The Penal Code previously in force did not do so with explicit terms, but Article 427 imposed a “long imprisonment” term for the offence of “pederasty”.
|-----------|--------------|------------------------------------------------------------------------------------------------------------------|
| Afghanistan | 2018         | Sodomy is now criminalised under Section 646 of the Penal Code. The crime is defined as “the penetration of a male sexual organ into a female or a male anus, not considering the depth of the penetration” and carries a punishment of up to two years’ imprisonment. Section 648 further stipulates certain aggravating conditions.
| Bangladesh | 1860         | Section 377 of the Penal Code (Act XLV of 1860) criminalises “unnatural offences”. This is defined as “carnal intercourse against the order of nature with any man, woman or animal” and penetration is “sufficient to constitute the carnal intercourse”. This crime carries the potential punishment of imprisonment for life. |

127 “Pederasty” referred to intercourse between males regardless of age. The fact that paedophilia or sexual relations with persons under the age of consent fell under subsection 2(a) of article 427 further confirmed this. Terming sexual acts between adult men “pederasty” has previously not been uncommon. This occurred for example in the translations of the Criminal Codes of Albania (1977) and Latvia (1933), and in the old Russian legal tradition a “pederast” usually referred to a male who had anal intercourse with another male, regardless of age. See: ILGA World: Daniel Ottosson, *State-sponsored Homophobia: A world survey of laws prohibiting same sex activity between consenting adults* (2010), 23.

128 These include cases where: (1) the person “against whom” the crime has been committed is someone with whom marriage is prohibited according to rules of Islam (“maharem”); (2) the “offender” is a tutor, teacher, or servant of the person “against whom” the crime has been committed or the latter has, one way or another, authority or influence over the former; or (3) the person “against whom” the crime has been committed is affected by the genital disease because of the offender’s claim of having sexually transmitted diseases.

129 For more information, please read the entry for Afghanistan in the special dossier on the death penalty in this report.

While prosecutions under Section 377 remain rare, other legislation has reportedly been used to harass, arrest and charge suspects. In May 2017, the police special forces—the Rapid Action Battalion—was mobilised to raid a gathering in Dhaka: 28 men were arrested and outed in the media as gay. All were eventually released and granted bail.

Section 213 of the Penal Code (2004) criminalises "unnatural sex", which is defined as "sodomy or any other sexual conduct that is against the order of nature". As this is classified as a petty misdemeanour under Section 214, it carries a maximum punishment of imprisonment of less than one year and a minimum term of one month, according to Section 3(c) of the Penal Code.

In January 2019, the National Assembly—the lower house of Bhutan’s parliament—voted to repeal Sections 213 and 214. In February 2020, the National Council—the upper house—sent an amended bill back to the National Assembly. In the same month, the National Assembly did not approve the National Council’s amendments on unnatural sex and the grading of unnatural sex, inter alia. The Joint Committee of the Parliament convened in October 2020 to review the disputed clauses between the two houses. On 10 December 2020, a joint sitting of both houses approved a bill to repeal Sections 213 and 214, and will need to be approved by the King of Bhutan before becoming law.

The Sultanate of Brunei runs a dual or hybrid legal system, with common law and Sharia law running in parallel to each other. Under Article 82 of the Syariah Penal Code Order (2013), the death penalty can be imposed for acts of liwat (sodomy). Section 92(3) criminalises musahaqah (lesbian acts), which can result in a fine, imprisonment for up to 10 years, whipping, or a combination thereof.

Section 377 of the secular Penal Code (Cap. 22 of 1951) criminalises "unnatural offences", defined as "carnal intercourse against the order of nature with any man, woman, or animal". In 2017, the Penal Code (Amendment) Order (2017) increased the punishment for a conviction under Section 377 of the secular Penal Code to imprisonment for a term not exceeding 30 years and whipping. Previously, the punishment was imprisonment for up to 10 years and a fine. A Bruneian news outlet reported that the amendments were drafted "to further protect children, young and vulnerable persons from sexual exploitation and to act as a deterrent to those willing to commit such offences".

In 2015, a Bruneian civil servant was fined under the Syariah Penal Code for cross-dressing in a public place, with the prosecutor warning during proceedings that "if this is not dealt with, it can lead to the spread of social disorder such as homosexuality, free sexual relations, drug abuse."
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<td>DE FACTO</td>
<td>Iraq’s Penal Code (Law No. 111 of 1969) does not explicitly prohibit consensual same-sex relations. However, Article 401 of the Code criminalises “immodest acts” in public, which is punishable by a period of detention not exceeding six months and/or a fine. There have been cases of same-sex couples and individuals being prosecuted for same-sex sexual intimacy on the basis of this criminal provision and prostitution charges.</td>
</tr>
<tr>
<td>Indonesia</td>
<td>151</td>
<td>(certain provinces)</td>
<td>Consensual same-sex sexual acts between consenting adults are not criminalised under the Penal Code. However, several provinces, cities, and districts prohibit same-sex intimacy through local ordinances. As such there have been multiple reports in recent years from various parts of the country of men sentenced to receive lashes, of spas and hotels being raided by police, and of individuals being detained and charged under various local laws and customs.</td>
</tr>
</tbody>
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145 This is discussed in greater detail in Iran’s entry in the section on the death penalty.
146 While public courts deal with civil and criminal cases, revolutionary courts try “certain categories of offenses, including crimes against national security, narcotics smuggling, and acts that undermine the Islamic Republic.” See, Omar Sial and Farah Khan, “Update: The Legal System and Research of the Islamic Republic of Iran”, *Hauser Global Law School Program*, April 2019.
151 Indonesia is not considered for the final count of UN Member States criminalising consensual same-sex intimacy because these laws are not in force at the national level.
152 We have included the provinces that have such ordinances, and the cities that fall outside of these provinces.
153 “Indonesia’s Aceh: Two gay men sentenced to 85 lashes”, *BBC News*, 17 May 2017; “Four detained in Indonesia’s Aceh for alleged gay sex, face 100 lashes”, *Reuters*, 3 April 2018; Euan McKirdy, “Gay men, adulterers publicly flogged in Aceh, Indonesia”, CNN, 15 July 2018;
In September 2020, nine men were arrested in Jakarta following a raid on a private party and charged under Article 296 of the Penal Code (committing or facilitating obscene acts with another person) and anti-pornography laws.\(^{154}\)

In October 2020, the Semarang Military Court sentenced a soldier to one year’s imprisonment and dismissal from military duty for having same-sex intercourse.\(^{155}\) In the same month, a police officer was demoted and made to undergo “special training” for allegedly having participated in same-sex sexual activity, as the officer’s “sexual preference was deemed as a despicable act”.\(^{156}\)

Several subnational jurisdictions have adopted local laws that criminalise consensual same-sex sexual acts.

| Province of Aceh | 2014 | Articles 63 and 64 of Aceh’s Regulation No. 6 (2014) stipulate a punishment of 100 lashes and/or up to approximately eight years in prison for the crime of liwat (sodomy) and musahaqah (lesbian acts). The regulation applies to both locals and foreigners living in the province. |
| Province of South Sumatra | 2002 | South Sumatra’s Provincial Ordinance on the Eradication of Immoral Behaviour classifies and penalises homosexual acts and anal sex performed by men as “immoral behaviour”.\(^{157}\) |
| City of Padang Panjang (West Sumatra) | 2010 | Padang Panjang’s City Ordinance on the Prevention, Eradication and Prosecution of Social Ills (No. 9/2010) prohibits “homosexual and lesbian” relationships. It prohibits persons from “offering themselves for homosexual and lesbian relationships either with or without payment”. It explicitly mentions the punishment for different immoral behaviours as a maximum of three months or a fine.\(^{158}\) |
| City of Pariaman (West Sumatra) | 2018 | In 2018, the city of Pariaman, in the Province of West Sumatra, passed a regulation that penalises activities that disturb public order and “immoral acts” among people of the same sex.\(^{159}\) |
| City of Tasikmalaya (West Java) | 2009 | The city of Tasikmalaya, in the Province of West Java, passed the City Ordinance on the Development of a Value System in Social Life Based on the Teachings of Islam and Local Social Norms (No. 12/2009), which prohibits adultery and prostitution, both heterosexual and homosexual.\(^{160}\) |
| District of Banjar (West Java) | 2007 | The District Ordinance on Social Order (No. 10/2007) includes “abnormal” homosexual and heterosexual acts in its definition of “prostitute”, in addition to “normal” ones. No further explanation is provided for “normal” or “abnormal” acts.\(^{161}\) |


Moch. Fiqih Prawira Adjie, "Indonesian military imprisons, dismisses soldier for having same-sex intercourse", Asia One, 16 October 2020. This follows a telegram letter in October 2019 from the Head of the Indonesian Military Forces that strict sanctions would be imposed on “LGBT practitioners”; see, Agus Raharjo, Ronggo Astungkoro, and Nawir Arsyad Akbar, "TNI Threatens Action by Soldiers Who are LGBT Practitioners", Republic, 18 November 2020.


Ibid.

"Indonesian city to fine LGBT for being ‘public nuisance’", The Jakarta Post, 30 November 2018; "Indonesian city plans to fine residents for ‘LGBT behaviour’", Reuters, 30 November 2018.


Ibid.
### Kuwait

**Article 193 of Penal Code (Law No. 16) (1960)** criminalises consensual intercourse between men of full age (from the age of 21), which carries a possible imprisonment of up to seven years.

- **Enforcement**

  There are numerous reports of vice-police raiding parties and businesses to arrest suspected gay men and lesbian (or “tomboy”) women. In July 2017, the government’s inter-ministry morals committee ordered the deportation of 76 gay men and the closure of 22 massage parlours.

### Lebanon

**Article 534 of the Penal Code (1943)** criminalises "sexual intercourse against nature", which is punishable with up to one year imprisonment.

- **Enforcement**

  In 2014, the Morals Protection Bureau of the Lebanese police raided a bathhouse on the basis that there were suspected “homosexuals” present, with numerous customers and employees arrested and charged under Article 534 and other offenses pertaining to prostitution and public morals.

  According to some reports forced anal examinations and non-consensual HIV and drug tests have been conducted in recent years, and the number of annual arrests under Article 534 has seemingly increased.

### Malaysia

Under Sections 377, 377A and 377B of the Penal Code "carnal intercourse against the order of nature" is defined as a sexual connection by the introduction of the penis into the anus or mouth of another person and is punished with imprisonment of up to 20 years and/or whipping.

Additionally, Section 377D punishes acts of gross indecency committed in public or private with imprisonment of up to 2 years.

- **Enforcement**

  In February 2015, leading opposition leader, and former Deputy Prime Minister, Anwar Ibrahim, was convicted of sodomy and sentenced to five years’ imprisonment—the case is widely considered to have been politically motivated and Ibrahim received a royal pardon in 2018.

  In subsequent years there have been a number of sentences meted out against those suspected of being gay or lesbian by Sharia and other courts, including several cases where corporal punishment was enforced.

### Maldives

Section 411(a)(2) of the Penal Code (Law No. 6) (2014) criminalises "unlawful sexual intercourse", which is committed when a person engages in sexual intercourse with a person of the same sex.

"Same-sex intercourse" is defined either as: (a) insertion by a man his sexual organ or any other object into the anus of another man for sexual gratification; or the insertion into another man’s mouth the penis of a man; or (a) insertion of a woman’s organ or any object into the vagina or anus of another woman for sexual gratification.

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The offences in the section range from Class 1 misdemeanours to Class 3 felonies that carry a jail term of between six months and eight years. It may also result in an additional punishment of 100 lashes.

Section 412(c) of the Penal Code criminalises “unlawful sexual contact” with a person of the same sex, which includes indecent acts for obtaining sexual gratification other than those listed under Section 411(a)(2). The offences in the section range from Class 1 misdemeanours to Class 3 felonies that carry a jail term between six months and eight years.

### Enforcement

In 2015, Rainbow Warriors reported that a gay couple (one aged 56 and the other 27) was arrested in their private home on the island of Dhaandhoo under the accusation of “homosexual activities”. Police had reportedly not actively tackled “private behaviour” until then.169

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**Myanmar**

Section 377 of the Penal Code (Act No. 45/1860) criminalises “carnal intercourse against the order of nature”. This carries the potential punishment of “transportation for life”, with imprisonment for a term which may extend to ten years and a fine.

### Enforcement

According to activists, LGBT people, especially transgender people, are targeted under Section 35c of the Police Act, also known as the “Darkness Law”, which allows authorities to detain someone whose face is covered or otherwise “disguised”.170

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**Oman**

The Penal Law (Promulgated by Royal Decree 7/2018) repealed the Penal Code (1974), which criminalised “erotic acts with a person of the same sex” and “homosexual or lesbian intercourse” under Article 223 with imprisonment from six months to three years.

Under the new Penal Law (2018), Article 261 criminalises consensual same-sex sexual intercourse between men, which carries a maximum punishment of 3 years. Article 263 defines sexual intercourse as completed “upon the penetration of the male organ, however slight, into the genital or anal opening whether or not accompanied by the ejaculation of semen”. Furthermore, Article 262 punishes “lustful acts with a person of the same sex”, with imprisonment of up to 3 years.171

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**Pakistan**

Section 377 of the Penal Code (Act XLV of 1860) punishes “carnal intercourse against the order of nature” with up to life imprisonment. It is further explained that “penetration is sufficient to constitute the carnal intercourse” (i.e., no need to prove emission of semen).

Additionally, Section 294 of the Penal Code criminalises “obscene acts and songs” in public, “to the annoyance of others”, which may result in imprisonment for up to three months, a fine, or both. This section is reportedly often deployed to target male and trans sex workers.172

### Enforcement

In August 2020 an arrest warrant was reportedly issued for a trans man who married a cisgender woman, for what authorities viewed as a same-sex wedding.173 The following month, in October, a Pakistan-based digital media platform reported that two lesbian women were “arrested by the police after their relatives and friends reported about their relationship and marriage plan”.174

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169 “Worrying arrest in the Maldives”, Rainbow Warriors, 31 August 2015.


171 Article 262 further states that criminal proceedings shall commence only “on the basis of a complaint by a spouse or guardian”; or, in the absence of a spouse or guardian, the Public Prosecution is permitted “to commence proceedings or order deportation from the country”. Further, in all cases, it is “permitted for the spouse or guardian to withdraw the case”, and the withdrawal of one of the complainants will terminate the criminal prosecution and stay the execution of the punishment.


FREEDOM IN THE WORLD 2019

Myanmar

PARTLY FREE

<table>
<thead>
<tr>
<th>Political Rights</th>
<th>13/40</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil Liberties</td>
<td>17/60</td>
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</tbody>
</table>

LAST YEAR’S SCORE & STATUS

31/100 Partly Free

Global freedom statuses are calculated on a weighted scale. See the methodology.
Overview

Myanmar’s transition from military dictatorship to democracy has faltered under the leadership of the National League for Democracy (NLD), which came to power in relatively free elections in 2015 but has failed to uphold human rights or bring security to areas affected by armed conflict. The military retains significant influence over politics, and the country is under international pressure regarding a 2017 military operation that forced more than 700,000 members of the Rohingya minority, a mostly Muslim ethnic group, to flee to Bangladesh.

Key Developments in 2018

- More than 900,000 Rohingya refugees from Myanmar’s Rakhine State remained in Bangladesh during the year, including the more than 700,000 who fled there since late August 2017. Civilians also continued to flee fighting between government forces and ethnic minority rebels in Shan and Kachin States.
- A panel of the International Criminal Court (ICC) ruled in September that the ICC had jurisdiction over prosecution of alleged crimes against the Rohingya. The ICC then began examining whether there was enough evidence to proceed to a full investigation.
- The UN Independent International Fact-Finding Mission on Myanmar briefed the UN Security Council in October, with the mission chair calling the Rohingya crisis “an ongoing genocide.”
- In September, despite international pressure on their behalf, Reuters journalists Wa Lone and Kyaw Soe Oo were sentenced to seven years in prison on charges of violating the 1923 Official Secrets Act while reporting on a massacre in Rakhine State. The journalists were widely understood to have been entrapped by police and subjected to an unfair trial in reprisal for their work.

Political Rights
A. Electoral Process

**A1  0-4 pts**

| Was the current head of government or other chief national authority elected through free and fair elections? | 2/4 |

The legislature elects the president, who is chief of state and head of government. Military members of the legislature have the right to nominate one of the three presidential candidates, and the elected members of each chamber nominate the other two. The candidate with the largest number of votes in a combined parliamentary vote wins the presidency; the other two candidates become vice presidents, ensuring that a military nominee is always either president or vice president. Htin Kyaw, the NLD candidate, won the presidency in the 2016 election. He resigned in March 2018 and was replaced by Win Myint, one of NLD leader Aung San Suu Kyi’s aides.

Aung San Suu Kyi holds the powerful position of state counselor, a post akin to that of a prime minister, which was created for her in 2016 through legislation designed to circumvent provisions in the 2008 military-drafted constitution that had barred her from running for president because members of her immediate family hold foreign citizenship.

The commander in chief of the armed forces holds broad powers, including control over security-related cabinet ministries, and is selected through an opaque process by the military-dominated National Defense and Security Council (NDSC).

**A2  0-4 pts**

| Were the current national legislative representatives elected through free and fair elections? | 2/4 |

The bicameral Assembly of the Union consists of the 440-seat lower House of Representatives and the 224-seat upper House of Nationalities. Representatives serve
five-year terms. A quarter of the seats in both houses are reserved for the military and filled through appointment by the commander in chief of the armed forces.

International electoral observers concluded that the 2015 legislative polls were generally credible and that the outcome reflected the will of the people, despite a campaign period marked by anti-Muslim rhetoric, the exclusion of Muslim candidates, and the disenfranchisement of hundreds of thousands of Rohingya. The NLD, with 57 percent of the overall popular vote in a first-past-the-post system, won 135 of the 168 elected seats in the upper house, 255 of 330 elected seats in the lower house, and 496 of 659 seats across 14 state and regional legislatures. The military-backed Union Solidarity and Development Party (USDP) placed second with 28 percent of the popular vote, 12 seats in the upper house, 30 in the lower house, and 76 in the states and regions. The remaining seats were captured by ethnic minority and other parties as well as independents.

The NLD did not perform as well in November 2018 by-elections, winning 7 out of 13 available seats in various national and subnational legislative chambers. Of those, the party lost 5 out of 6 in ethnic minority areas.

### A3 0-4 pts

**Are the electoral laws and framework fair, and are they implemented impartially by the relevant election management bodies?**

1/4

Various features of the electoral framework undermine the democratic nature of the country’s elections. These include the military’s role in presidential nominations and appointments to both chambers of parliament, as well as rigid citizenship laws and excessive residency requirements that prevent large numbers of people from voting or standing for office.

The Union Election Commission (UEC), which is responsible for electoral administration, is empowered to adjudicate complaints against itself. Its members are appointed by the president and confirmed by the legislature, which has only limited authority to reject nominees. Election monitors have expressed concern about the potential for early voting procedures to facilitate fraud.
B. Political Pluralism and Participation

B1 0-4 pts

Do the people have the right to organize in different political parties or other competitive political groupings of their choice, and is the system free of undue obstacles to the rise and fall of these competing parties or groupings?

2/4

New political parties were generally allowed to register and compete in the 2015 elections, which featured fewer restrictions on party organization and voter mobilization than the 2010 vote. Only sporadic interference from government officials was reported. Ninety-one parties competed in the elections, and many of them convened meetings and large rallies throughout the country.

However, competition is skewed in part by the USDP’s systematic support from the military, whose personnel and their families are eligible to vote, casting ballots in military barracks in some cases. Moreover, some legal provisions can be invoked to restrict parties’ operations. The constitution contains a requirement that political parties be loyal to the state, which carries the potential for abuse. Laws allow for penalties, including deregistration, against political parties that accept support from foreign governments or religious bodies, or that are deemed to have abused religion for political purposes or disrespected the constitution.

B2 0-4 pts

Is there a realistic opportunity for the opposition to increase its support or gain power through elections?

3/4

As evidenced by both the NLD’s overwhelming parliamentary victory in 2015 and its losses in the 2018 by-elections, there is a realistic opportunity for the opposition to increase its support and gain power through competitive balloting. However, the
military’s constitutional prerogatives, as well as its close ties to the USDP, limit the
degree to which any opposition force can secure control over the executive or the
legislature through elections.

**B3**  0-4 pts

**Are the people’s political choices free from domination by forces that are external to the political sphere, or by political forces that employ extrapolitical means?**

The results of the 2015 elections and subsequent transition talks suggested that the military had a waning ability or determination to influence electoral outcomes. Nevertheless, the military retains considerable power over political affairs, particularly in conflict areas where it has a dominant presence, and in 2015 the USDP reportedly benefited from pressure on public employees and students to attend rallies and cast ballots for the party.

**B4**  0-4 pts

**Do various segments of the population (including ethnic, religious, gender, LGBT, and other relevant groups) have full political rights and electoral opportunities?**

Minority groups face restrictions on their political rights and electoral opportunities. In particular, citizenship, residency, and party registration laws disadvantage ethnic and religious minorities, particularly the mainly Muslim Rohingya, the majority of whom were rendered stateless by the 1982 citizenship law. In 2015, under pressure from Buddhist nationalists, the president issued a decree revoking the temporary identification cards, or “white cards,” that had allowed Rohingya to vote in previous elections. A Constitutional Tribunal ruling later in 2015 then found that voting by white-card holders was unconstitutional. Nearly all Rohingya were consequently left off the voter rolls for the 2015 elections. In addition, a sitting Rohingya lawmaker from the USDP was barred from running in the polls.
Other Muslims with citizenship documents were able to vote, but of more than 6,000 candidates on the final list, only about 28 were Muslim. No Muslim sits in the current parliament.

While ethnic parties generally fared poorly in the 2015 legislative elections, the Shan Nationalities League for Democracy (SNLD) and the Arakan National Party (ANP) performed well in their respective states. The SNLD won a lower house seat in the 2018 by-elections.

Women remain underrepresented in the government and civil service, due largely to societal biases that discourage their political participation. Notwithstanding the prominence of Aung San Suu Kyi, whose father led Myanmar’s independence struggle, few women have achieved ministerial-level appointments.

C. Functioning of Government

C1  0-4 pts

| Do the freely elected head of government and national legislative representatives determine the policies of the government? | 2/4 |

Although elected officials are able to set policy in some subject areas, the military is guaranteed control over the Defense, Home Affairs, and Border Affairs Ministries. The military also effectively controls at least six seats on the powerful 11-member NDSC. The 2008 constitution allows the military to dissolve the civilian government and parliament and rule directly if the president declares a state of emergency. Governance is contested in some areas between the armed forces and ethnic minority rebel groups.

C2  0-4 pts

| Are safeguards against official corruption strong and effective? | 1/4 |
Corruption is rampant at both the national and local levels, and recent government initiatives aimed at curbing it have generally not produced meaningful results. For example, an Anti-Corruption Commission (ACC) established in 2014 has yet to establish a strong track record of investigations against high-ranking officials. In its most prominent cases to date, the ACC brought bribery charges against the chief of the Food and Drug Administration in April 2018 and a number of senior regional law enforcement officials in Yangon in September.

Privatization of state-owned companies and other economic reforms in recent years have allegedly benefited family members and associates of senior officials. The government has ignored tax evasion by the country’s wealthiest companies and individuals.

**C3  0-4 pts**

**Does the government operate with openness and transparency?**

The government does not operate with openness and transparency. A draft Right to Information Law was developed in 2016, and a new draft was released in December 2017, but the measure remained stalled in the parliament during 2018. Some information about the budget has been released in recent years, but it receives limited parliamentary scrutiny.

**Add Q**

**ADDITIONAL DISCRETIONARY POLITICAL RIGHTS QUESTION**

Is the government or occupying power deliberately changing the ethnic composition of a country or territory so as to destroy a culture or tip the political balance in favor of another group? –4 / 0
The government has long used violence, displacement, and other tactics to alter the demographics of states with ethnic unrest or insurgencies. The Rohingya in Rakhine State have faced particularly harsh restrictions for decades, including limits on family size and the ability and right to marry, the denial of legal status and social services, and disenfranchisement and loss of citizenship. Human rights experts and the United Nations have labeled the abuses against the Rohingya as crimes against humanity and ethnic cleansing, and some analysts have argued that they constitute either genocide or a precursor to genocide.

Repression of the Rohingya escalated in 2017, after rebels from the Arakan Rohingya Salvation Army (ARSA) attacked multiple police posts with rudimentary weapons. The military launched a severe counteroffensive against Rohingya communities across the northern part of the state, leading to reports of torture, rape, indiscriminate killings, and the burning of villages, worsening already-dire humanitarian conditions and causing an outflow of more than 700,000 Rohingya refugees to Bangladesh. Those refugees joined another 200,000 who had crossed into Bangladesh to escape previous rounds of persecution before 2017. Aung San Suu Kyi has drawn sharp criticism from international observers for her reluctance to explicitly condemn state violence against Rohingya civilians. Attempts to organize a repatriation system that would allow refugees to return to Myanmar made little progress during 2018, as the government failed to address the conditions that had caused the Rohingya to flee.

The UN Independent International Fact-Finding Mission on Myanmar, chaired by former Indonesian attorney general Marzuki Darusman, released its full report in September 2018. Darusman briefed the UN Security Council in October, calling the situation in Myanmar “an ongoing genocide” in which Rohingya who remain in Rakhine State are “at grave risk.” A panel of the ICC ruled in September that the court has jurisdiction over prosecution of the crime of deportation of the Rohingya, and later that month the ICC chief prosecutor launched a preliminary inquiry to establish whether there was enough evidence to proceed to a full investigation. Myanmar is not a signatory of the ICC’s founding Rome Statute, but Bangladesh is; the ICC judges ruled that they had jurisdiction because the deportations occurred on the territory of Bangladesh.
Civil Liberties

D. Freedom of Expression and Belief

D1  0-4 pts

Are there free and independent media?  1/4

Media freedoms have improved since the official end of government censorship and prepublication approval in 2012. However, existing laws allow authorities to deny licenses to outlets whose reporting is considered insulting to religion or a threat to national security, and the risk of prosecution under criminal defamation laws encourages self-censorship. While internet access has expanded in recent years, online activity is still subject to criminal punishment under several broadly worded legal provisions, particularly those in the Electronic Transactions Law. Journalists and social media users continued to face defamation and incitement cases during 2018.

Surveillance of journalists by the military-controlled Home Affairs Ministry remains a common practice, and reporters covering sensitive topics risk harassment, physical violence, and imprisonment. In the most prominent case of 2018, two Reuters journalists were sentenced in September to seven years in prison for violating the Official Secrets Act after a deeply flawed trial. The charges stemmed from an incident in late 2017 in which the reporters met with a police officer at his invitation at a restaurant in Yangon. When they got up to leave, the officer handed them supposedly secret documents, and they were quickly arrested in front of the restaurant before they could even look at the papers. The reporters, Wa Lone and Kyaw Soe Oo, were investigating a 2017 massacre of Rohingya at Inn Din village in Rakhine State, and the case against them was criticized internationally as an unjust reprisal for their work.
Score Change: The score declined from 2 to 1 due to increasing restrictions on the media’s ability to cover sensitive topics including the military’s actions in Rakhine State, as illustrated by the entrapment, conviction, and imprisonment of two journalists who had investigated atrocities by security forces.

D2  0-4 pts

Are individuals free to practice and express their religious faith or nonbelief in public and private?  1/4

The constitution provides for freedom of religion. It distinguishes Buddhism as the majority religion, but also recognizes Christianity, Islam, Hinduism, and animism. The government occasionally interferes with religious assemblies and attempts to control the Buddhist clergy. Authorities discriminate against minority religious groups in practice, refusing to grant them permission to hold gatherings and restricting educational activities, proselytizing, and construction and repair of houses of worship.

Anti-Muslim hate speech and discrimination have been amplified by social media, and by some state institutions and mainstream news websites. Facebook, which had received criticism for allowing such hate speech on its platform, removed hundreds of Myanmar accounts during 2018, including many linked to the military. The officially illegal Buddha Dhamma Parahita Foundation, formerly known as Ma Ba Tha, agitates for the protection of Buddhist privileges, urges boycotts against Muslim-run businesses, and disseminates anti-Muslim propaganda. Reports have detailed systematic discrimination against Muslims in obtaining identity cards, as well as the creation of “Muslim-free” villages with the complicity of officials.

D3  0-4 pts

Is there academic freedom, and is the educational system free from extensive political indoctrination?  1/4
Political activity on university campuses is generally restricted, and universities are not autonomous. Student unions are discouraged, have no formal registration mechanisms, and are viewed with suspicion by authorities.

In January 2018, 14 students at Mandalay’s Yadanabon University were expelled for holding a campus protest calling for more education funding. More than 20 other students were reportedly expelled that month for taking part in similar protests at other schools. The Ministry of Education issued a directive in May that required students to get permission from the head of their university to hold events on campus, obliging them to submit names and biographies of speakers, titles of public talks, and the number of people expected to attend. After students file their application, the request must be submitted to the ministry’s Higher Education Department for approval.

Are individuals free to express their personal views on political or other sensitive topics without fear of surveillance or retribution?

Private discussion and personal expression are constrained by state surveillance and laws that inhibit online speech. Numerous defamation cases involving online commentary have been filed under Section 66(d) of the 2013 Telecommunications Law, which includes bans on online activity deemed to be threatening or defamatory.

Social media users and those quoted in the media have faced prosecution for expressing their views on particular topics, particularly when they entail criticism of the authorities. A former child soldier, Aung Ko Htwe, was sentenced to two years in prison for incitement in March 2018 due to a media interview in which he spoke about being abducted by the military at age 14 and claimed that he had faced abuse by officials during a previous trial for a 2007 murder that occurred while he was escaping from the military. In September, a social media user in Mon State was sentenced to a year in prison for allegedly defaming the state’s chief minister.
### E.Associational and Organizational Rights

<table>
<thead>
<tr>
<th>E1</th>
<th>0-4 pts</th>
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<tbody>
<tr>
<td>Is there freedom of assembly?</td>
<td>2/4</td>
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Under the Peaceful Assembly and Peaceful Procession Law as revised in 2016, unauthorized demonstrations are still punishable with up to six months in prison; a variety of other vaguely defined violations can draw lesser penalties. Protesters no longer have to ask permission for assemblies, but they do need to notify authorities 48 hours in advance, and local officials often treat this process as a request for permission in practice. Additional problematic amendments to the law were under consideration in 2018. Separately, a blanket ban on protests in 11 townships of central Yangon has been in place since November 2017, though it is selectively enforced.

Among other cases during the year, the authorities arrested 47 antiwar protesters across the country in May 2018, charging them with offenses such as disturbing the public, staging an unlawful protest, and criminal defamation. The peaceful demonstrations were held to protest the conduct of military operations in Kachin State.

<table>
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<tr>
<th>E2</th>
<th>0-4 pts</th>
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<tbody>
<tr>
<td>Is there freedom for nongovernmental organizations, particularly those that are engaged in human rights- and governance-related work?</td>
<td>2/4</td>
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The 2014 Association Registration Law features simple, voluntary registration procedures for local and international nongovernmental organizations (NGOs) and no restrictions or criminal punishments for noncompliance. Although the law was seen as a positive development, in 2015 the Home Affairs Ministry issued
implementing regulations that required NGOs to obtain government approval prior to registration, drawing sharp criticism from civil society leaders.

**F3 0-4 pts**

| Is there freedom for trade unions and similar professional or labor organizations? | 2/4 |

A ban on independent trade unions was lifted in 2011, and union activity has taken root in Myanmar. In recent years, factory workers have held strikes in Yangon with fewer repercussions and arrests than in the past. However, trade unionists continue to face retaliation for their efforts, and legal protections against abuse by employers are weak. In October 2018, a group of men armed with metal rods attacked striking garment workers in Yangon; six workers were hospitalized for head injuries.

**F. Rule of Law**

**F1 0-4 pts**

| Is there an independent judiciary? | 0/4 |

The judiciary is not independent. Judges are nominated by the president, and lawmakers can reject the choice only if it is clearly proven that the nominee does not meet the legal qualifications for the post. The courts generally adjudicate cases in accordance with the government’s interests, particularly in major cases with political implications.

**F2 0-4 pts**

| Does due process prevail in civil and criminal matters? | 1/4 |
Administrative detention laws allow individuals to be held without charge, trial, or access to legal counsel for up to five years if they are deemed a threat to state security or sovereignty. A 2017 assessment by the British-based NGO Justice Base found that the country performed poorly in nearly every measure of international fair trial standards.

In 2016, the parliament repealed the 1950 Emergency Provisions Act, which the former military government had invoked frequently to silence and imprison dissidents. The 1975 State Protection Act, which was used to hold then opposition leader Aung San Suu Kyi under house arrest during the period of military rule, was also repealed in 2016. Nevertheless, individuals who are considered political prisoners continue to be held in the country. According to the Assistance Association for Political Prisoners (Burma), as of December 2018 there were 35 serving sentences, 56 in pretrial detention, and 236 awaiting trial outside prison.

**F3 0-4 pts**

| Is there protection from the illegitimate use of physical force and freedom from war and insurgencies? | 0 / 4 |

The NLD government’s push for the creation of a more comprehensive peace mechanism remained hampered in 2018 by military offensives against various ethnic rebel groups, particularly in Shan and Kachin States, as well as by attacks from such groups against security forces and continued divisions among signatories and nonsignatories to a 2015 national cease-fire agreement. The NLD’s own approach to dealing with ethnic minorities has also been faulted for inhibiting peace efforts.

Indiscriminate shelling, extrajudicial killings, forced disappearances, and other abuses by the military continue to be reported, while rebel groups engage in forced disappearances and forced recruitment. Areas in the north remain riddled with landmines planted by both rebels and the army. Authorities at times prevent aid groups from reaching populations affected by violence. Civilians continued to flee fighting in Shan and Kachin States in 2018, leaving more than 100,000 internally
displaced by year’s end. Episodes of fighting and displacement were also reported in Karen and Chin States.

Prisons in Myanmar are severely overcrowded, and conditions for inmates are sometimes life-threatening.

**F4 0-4 pts**

| Do laws, policies, and practices guarantee equal treatment of various segments of the population? |
| --- | --- |
| O / 4 |

Some of the country’s worst human rights abuses, commonly committed by government troops, are against ethnic and religious minorities. The government’s failure to protect victims, conduct investigations, and punish perpetrators is well documented.

The 1982 Citizenship Law discriminates based on ethnicity. The law does not allow for anyone who entered the country or is descended from someone who entered the country after 1948 to become a full citizen. Naturalization of spouses is only allowed if the spouse holds a Foreigner’s Registration Certificate from before the enactment of the 1982 law. Only those who are descended from ethnic groups deemed to be indigenous to the country prior to 1823 are considered full citizens who can run for public office. Full citizens cannot have their citizenship revoked unless they become a citizen of another country.

In addition to conflict-related violence, women are subject to discrimination in employment, against which there are no explicit legal protections. A number of laws create a hostile environment for LGBT (lesbian, gay, bisexual, and transgender) residents. Same-sex sexual conduct is criminalized under the penal code, and police subject LGBT people to harassment, extortion, and physical and sexual abuse.

**G. Personal Autonomy and Individual Rights**
G1 0-4 pts

Do individuals enjoy freedom of movement, including the ability to change their place of residence, employment, or education?

2/4

Freedom of internal travel is generally respected outside of conflict zones for Myanmar citizens. This is not the case for Myanmar’s large population of stateless residents, who have significant restrictions on their travel, particularly Rohingya in Rakhine State. Numerous exiled activists who returned to the country after the transition to partial civilian rule have experienced substantial delays and evasion from government authorities when attempting to renew visas and residency permits. Illegal toll collection by state and nonstate actors has been a problem in some areas. The parliament voted in 2016 to repeal a long-standing rule requiring overnight houseguests to be registered with local authorities; guests staying for more than a month must still be registered.

G2 0-4 pts

Are individuals able to exercise the right to own property and establish private businesses without undue interference from state or nonstate actors?

1/4

Contentious disputes over land grabbing and business projects that violate human rights continued in 2018. Myanmar’s property transfer laws prohibit transfers to or from a foreigner except in certain state-approved cases of inheritance, and require registration of foreign-owned property. Stateless residents, including the Rohingya, cannot legally buy or sell property or set up a business.

Instances of forced eviction and displacement, confiscation, lack of sufficient compensation, and direct violence against landholders by state security officials abound. Court cases are frequently brought against farmers for trespassing on land that was taken from them. In May 2018, for example, 33 farmers were found guilty of trespassing on land that was seized by a military-run economic entity in 1996 but never developed.
Amnesty International reported in March that the military was involved in a massive land grab in Rakhine State, building military infrastructure over razed Rohingya villages.

**G3** 0-4 pts

<table>
<thead>
<tr>
<th>Do individuals enjoy personal social freedoms, including choice of marriage partner and size of family, protection from domestic violence, and control over appearance?</th>
</tr>
</thead>
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</table>

Men and women formally enjoy equal rights on personal status issues, though there are restrictions on marriages of Buddhist women to non-Buddhist men. Laws that might protect women from domestic abuse and rape are weak and poorly enforced, and such violence is an acute and persistent problem. The army has a record of using rape as a weapon of war against ethnic minority women, and security personnel typically enjoy impunity for sexual violence.

**G4** 0-4 pts

<table>
<thead>
<tr>
<th>Do individuals enjoy equality of opportunity and freedom from economic exploitation?</th>
</tr>
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Human trafficking, forced labor, child labor, and the recruitment of child soldiers all remain serious problems in Myanmar, and the government’s efforts to address them are inadequate. Child soldiers are enlisted by the military and ethnic rebel groups, which also recruit civilians for forced labor. Various commercial and other interests continue to use forced labor despite a formal ban on the practice since 2000. Trafficking victims include women and girls subjected to forced sex work and domestic servitude. People displaced by conflict are especially vulnerable to exploitation.
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In the shadows
Systemic injustice based on sexual orientation and gender identity/expression in Myanmar
This report was commissioned by Denmark-Myanmar Programme on Rule of Law and Human Rights.

The contents of this report are the authors’ work alone with individual contributions noted in the acknowledgments. Any of the contents and views expressed within this report cannot be attributed to the Government of Denmark or the Denmark-Myanmar Programme on Rule of Law and Human Rights. Any errors are the authors’ responsibility alone.
In the shadows
Systemic injustice based on sexual orientation and gender identity/expression in Myanmar

All Photos (unless otherwise stated): Violaine Beix and Colors Rainbow
Design and layout: David Lloyd
Preface

It is my great honor to introduce this very important report on the situation of LGBTIQ people in Myanmar.

Like any human society, there have always been LGBTIQ people in Myanmar. From the time of ancient civilizations, dynasties of kings, colonialism, and in the modern era, LGBTIQ people have always lived here. However, their lives and roles in society were limited, and their contributions as well as their rights were not well-recognized, because of discriminatory cultural and social perspectives. Although LGBTIQ persons served important roles in Myanmar’s national and cultural history, it is not acknowledged. For instance, they are not mentioned in a single page in textbooks in Myanmar. In the view of history, it is if they are invisible and voiceless.

Moreover, Myanmar’s criminal laws and justice system make LGBTIQ more marginalized and vulnerable, particularly Penal Code Article 377. This is a provision inherited from British colonial rule, and it continues to criminalize consensual same-sex sexual conduct. Although this Act is not strictly enforced, law enforcement officers have been using this to intimidate, harass, and arrest LGBTIQ people on other charges. Many of the LGBTIQ members are subject to all forms of mistreatment by criminal laws and are not protected by the justice system in Myanmar.

However, the LGBTIQ movement in Myanmar has progressed significantly in recent years. There have been strong efforts to advocate for legal reform and carry out public campaign for non-discrimination. LGBTIQ activists today are never silent.
We stand up and we always call for equality and justice. LGBTIQ activists are working together like never before to create more space in society, to build a world that is more respectful and tolerant of diversity. They prove that they are part of society, not the problem of society. Nonetheless, there is still a long fight ahead over ending the discrimination based on sexual orientation and gender identity. We need both legal protection and widespread acceptance by society.

This report highlights not only the situation of LGBTIQ people in Myanmar but also makes important recommendations for how to make a better world for them and all people. Without a doubt, this report makes an important contribution in documenting the challenges people face both in their daily life and in the legal environment. The stories in this report highlight the suffering, intimidation, and threats faced by LGBTIQ in Myanmar today. These injustices must be stopped, and we all have a moral imperative to be part of the solution. As fellow human beings, LGBTIQ people are entitled to enjoy fair and equal legal protection and access to justice. They are not the rightful subjects of discrimination.

I strongly believe that recommendations for protection and policy changes mentioned in the report should be well recognized and implemented by the duty-holders with urgency. Action is needed by both LGBTIQ and non-LGBTIQ alike to make the government listen.

*Let’s work for equality for all!*

_Aung Myo Min_
Executive Director
_of Equality Myanmar_
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Summary

Like many other transgender women in Myanmar, Alinkar and her friends work as makeup artists. In November 2016 during the cool season, they were traveling by motorbike to a client, to do make up for a night-time Buddhist ritual, when they were stopped at a police checkpoint. Alinkar recounted her experience:

“The police asked us where we were going, but before we could answer, they were hitting us. They forced us to kneel with our hands behind our heads. They falsely accused us of dealing drugs and mocked us for being transgender. An officer derisively asked whether my friends and I are men or women. When we said that we are transgender, the police kicked us brutally. A police officer asked me if parts of my body were fake. When I said my body is real, the officer kicked me again and demanded oral sex.”

When Alinkar refused, she was subjected to further abuse. The women were released only after their make up client arrived to help them. Due to their well-founded fear of retaliation, Alinkar and her friends never complained to the authorities about this incident. Memories of this traumatic evening still haunt Alinkar. She noted, “to this day, I feel scared.”

1 Interview with Respondent No. 11, 26 September 2018; interview with Respondent No. 11, 19 December 2018.
Alinkar's experience is not exceptional. During research interviews conducted for this report, dozens of lesbian, gay, bisexual, transgender, and queer (LGBTQ) individuals spoke of how Myanmar’s criminal laws, law enforcement officials, and the whole justice system fail them. Additional accounts of mistreatment were conveyed to the research team through written submissions.

This report documents and analyses these injustices, and identifies certain patterns of human rights violations perpetrated against LGBTQ individuals in Myanmar. It also makes a number of recommendations aimed at law and public policy reforms necessary to address the plight of LGBTQ persons. Specifically, this report focuses on three aspects of Myanmar’s criminal law and justice system that perpetuate stigmatization, discrimination, violence and abuse based on sexual orientation and gender identity/expression (SOGIE), as outlined below:

First, Myanmar’s criminal laws are outdated and fail to respect and protect human rights, including those enshrined in international human rights treaties binding on the country.

In particular, Myanmar has maintained Section 377 of its Penal Code, a provision inherited from British colonial rule that criminalizes consensual same-sex sexual conduct. This provision reads as follows:

377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for a term of twenty years, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation. — Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

This provision of the Myanmar Penal Code is almost identical to what was Section 377 of the 1860 Indian Penal Code. Under colonial rule, Myanmar was administered...
as a province of British India and adopted the Indian Penal Code, among other colonial era legislation, into its system.

In 2018, the Indian Supreme Court delivered a ground-breaking judgment in *Navtej Singh Johar et al & Others v Union of India and others*, which concerned the criminalization of consensual same-sex sexual conduct under Section 377 of the Penal Code. The Supreme Court ruled that the section ran contrary to the Indian Constitution and went against India’s international obligations. In its decision, the Indian Supreme Court underscored that Section 377 contravened the rights to privacy, equality, non-discrimination and dignity, which were enshrined in international human rights treaties binding on India. These include the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. The Indian Supreme Court also noted that the Yogyakarta Principles on the Application of International Human Rights law in relation to Sexual Orientation and Gender Identity (hereinafter referred to as the Yogyakarta Principles) affirming the conclusion that criminalizing consensual same-sex sexual conduct violated fundamental rights.

Meanwhile, in Myanmar, not only does Section 377 continue to affect individuals who are accused of violating it; but its mere retention in the Penal code is a powerful symbol that lends false legitimacy to prejudices against individuals based on their real or imputed sexual orientation or gender identity/expression.

Other criminal provisions also stigmatize, discriminate against, or are otherwise used to justify violence and abuse against, LGBTQ individuals. Certain colonial era laws in Myanmar, which provide for a wide ambit of police powers for the ‘prevention and detection of crime’, known collectively among the LGBTQ community as the “Shadow Laws” or “Darkness Laws”, are a primary example of criminal laws that breed mistreatment based in whole or in part on SOGIE grounds. These laws exist both at the union level and state level, as codified in Section 35 of the Police Act.
1945, and Section 30 of the Rangoon Police Act 1899. Some of their provisions are vague and overbroad (e.g., failing to specify what counts as a ‘satisfactory account’ for ‘being found in a public place between sunset and sunrise’) and are therefore open to serious abuse. Law enforcement agents too easily invoke these provisions to harass, arrest and even bring spurious charges against LGBTQ people. The fact that these laws are colloquially referred to as the “Darkness Laws” and the “Shadow Laws” reflects their arbitrary nature. These laws give law enforcement officers wide latitude to arrest LGBTQ persons during the evening and night-time hours. Indeed, many arrests are carried out with spurious and vague accusations such as “you are in the dark, you have an agenda to do something”.

In addition, several other criminal provisions have been used to harass, intimidate and detain LGBTQ persons. They include the crime of “Public Nuisance”, under Section 268 of the Penal Code, and Section 320 of the Penal Code criminalizing the act of “emasculaton”.

The present report focuses on the abovementioned Section 377 of the Penal Code and the “Darkness Law” found in Section 35 of the Police Act and Section 30 of the Rangoon Police Act.

Second, this report focuses on law enforcement officers’ discriminatory attitudes and behaviours, which contribute to LGBTQ persons being targeted for and being meted out unjust and unfair treatment within the criminal justice system. While conducting research for this report, many allegations detailing law enforcement officers’ misconduct toward LGBTQ persons were received. Misconduct at the hands of officers of the Myanmar Police Force (MPF) and General

8 Section 35 of the Rangoon Police Act 1945 states: “(a) Any person found armed with any dangerous or offensive instrument whatsoever, who is unable to give a satisfactory account of his reasons for being so armed; (b) any reputed thief found between sunset and sunrise remaining or loitering in any bazaar, street, road, yard, thoroughfare or other place, who is unable to give a satisfactory account of himself; (c) any person found between sunset and sunrise having his face covered or otherwise disguised, who is unable to give a satisfactory account of himself; (d) any person found within the precincts of any dwelling-house or other building whatsoever, or in any back-drainage space, or on board any vessel, without being able satisfactorily to account for his presence therein [. . .] may be taken into custody by any police-officer without a warrant, and shall be punishable on conviction with imprisonment for a term which may extend to three months.”

9 Section 30 of the Rangoon Police Act 1899 states: “(b) any reputed thief found between sunset and sunrise lying or loitering in any bazaar, street, road, yard, thoroughfare or other place, who shall not give a satisfactory account of himself; (c) any person found between sunset and sunrise having his face covered or otherwise disguised and who is unable to give a satisfactory account of himself; (d) any person found within the precincts of any dwelling-house or other building whatsoever, or in any back-drainage space, or on board any vessel, without being able satisfactorily to account for his presence therein [. . .] may be taken into custody by any police-officer without a warrant, and shall be liable to imprisonment which may extend to three months.”

10 Please refer to note 9 for the wording of the Rangoon Police Act

11 Interview with Respondent No. 67, 14 November 2018

12 Refer to annex containing Myanmar laws
Administration Department (GAD)\(^{13}\) range from false accusations and arbitrary arrests to verbal and physical abuse. Furthermore, the police’s misconduct toward LGBTQ communities legitimizes the perception that LGBTQ persons are a source of criminality and social ills.\(^{14}\) In addition to violating the human rights of LGBTQ persons and causing them harm, continued misconduct generates a general mistrust on the part of LGBTQ individuals towards the police and law enforcement agencies. This fear of the police and the GAD gives rise to a reluctance among LGBTQ individuals to seek assistance from authorities when they are themselves victims of crimes. It dissuades victims of human rights violations from seeking justice and, therefore, it hampers the overall exercise and enjoyment of human rights by LGBTQ people.

An intersectional analysis\(^{15}\) suggests that prejudices against LGBTQ people intersect with discrimination against women. In this context, this report’s findings substantiate previous studies showing that discrimination and violence against transgender women is particularly severe.\(^{16}\) In addition, a lesbian community leader explained that lesbians can usually avoid police discrimination; however, to do so, they must conceal their sexual orientation when interacting with the police.\(^{17}\) This pressure to conceal one’s identity undermines lesbians’ ability to live openly, with dignity, as their authentic selves.\(^{18}\)

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\(^{13}\) As it was previously one of four departments of the Ministry of Home Affairs, the MPF has limited institutional independence, as its command structure ultimately comes under authority of the Tatmadaw Commander-in-Chief. The General Administration Department (GAD), effectively wields controls over all the administrative functions of subnational governance throughout Myanmar. Until late 2018 the GAD was a department of the Ministry of Home Affairs, whose Minister is constitutionally appointed by the military, meaning its command structure ultimately came under authority of the Commander-in-Chief of. From January 2019, the GAD was transferred from Home Affairs to the Ministry of the Union Government Office, a newly created ministry coming under the purview of the elected quasi-civilian government. Its tasks entail responsibilities ranging from tax collection to various registration and certification processes. GAD officers sometimes perform a law enforcement role. For background reading on the GAD, see Kyi Pyar Chit Saw & Matthew Arnold, Administering the State in Myanmar: An Overview of the General Administration Department, October 2014 (MDRI-CESD & The Asia Foundation, Subnational Governance in Myanmar Discussion Paper Series, Paper No. 6). See also: “GAD chief appointed deputy govt office minister,” The Myanmar Times, 3 January 2019.

\(^{14}\) Interview with respondent No. 11, 26 September 2018, Interview respondent No. 60, 14 November 2018

\(^{15}\) See Women’s Access to Justice for Gender-Based Violence, A Practitioner’s Guide by the International Commission of Jurists, defines the term ‘intersectionality’ as a “term developed in international human rights discourse to express the fact that individuals may be subjected to discrimination or treated unequally in a variety of, or compounded, ways according to various facets of their identity. These multiple forms need to be taken into account in order to design methods of implementing rights obligations”, p. 26. Some of these characteristics include: ‘ethnicity/race’, indigenous or minority status, colour, socio-economic status and/or caste. “Practitioners Guide 12: Women’s Access to Justice for Gender-Based Violence”


\(^{17}\) Interview with Respondent No. 17, 26 September 2018.

\(^{18}\) Anecdotal evidence from the ICJ’s research suggests that social class also plays a significant role in LGBTQ individuals’ experiences within Myanmar’s criminal justice system. Wealth, educational attainment, and political connectedness appear to mitigate one’s risk of experiencing SOGIE-based discrimination. See, for example, the case of Moe Thida discussed on p. 32. Further research, however, is necessary to better understand the relationship between socioeconomic status and LGBTQ experiences within the criminal law and justice system.
Third, this report focuses on discriminatory attitudes of judges and court staff as these attitudes create obstacles to access to justice and fair judicial proceedings for LGBTQ persons. Many LGBTQ individuals reported that, in their experience, the attitude of judges and court staff toward them is profoundly affected by negative biases against, and stereotypical perceptions of, them. Deeply entrenched homophobia, transphobia and the harmful perpetuation of gender stereotypes pervade the court system. Prejudices manifest in various ways, ranging from judges’ derogatory comments about homosexuality to their refusals to address transgender litigants using language that comport with the litigants’ gender identity or expression. Lawyers too reported that judges discriminate against LGBTQ individuals.

For example, in one case, a gay man was not allowed to call a transwoman to stand as surety. The police informed him that he needed to call someone who was ‘straight’. In May 2014, Myo Aung, a gay man, was arrested for selling alcohol. He called two of his friends – who happened to be a gay man and transgender person – for support. The police vetoed these two friends from standing as Myo Aung’s surety because of their discriminatory attitudes towards LGBTQ persons. This is clearly discriminatory and is against standard police procedures for providing surety and securing bail.

Similarly, when Jasmine, a restaurant owner and a transwoman, was arrested, she was not considered a ‘credible’ witness; the court stated it would not accept a transgender or a gay person providing witness testimony.

The research conducted for this report established that discriminatory treatment of LGBTQ individuals ranged from judges rejecting witnesses on SOGIE grounds, to defendants facing difficulty contacting their family due to restrictions that court and prison staff applied selectively against them on SOGIE grounds.

In addition to the specific challenges resulting from prejudice and discrimination on SOGIE grounds, LGBTQ individuals are also confronted by all the other obstacles to securing access to justice that ordinarily beset Myanmar’s criminal justice system. Corruption detrimentally affecting one’s right to a fair trial, for example, is a pervasive problem within Myanmar’s criminal justice system generally, not only in cases concerning LGBTQ individuals. However, as this report demonstrates, LGBTQ individuals face additional systemic challenges due to SOGIE-based prejudice and discrimination.

19 Interview with respondent No. 23, 27 September 2018
20 Interview with respondent No. 26, 27 September 2018
21 Respondent No. 27, 26 September 2018; Respondent No. 7, 25 September 2018.
The human rights violations committed against LGBTQ people documented in this report directly contradict Myanmar’s constitutional commitment to protect equality, liberty, privacy, and justice. Myanmar’s laws, and the way in which they are enforced against LGBTQ people, also violate Myanmar’s obligations under international human rights law. The state of Myanmar has the duty to respect, protect and fulfil the human rights of LGBTQ persons, including their rights to equality and non-discrimination; to liberty and security of person; to freedom from torture or other ill-treatment; and to privacy and family life. The authorities of Myanmar also have a duty to prevent and protect LGBTQ persons from stigma, discrimination, violence, intimidation, harassment and abuse meted out against them, and motivated, in whole or in part, by ignorance of, prejudice and hatred against their real or imputed sexual orientation, gender identity and expression.

There is also a striking tension between the situation in Myanmar and legal developments concerning the human rights of LGBTQ individuals around the world. For example, a growing number of countries have recently removed legal provisions criminalizing consensual same-sex sexual conduct; this evolution has taken place particularly in countries where such provisions were relics of colonial rule. Conversely, in Myanmar, Section 377 remains in place.

Overview of Recommendations

The following reforms are recommended to address the systemic injustices LGBTQ people face when they come into contact with Myanmar’s criminal law and justice system.

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23 As Justice Malhotra of the Indian Supreme Court noted in its momentous 2018 decision in the case of Navtej Singh Johar et al v. Union of India and others, which held that section 377 of the Indian Penal Code was unconstitutional and in breach of India’s obligations under international law, “The trend of decriminalizing anti-sodomy laws world over has gained currency during the past few decades since such laws have been recognised to be violative of human rights”, Navtej Singh Johar v. Union of India, W. P. (Crl.) No. 76 of 2016 (India 2018) (Malhotra, J., concurring, para. 10). See https://www.icj.org/india-supreme-court-decision-ending-criminalization-of-consensual-same-sex-relationships-is-a-momentous-step-forward-for-human-rights/.
To the Parliament of Myanmar

a. To repeal Section 377 of the Penal Code, the provision for ‘unnatural offences’.

An important and urgent reform to pursue is repealing Section 377 of the Penal Code, at least insofar as it criminalizes consensual same-sex sexual conduct.

Section 377 must be repealed or at the bare minimum amended to meet Myanmar’s international law obligations because it violates the non-discrimination principle, the right to equality before the law and equal protection of the law without discrimination, as well as the rights to liberty and security of person and to private life, among other rights, and contributes to the stigmatization of LGBTQ people. This lends false legitimacy to the anti-LGBT prejudice common throughout Myanmar’s criminal justice system.

b. To enact anti-discrimination legislation in Myanmar.

c. To become a party to nine core international human rights treaties.

d. To establish legal gender recognition for transgender persons.

e. To reform vague and discriminatory laws.

Parliament should review and repeal or reform vaguely worded laws that invite discriminatory application, especially where such laws enable arrests to be made solely based on prejudice, discrimination, etc. on SOGIE grounds. Specifically, Section 35 of the Police Act 1945, Section 30 of the Rangoon Police Act 1899 (the so-called Shadow Laws) are legal provisions that should be amended or repealed as a matter of priority.

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24 The Assembly of the Union is the bicameral Parliament in Myanmar that promulgates national-level legislation for the Union. It was established by the 2008 Constitution. Section 12 of the 2008 Constitution defines legislative power of the Union as shared amongst the national level Parliament (Pyidaungsu Hluttaw), Region and State Hluttaws. Section 12(b) defines the two houses of Parliament, one representing townships and populations, while the other house is represented from the States and Regions (divided into the House of Nationalities, the Amyotha Hluttaw and the House of Representatives, the Pyithu Hluttaw). Section 96 of the 2008 Constitution provides for the powers of the Pyidaungsu Hluttaw to enact laws for the entire country or any part of the country, so long as it falls within the Schedule One of the Union Legislative List.

25 Please refer to page 36, footnote 150
To the Myanmar National Police and General Administrative Department

a. To cease discriminatory arrests and detentions.
   The Myanmar National Police (MPF) officers must stop arresting members of the LGBTQ communities on the mere suspicion of ‘engaging in unnatural sex’. MPF officers must also cease applying laws selectively to target individuals for their assumed sexual orientation or gender identity/expression, especially with regard to Section 30 of the Rangoon Police Act and Section 35 of the Police Act.

b. The police have a duty to promptly, thoroughly, independently and impartially investigate all crimes and human rights violations perpetrated against LGBTQ individuals. These investigations should be carried out with a view to identifying those responsible and bringing them to justice in proceedings that comply with international fair trial standards. This will include offences perpetrated by GAD officers.

c. Crimes perpetrated by police, the military and other law enforcement agencies should be tried exclusively by civilian courts, especially gross violations of human rights. Civilian courts must be empowered by law to be able to conduct inquiries, prosecute and try members of the police force, the military and other law enforcement agencies, as a decisive step towards combating all forms of impunity.

d. Undertake sensitivity training.

e. The Government of Myanmar should provide mandatory training to MPF and GAD officers with a view to dismantling prejudicial attitudes and behaviours toward LGBTQ people.

To the Judiciary, Lawyers and Other Actors in the Court System

a. To proactively prevent discrimination.
   The judiciary, lawyers and other actors in the court system should take an active role in preventing discrimination against LGBTQ persons involved in court proceedings.
b. To issue writs to uphold constitutional rights and international human rights.

The Supreme Court should ensure that LGBTQ detainees can file writ petitions to the Court to challenge the legality of their arrest. The Court must independently and impartially hear these cases, and issue writs to uphold constitutional rights and international human rights. The Court’s reasoned decisions in these cases should be made available through publicly accessible judgments.

c. To ensure the security of LGBTQ individuals and to guarantee their right to a fair trial.

Ensure the right of LGBTQ individuals who are defendants in criminal proceedings to be tried in proceedings complying with international fair trial standards, including, in particular, the right to adequate legal advice and representation, the right to be brought before the court in a dignified manner free from discrimination and the right to a fair hearing. This must ensure that LGBTQ individuals who suffer human rights violations while in detention are able to seek accountability and reparation without fear of reprisal.

The members of the legal profession should provide LGBTQ defendants with adequate, fair and dignified legal representation.

The members of the legal profession must recognize that discrimination based on sexual orientation and gender identity or expression is baseless and unwarranted, and creates a barrier to justice for LGBTQ people. The members of the legal profession should provide LGBTQ defendants with adequate, fair and dignified legal representation and pro bono legal aid service, whenever necessary and possible, and without discrimination.

To the Myanmar National Human Rights Commission (MNHRC)

a. To ensure its policy, public statements, reports and investigations actively address violence and discrimination based on sexual orientation and gender identity.
The MNHRC must ensure that the human rights of lesbian, gay, bisexual, transgender and queer persons feature in its national strategy, policy and objectives with the view to addressing the stigmatization, discrimination, violence and other abuse LGBTQ persons face.

b. To ensure transparent, timely and expedient availability of reports that are accessible by the public.

The MNHRC must make its investigations, especially its investigations in cases of LGBTQ persons publicly available, while ensuring their protection, the confidentiality of their complaint and the prioritization of their personal security.

c. To create and implement a plan of action on discrimination and violence based on sexual orientation and gender identity/expression.

The MNHRC should conduct an inquiry with the objective of documenting human rights violations faced by LGBTQ persons in Myanmar. This should include recommendations aimed at providing better public awareness about such violations as well as greater protection and security for LGBTQ individuals. It is critical that such an inquiry includes adequate and detailed consultation with LGBTQ persons.

d. To increase accessibility of the public to the MNHRC’s complaint mechanisms, it is recommended that regional and state offices are created throughout Myanmar. This is to ensure that the Commission will be able to receive complaints and develop policies that are reflective of the country’s diverse religious, ethnic groups, and LGBTQ people from all around Myanmar will be able to access these mechanisms with little difficulty.

Acknowledgments

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members: Kings N Queens, TRY, Khaing Hnin Sii & LGBT Rights Groups, Same Hands from Cherry Land, Same Hands from Tamar Myay, Tha Pyay Nyo Shwe Bo Pan – who were closely involved in the design of this research. The research team is grateful to these partners for their valuable input.

The Programme would especially like to thank the community-based coordinators of and focal persons from the LGBT organizations based in Yangon, Mandalay, Sagaing, Pakoukku, Shan State for their support during the field research.

The preparation of this report has been a team effort. The Denmark-Myanmar Programme on Rule of Law and Human Rights, implemented by the International Commission of Jurists in partnership with Danish Institute for Human Rights commissioned this report. The Report Team was supported by external consultant Professor Holning Lau of the University of North Carolina, who provided substantial support on the conceptualization, research and writing of the report. The field research was carried out by Michelle Yesudas and Zar Li Aye of the Denmark-Myanmar Programme along with consultant Holning Lau.

Several legal experts reviewed the report, and the Report Team would especially like to thank the Programme Team Leader Ross Clarke for support, guidance and reviews. Thanks also go to additional reviewers, including the Regional Director of the International Commission of Jurists, Asia Pacific, Frederick Rawski and ICJ staff Livio Zilli, Shaun Martinez, Sean Bain, and Maitreyi Gupta. Christina Pauly-Jones former Deputy Team Leader with the Danish Institute for Human Rights provided legal review as well.

The Programme Team would like to thank the Danish Embassy for its continued support and colleagues from the Joint-Venture team for their support and encouragement.

This report is dedicated to young librarian Ko Kyaw Zin Win who took his own life on 23 June 2019 in Yangon, and who was reportedly bullied by co-workers and forced to admit his sexual orientation. The Myanmar National Human Rights Commission (MNHRC) announced it would investigate the circumstances surrounding the case in August 2019. In a statement to the press, the MNHRC announced that he was “mentally weak”, and Commissioner Member Yu Lwin Aung told the media that “absolutely no evidence could be found he was bullied”.26 At the time of publication, the MNHRC report is currently pending.

Methodology

While earlier publications have documented a number of concerns about the treatment of LGBTQ people at the hands of the criminal law and justice system, this report documents relatively recent cases of mistreatment, and analyses the legal framework that creates the conditions where such mistreatment can occur with impunity.

This report describes emblematic cases of recurring human rights violations against LGBTQ persons in Myanmar. Because the report’s underlying research was based on a snowball sample (see below), the findings in this report are not intended to represent the totality of LGBTQ experiences in Myanmar.

Field research for this report was conducted from September 2018 to March 2019. The research sample consisted of 70 respondents who participated in in-person interviews, either individually or in small focus groups. Some respondents participated in follow-up interviews either in person or by phone. Every person who was interviewed also completed a written survey about SOGIE-based discrimination in the context of the criminal law and justice system, as well as in other aspects of life. Additionally, two respondents completed the written survey even though they were not interviewed. All the interviews and written surveys were conducted in Burmese, with English-Burmese interpretation/translations provided to members of the research team who do not write or speak Burmese.

All respondents gave their informed consent to participate in this research. No participant was paid any remuneration. When participants needed to travel to attend an interview, travel expenses were reimbursed. To protect the respondents’ security and privacy, this report refers to respondents using pseudonyms unless the specific respondent strongly preferred that the report use the respondent’s real name. In addition, this report withholds other details (e.g., respondents’ specific locations) to prevent respondents from being identified.

A snowball sampling process was used to identify the respondents, with research partners helping the research team to make initial contact with participants. The researchers identified participants who had concerns based on their first-hand experience with the criminal law and justice system. In addition, the research team identified participants who wished to share their experiences and insights about SOGIE-based discrimination even if they had not been subjected to mistreatment.

first-hand. All the research respondents identified themselves in ways that shaped this report's terminology (i.e., LGBTQ, see Appendix A for definitions). The research team spoke with respondents from the Magway Region, Mandalay Region, Sagaing Region, Shan State, and Yangon Region.  

The field research for this report was supplemented by a desk review of the literature concerning SOGIE-based discrimination in Myanmar, including academic work, media reports and advocacy reports, as well as literature on international human rights and comparative law. The team carried out additional research to better understand Myanmar's laws, and to evaluate them against international and comparative human rights law.

The research team sought to obtain official information from government authorities concerning LGBTQ persons’ grievances about Myanmar’s criminal law and justice system. These efforts were, however, unavailing. Furthermore, upon meeting with the Myanmar National Human Rights Commission, Commissioners reported that they had received no complaints regarding discrimination on SOGIE grounds. There is also very limited official information available about criminal prosecutions for “SOGIE-related crimes”.

Despite these challenges on access to official information and lack of data, the interviews and respondents’ testimonies compiled for this report, illustrate a clear pattern of discriminatory treatment, mistreatment and injustice.

28 We interviewed 13 people from Yangon, 17 from Mandalay, 15 from Monywar (Sagaing region), 8 from Shwebo (Sagaing Region), 11 from Pakoukku (Magwe region), 6 from Aye Thayar and Taunggyi (Shan state)

29 To input information from UAGO, OSCU letters
20 In the shadows

Part One
Part Two
Background and Context

From 1962 to 2011, Myanmar has seen a succession of military governments, and in 2011, executive power was transferred to a quasi-civilian government that promised to deliver significant economic and political reforms, together with a firm commitment to the ‘rule of law’. After a landslide victory in the November 2015 elections, the National League for Democracy (NLD) formed a government in March 2016.

Historically, people in Myanmar have been consistently disenfranchised, experienced barriers in access to the courts, justice and effective remedies, including as a result of unfair and discriminatory laws.

Several provisions of Myanmar’s national laws enable impunity for human rights violations, including by shielding security forces from public criminal prosecutions. Members of the military and police force enjoy impunity largely through the use of military courts or special police courts as mechanisms of investigation and prosecution concerning the conduct of the military and police personnel. Convictions are rare and penalties are relatively weak, often times not commensurate with the gravity of the acts in question.  

Myanmar’s legal system is derived from the British common law system, certain standard elements of this system, such as the doctrine of ordinarily being bound by judicial precedents (i.e., to adhere to judicial decisions when cases are similar or substantially similar to those where a superior court/s’ judicial precedent exist/s), have rarely been given effect since the 1962 military coup. Political and military influence over judges remains a major obstacle to the rule of law, with the executive branch, the military and security apparatus maintaining undue influence over the judiciary.

The 2008 Myanmar Constitution vests significant powers in the Myanmar National Police Force, the Tatmadaw. Article 20(b) confers upon the Tatmadaw the right to independently administer its own affairs without effective oversight from civilian executive authorities, the legislature or the judiciary. Articles 109(b) and 141(b)

allocate to the Tatmadaw 25 percent of seats in each of the two houses of the national legislature.

The NLD-led Government is Myanmar’s first democratically elected, civilian-led government since 1962. However, the many years of authoritarian military rule gradually weakened Myanmar’s legal institutions, the perception of independence of the legal system and its adherence to the rule of law. Indeed, as a result of this, the current government has publicly committed itself to prioritize the establishment of the rule of law in Myanmar.

Myanmar continues to experience deficiencies in the rule of law and impunity for human rights violations carried out by security forces and the police to exist. The legal system is affected by widespread corruption, and the public generally has a deep mistrust of it. Corruption in the courts has created an environment where bribery, delays and obstructions are a systemic challenge. Furthermore, as the legal profession rebuilds itself during the ongoing period of political transition, lawyers who represent clients in so-called ‘political’ cases have faced harassment, threats, and reprisals.

The plight of LGBTQ people facing Myanmar’s criminal law and justice system is thus one dimension of Myanmar’s larger challenges concerning the rule of law and human rights compliance. Yet, as this report will demonstrate, LGBTQ people face barriers to justice stemming from SOGIE-biased prejudices that extend beyond more general deficiencies across Myanmar’s legal system.

Nevertheless, there are some early indications of potential progress on which Myanmar can build, for example, by implementing this report’s recommendations with a view to enhancing the respect of the human rights of LGBTQ persons facing the criminal justice system and interacting with Myanmar’s law enforcement officials. For example, this report calls for the repeal of Section 377 which is a concrete step that has previously been supported by the government. This report also calls on Myanmar to become a party to core human rights treaties. Doing so would build on recent history, with Myanmar having ratified the International Covenant on Economic, Social and Cultural Rights in 2017 and enacting the new Child’s Rights Law from 2019.

31 Ibid, page 5
32 See Matthew McFetridge, “The Outlook for LGBT Rights in Myanmar,” The Diplomat, 5 September 2014, https://thediplomat.com/2014/09/the-outlook-for-lgbt-rights-in-myanmar. During the second cycle of Myanmar’s Universal Period Review at the United Nations, Australia called on Myanmar to “Repeal or revise the ‘Protection of Race and Religion’ laws and Section 377 of the 1861 Penal Code to ensure the rights of women, religious minorities and the lesbian, gay, bisexual, transgender and intersex community are protected”. Myanmar took note of this recommendation but has so far not taken any steps to implement it.
Discriminatory Criminal Laws Systemic injustice based on sexual orientation and gender identity/expression in Myanmar

This chapter focuses on Myanmar’s criminal laws and the ways in which their enforcement discriminates against and violates the human rights of LGBTQ people. The mere existence of and the actual application of Section 377 of the Penal Code, which criminalizes “carnal intercourse against the order of nature” violates LGBTQ people’s human rights to: freedom from discrimination; equality before the law and equal protection of the law without discrimination; liberty and security of person; privacy; freedom of association; and freedom of expression, among others. Meanwhile, other legislative provisions grant the police a wide ambit of powers to detain, arrest, search and seize belongings from a person, and give them broad discretion to criminalize any activity that occurs after sunset. Granting this almost unfettered discretion opens up avenues for the police to discriminate against individuals based on their real or purported sexual orientation or gender identity or expression, resulting in the violation of LGBTQ people’s human rights.

A. Section 377

Background on Section 377

Section 377 was introduced in 1861 during British Colonial rule in the territory which today is independent Myanmar. Section 377 penalizes “carnal intercourse against the order of nature.” Although the Penal Code does not clearly define “carnal intercourse”, Section 377 is generally understood – and perhaps more importantly enforced by law enforcement agencies, as a prohibition on consensual same-sex sexual relations.

For additional information on the British colonial legacy of criminalizing same-sex sexual intimacy, see Douglas E. Sanders, “377 and the Unnatural Afterlife of British Colonialism in Asia,” 4 Asian Journal of Comparative Law 1 (2009).

See Appendix B for the text of Section 377.

Chua & Gilbert (note 24), p. 16.
The prosecution must prove beyond reasonable doubt that:

i. The accused had carnal intercourse with a man, woman or animal;
ii. That such intercourse was against the order of nature;
iii. That the accused did the act voluntarily;
iv. That there was penetration.36

Three former British colonies have recently abolished – or otherwise done away with – prohibitions on consensual same-sex sexual conduct that they also had inherited from the British. In 2019, the High Court of Botswana struck down criminal law provisions criminalizing consensual same-sex relations, which were a legacy of British colonial rule.37 Similarly, in 2018, the Supreme Court of India and the High Court of Trinidad & Tobago both invalidated their respective British colonial-era laws that criminalized consensual same-sex sexual relations.38 In 2019, Angola decriminalized consensual same-sex sexual activity by repealing the relevant provision of its penal code, which was a legacy of Portuguese colonial rule.39

In Myanmar, however, Section 377 remains fully part of the criminal law, and continues to have a detrimental impact on the lives of LGBTQ individuals. To date, there has been no constitutional challenge filed against Section 377 before Myanmar’s Constitutional Tribunal. UN Special Rapporteurs on the situation of human rights in Myanmar have recommended that section 377 be repealed because it violates the rights to privacy, equality and non-discrimination, among others.40

In Myanmar, official information on prosecutions and conviction rates—especially regarding the use of Section 377 to prosecute consensual, same-sex relationships—has been difficult to access.

One exception, however, has drawn public attention to Section 377. In both cases, the charges related to alleged non-consensual same-sex sexual activity, and the

36  Ratanlal & Dhirajlal’s “Law of Crimes”, Volume 2, Bharat Law House, New Delhi, Page 1901
38  Navtej Singh Johar v. Union of India, W. P. (Cr.) No. 76 of 2016 (India 2018) (reading down India’s version Section 377); Jason Jones v. Attorney General of Trinidad and Tobago, Claim No. CV 2017-00720 (Trinidad & Tobago 2018) (declaring null and void Trinidad and Tobago’s law criminalizing same-sex sexual conduct).
defendants have been stigmatized because of their sexual orientation and gender identity. Both cases sensationalized the sexual orientation of the defendants, shrouding same-sex sexual activity in taboo and stigma.41

The first case involves an alleged sexual assault by U Aung Myo Htut, a well-known LGBTQ Yangon-based human rights activist, of his restaurant employee. The accused was arrested in March 2018, charged in the South Okkalapa Township Court under Section 377 with allegedly committing 'unnatural intercourse', and was then denied bail.42 Concern has been raised about the fact that his detention may be detrimental to his health.43 His status as an HIV-positive gay man found its way to media headlines.44 A transwoman, who is also an LGBTQ human rights defender from Yangon,45 explained in an interview that media coverage of U Aung Myo Htut’s case had the effect of ‘discriminating against the LGBT people.’ She noted that many journalists lack experience reporting on and ‘making contact with the LGBT community’. In particular, she raised concern that the media had depicted the accused and used headlines referring to a ‘man with HIV’, reinforcing negative stereotypes of LGBTQ people as ‘HIV spreaders’.46

An acquaintance of U Aung Myo Htut, who is a human rights worker and a lawyer based in Yangon, also commented on the coverage of the case, stating, ‘I am concerned that the media coverage of Aung Myo Htut’s case has not respected the presumption of innocence. This has contributed to a belief among the general public that Aung Myo Htut is guilty. It is in that environment that his case is being heard.’ While she notes the LGBTQ community members in Myanmar have started creating their own films and presenting their own narratives about the LGBTQ community, in mainstream media ‘LGBTQ persons in Myanmar are presented . . . as figures of ridicule’.47

41 Interview with Respondent No. 69, 28 May 2019.
42 ‘Two people have recently been charged under Section 377, a law advocates say was rarely enforced’, see: https://equalitymyanmar.org/myanmar-is-arresting-people-for-being-gay-under-colonial-era-sodomy-law/
43 Interview with Respondent No. 69, 28 May 2019
45 Interview with Respondent No. 69, 28 May 2019.
47 Interview with Respondent No. 70 11 June 2019.
A. A tool of oppression, even without formal charges

Police officers have invoked Section 377 to enter LGBTQ people’s homes; accuse them of ‘unnatural sex’;\(^{48}\) take them into police custody;\(^{49}\) and to subject them to abuse.\(^{50}\) LGBTQ human rights defenders fear that arrests and charges based on Section 377 are on the rise.\(^{51}\) One LGBTQ human rights defender in Mandalay told the research team that, by September of 2018, he had already heard about 17 arrests in 2018, which, by then, already exceeded the number of known arrests for the same period in previous years.\(^{52}\) An LGBTQ rights organization based in Yangon has voiced similar concerns.\(^{53}\)

\(^{48}\) See Interview with Respondent No. 35, 27 September 2018.
\(^{49}\) See also Interview with Respondent No. 35, 27 September 2018; and Interview with Respondent No. 61, 14 November 2018.
\(^{50}\) Interview with Respondent No. 61, 14 November 2018.
\(^{51}\) Interview with Respondent No. 61, 14 November 2018.
\(^{52}\) Interview with Respondent No. 16, 26 September 2018.
\(^{53}\) Interview with Respondent No. 61, 14 November 2018.
Yet, the oppressive impact of Section 377 extends far beyond documented cases of arrest and charges. Law enforcement officers often threaten to press charges under Section 377 in order to extort money or coerce LGBTQ individuals into performing sexual acts. When the targets of these threats acquiesce, formal charges are not pursued. For example, a gay man named Htet Zaw spoke of how a male police officer threatened him with pressing charges under Section 377 in 2010. Htet Zaw had flirted with this man before realizing he was a police officer. Htet Zaw recounted how the officer had revealed that he was a member of the police by showing him his identification card. According to Htet Zaw, the police officer then abused his position and extorted money and non-consensual sexual acts from him. While the police officer did not explicitly refer to Section 377, he told Htet Zaw “I know you are gay and you have homosexual sex”, and suggested that Htet Zaw had better submit to his demands. As a result, Htet Zaw was both sexually assaulted and forced to pay his assailant, the police officer, the money he had demanded.54

“... I know you are gay and you have homosexual sex…”

Many respondents provided similar examples of how section 377 has been used to blackmail, threaten and extort money from LGBTQ persons. In Myanmar, Section 383 of the Penal Code criminalizes extortion,55 and Section 503 makes criminal intimidation illegal.56 However, MPF and GAD officers have been able to intimidate and blackmail individuals, including members of the LGBTQ community, with impunity.57

Section 377 also functions as a powerful tool that socially isolates LGBTQ people. It lends false legitimacy to harmful stereotypes depicting LGBTQ people as morally corrupt. Section 377 has given rise to widespread stigma prevalent across the country against LGBTQ individuals, and to a common perception of them as potential ‘criminals’58 and sexual deviants.59 As a result, generally speaking, the LGBTQ persons live segregated from mainstream society.

54 Interview with Respondent No. 1, 24 September 2018.
55 Section 383 of the Penal Code: Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits “extortion.”
56 Section 503 of the Penal Code: Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.
57 This has also been recorded by media: https://frontiermyanmar.net/en/myanmars-lgbt-community-between-old-laws-and-enduring-stigma, https://frontiermyanmar.net/en/the-left-over-laws-myanmars-colonial-hangover.
58 Interview with Respondent No. 24, 27 September 2018.
As an LGBTQ human rights defender in Mandalay noted, he does not fear arrest based on Section 377 because he is a bisexual man who can pass as “straight”, but he is still affected by Section 377 because it legitimizes social stigma against LGBTQ people. He noted that, “it is important to amend the written law, such as Section 377, so that unwritten laws [in the form of social norms] will also change.”  

Another respondent, a lesbian woman, noted that Section 377 is typically applied to gay men and transwomen. Thus, as a cisgender woman, she does not feel directly threatened by Section 377. Still, she believes that Section 377 sends the message that same-sex relationships are wrong and, as a result, Section 377 stigmatizes lesbian relationships as well.

B. Vague criminal laws and overly broad police powers

According to respondents for this report, as well as published sources, law enforcement officials frequently violate the human rights of LGBTQ people through the prejudicial application of vague criminal provisions granting them overly broad powers.

The two key law enforcement agencies in this context, namely, the Myanmar Police Force (MPF) and the General Administration Department (GAD), were both previously under the purview of the Ministry of Home Affairs; however, the GAD has recently been moved under the authority of the Ministry of the Union Government Office.

The General Administration Department (GAD) plays a large role in Myanmar’s civil service, at the state/region and township levels. GAD is part of subnational governance, forming much of the civil service for state and regional governments while also providing administrative functions for districts and townships. Previously, GAD was under the purview of the Ministry of Home Affairs, and it is usually the first point of contact for many people in villages and wards, through management of the Wards and Village Tract or Township offices. The Direct Administrator of GAD has significant formal and informal powers in terms of oversight and control of other government departments operating within the district and often regardless of their

60 Id. The respondent also emphasized that the abolition of 377 should be accompanied by additional law reforms, such as the enactment of anti-discrimination protections, and laws to ensure that non-consensual same-sex sexual activity continues to be criminalized.

61 Interview with Respondent No. 17, 26 September 2018.

62 E.g., sources cited in note 24.

formal accountability line to civilian-led government. Interference with police and judicial affairs is also reportedly common.\textsuperscript{64}

MPF and GAD officers often rely on archaic national level and state-level provisions providing a low threshold for authorities to exercise their powers of stop, search and arrest. Most prominent among these legal provisions are Section 30 of the Rangoon Police Act of 1899, which applies in Yangon, and Section 35 of Police Act of 1945, which applies everywhere else in Myanmar.\textsuperscript{65} Because of their vague and overly broad nature, these two Sections provide the police with unbridled power. Neither of these provisions is necessary because other criminal provisions, which are more carefully defined, can be used by authorities to maintain law and order.

1. “Shadow” and “Darkness” Laws

Section 30 of the Rangoon Police Act and Section 35 of the police Act are both colloquially referred to as the “Shadow Laws” or “Darkness Laws.”\textsuperscript{66} These names, which are commonly used throughout the country, derive from the fact that under vaguely defined circumstances, the laws criminalize the act of being found outdoors during night-time. For brevity, this report will hereinafter refer to these laws as the “Shadow Laws.” The text of the Shadow Laws are as follows.

Section 35 of the Police Act of 1945 states that:

(a) Any person found armed with any dangerous or offensive instrument whatsoever, who is unable to give a satisfactory account of his reasons for being so armed;

(b) any reputed thief found between sunset and sunrise remaining or loitering in any bazaar, street, road, yard, thoroughfare or other place, who is unable to give a satisfactory account of himself;

(c) any person found between sunset and sunrise having his face covered or otherwise disguised, who is unable to give a satisfactory account himself;

\textsuperscript{64} International Commission of Jurists, Myanmar: Human Rights Law in Rakhine State, Questions & Answers- November 2017, page 28  

\textsuperscript{65} See Appendix B for the text of these criminal provisions.  

\textsuperscript{66} Some commentators use these terms to refer specifically to subsections (b)-(d) of the criminal provisions referenced above.
(d) any person found within the precincts of any dwelling-house other
building whatsoever, or in any back-drainage space, or on board any
vessel, without being able satisfactorily to account for his presence
therein; and

(e) any person having in his possession, without lawful excuse, any
implement of housebreaking, may be taken into custody by any
police-officer without a warrant, and shall be punishable on conviction
with imprisonment for a term which may extend to three months.

Section 30 of the Rangoon Police Act 1899 states:

Apprehension and punishment of reputed thieves and others.

30. (a) Any person found armed with any dangerous or offensive
instrument whatsoever, and who is unable to give a satisfactory
account of his reasons for being so armed;

(b) any reputed thief found between sunset and sunrise lying or
loitering in any bazaar, street, road, yard, thoroughfare or other
place, who shall not give a satisfactory account of himself;

(c) any person found between sunset and sunrise having his face
covered or otherwise disguised and who is unable to give a
satisfactory account of himself;

(d) any person found within the precincts of any dwelling-house or
other building whatsoever, or in any back-drainage space, or on
board any vessel, without being able satisfactorily to account for
his presence therein; and

(e) any person having in his possession, without lawful excuse, any
implement of house-breaking,

may be taken into custody by any police-officer without a warrant,
and shall be liable to imprisonment which may extend to three
months.

These laws, adopted in pre-independence times, provide MPF and GAD officers with
a wide ambit of powers to arrest and detain suspects. These provisions’ vague
wording allows police officers to use the law to target virtually anybody they want.
For example, Sections 30(a), (b), (c), (d) of the Rangoon Police Act and Sections 35(a),
(b), (c), (d), (e) of the Police Act require persons to provide a satisfactory reason for
being outdoors after sunset, but the laws do not define what constitutes a satisfactory
account. As a result, MPF and GAD have exercised wide discretion in determining what counts as a satisfactory account.

LGBTQ people have been particularly easy targets for arrest under the Shadow Laws. For example, transgender women often find work as hair and makeup stylists because it is one of the few occupations available to them. However, transgender women have been apprehended simply because the police have deemed the scissors they carry for work a “dangerous or offensive instrument” under subsection (a) of the Shadow Laws. LGBTQ people are also stereotyped as criminals and sometimes presumed to be a “reputed thief” under subsection (b) without any evidence warranting such presumption. Meanwhile, transgender women have been accused of violating the Shadow Laws because their makeup is deemed to be a “disguise” according to subsection (c). Simply sitting outside one’s house can prompt the arrest of an LGBTQ person based on subsection (d).

Furthermore, the vague Shadow Laws are enforced arbitrarily against LGBTQ people, with the practical consequence of criminalizing what would be considered normal, everyday behaviour for cisgender heterosexual people, including the basic act of going to and from work. For example, Chu a transgender woman, was arrested in 2017 in the early morning while she was on her way to a wholesale market to purchase flowers for her retail business. What happened to Sandar Thein, who was out at night in Yangon, is another example of police abuse under Shadow Laws. She recounted how upon finishing her work, she started walking home with friends; she then realized that police in an unmarked car were followed them. When the policemen started to photograph Sandar Thein and her friends, they asked why they were being photographed. Following this, the policemen placed her in their car, took her to the police station and later locked her up in a cell pursuant to Shadow Law. In yet another example, a transgender respondent named Shweyin was arrested while attending a cultural and religious festival one night in 2014. She told researchers that she was arrested for alleged theft, when a festival attendee accused Shweyin of stealing her earrings. However, it became clear that there was no evidence of theft, the police threatened to charge her with violating a “Shadow Law” based on no evidence other than the fact that she was a transwoman out at night. Shweyin was released after paying a so-called “fine”, which was essentially a bribe.

67 Interview No. 7, 25 September 2018
68 Interview Respondent No. 12, 26 September 2018; Interview Respondent No. 12, 19 December 2018.
70 Interview Respondent No. 42, 13 November 2018.
San San was found outdoors by police at around 7pm in June 2016. She had been cross-dressing and sat on a bench with a group of young people in front of a hospital in a public area in Mandalay, at around 7 in the evening. She noticed a car that drove past and stopped in front of them.

Five police men in plainclothes emerged from the car and arrested San San. She asked the police why she was being arrested, and was merely informed that she was being detained under Section 377 and the Shadow Law. No further explanation was given. She recounted how she was held in police custody where police officers subjected her to repeated slapping, beatings, and verbal abuse.

“When I arrived at the police station, they asked me what my name was, and I said ‘my name is San San’. Then, they slapped my face, and told me to say what my real name was, and I repeated my name was San San, and they continued slapping my face”

she recalled. San San then said they had asked her why she dressed as a woman, and why she had a wig. The policemen then made her remove her clothing and her wig.

Other respondents have also reported being arrested under Shadow Laws for strolling on a date as a gay couple or visiting a park in the evening. Indeed, the Shadow Laws have the effect of deterring LGBTQ people from going places after sunset and, therefore, impinge upon LGBT people’s right to freedom of movement, among other human rights.

The Shadow Laws are the most notorious among the vague laws used to harass, intimidate, and arbitrarily arrest LGBTQ people, but they are not the only ones.

71 Interview with Respondent No. 61, 14 November 2018
72 Interview Respondent No. 5, 25 September 2018.
73 Transgender women reported that they were targeted by police while other individuals at the park were not. Interview Respondent No. 33, 27 September 2018; Interview Respondent No. 61, 14 November 2018.
Myanmar’s nuisance and obscenity laws are also written so broadly that they can be used to the same effect against them. The specific provisions of these laws, as well as those of the Shadow Laws, can be viewed in Appendix B.

2. “Hot areas” as danger zones

Testimonies indicate that arrests of LGBTQ persons under Shadow Laws often occur in so-called “hot areas”, where visible members of the LGBTQ communities are known to frequent at night. Policing of these hot areas can lead to multiple unwarranted arrests.

Interviewees have mentioned specific areas in Mandalay and Aye Thar Yar, Shan State, as favoured locations for socializing among LGBTQ persons. According to respondents, police target these areas to arrest LGBTQ persons. For example, Ei Khine, a transgender woman recounted her experience of being arrested on the U Bein bridge in Mandalay and being accused of being ‘behind the shadow’ (this is a phrase that was literally translated from Burmese, and this expression means they were found outdoors after sunset). That night, six other transgender persons were also arrested at the U Bein bridge. The police demanded them all to pay a bribe of 50,000 Myanmar Kyats (32 USD) and when Ei Khine failed to do so, she was placed in police custody.

Myat Thiri, War and Min Da Tha shared their separate experiences of being arrested by the police at a specific “hot spot” called Aye Thar Yar Gate, in Shan State. War told her story of being transgender and crossing the Aye Thar Yar Gate, a route she uses when she travels to meet her clients as a makeup artist. On a particular occasion on which she was crossing the bridge, a policeman requested sexual favours from her, and when she refused, the police officer slapped her and told her ‘you want a lesson from me!’ She was then arrested and placed in a small cell. Police officers taunted her, teased her and told her she would be freed in exchange for sexual acts. She then was coerced into having sex with two policemen after several hours of being harassed.

75 Interview Respondent No. 63, 15 November 2018
76 Interview Respondent No. 14, 26 September 2018, No. 61, 62, 14 November
77 Interview Respondent No. 63-68, 15 November
78 Interview Respondent No. 14, 26 September 2018
79 Respondent No. 68, 15 November 2018
Part Four
Mistreatment by Law Enforcement Agents
(The Myanmar Police Force and the General Administration Department)

Transparent investigations and prosecutions of acts involving human rights violations allegedly perpetrated by law enforcement agents rarely occur within Myanmar’s criminal justice system, especially in relation to crimes perpetrated against LGBTQ persons. Rather, the reverse is commonplace, with investigations at times taken over by the special forces, ad hoc government committees and the Myanmar National Human Rights Commission. These investigations have occurred in lieu of the independent, impartial, independent, effective and fair investigations and prosecutions that are required according to Myanmar’s criminal procedures and international human rights law and standards.

Lenient penalties for serious crimes

- Legislation providing for police discipline, the 1995 Myanmar Police Force Maintenance of Discipline law (also see 1997 Law Amending the Myanmar Police Force Maintenance of Discipline Law), stipulates a wide range of offences committed by police will fall under the jurisdiction of Police Courts.

- The offences under the law will include if police: carries out ‘unnecessary imprisonment’, ‘strikes or otherwise ill-treats any prisoner, any person in custody or any person detained;’, or ‘demands or accepts cash or kind in a corrupt manner from any person he shall, on conviction by a Police Court be punished with imprisonment for a term which may extend to 3 years or such less punishment as it is mentioned in this Law’.

- The offences are punishable with ‘imprisonment for a term which may extend to 3 years or such less punishment or such less punishment as is mentioned in this Law’.

- The Police Court will have exclusive jurisdiction over crimes stipulated by the law.
The failure to use the ordinary court system has effectively enabled the police to enjoy impunity for the perpetration of criminal offences, including acts involving the commission of human rights violations.  

Indeed, respondents interviewed for this report expressed concern that police officers who commit acts against LGBTQ individuals that constitute criminal offences under the penal code, rarely if ever face disciplinary, let alone criminal sanctions.

A. Mistreatment by Law Enforcement Agents

This chapter documents complaints about human rights violations against LGBTQ persons committed by law enforcement officials. At present, no government initiatives exist to systematically collect complaints from LGBTQ people about complaints of misconduct at the hands of law enforcement officials of which they alleged to be victims. This information relevant to this chapter was collected, mainly, through research interviews and survey-based research. The chapter begins by outlining the various forms of mistreatment that respondents described having experienced at the hands of law enforcement officials. It goes on to discuss how such misconduct generates mistrust of law enforcement in general, and how this mistrust in turn creates a disincentive for LGBTQ individuals to file complaints when they themselves become victims of crime.

LGBTQ persons are not the only people in Myanmar who experience abuse and mistreatment at the hands of the MPF and GAD. Some forms of misconduct, such as demanding a bribe, are widespread, affecting the public at large. This chapter, however, discusses instances of misconduct that are directed specifically at LGBTQ people. It should be noted that, like LGBTQ individuals, other marginalized groups—such as ethnic and religious minorities—are negatively stereotyped and, as a result, are specifically targeted by law enforcement officers for abusive treatment. Various, perceived aspects of one’s identity, whether real or imputed—such as ethnicity, religion, class, and SOGIE status—may intersect in ways that increase the risk that an individual will face of mistreatment at the hands of law enforcement officers.

B. Mistreatment Takes Many Forms

Mistreatment of LGBTQ people by law enforcement officers may be described as falling into three main categories: (1) arbitrary accusations and detentions; (2) physical, sexual and verbal abuse; (3) forcible disavowal of sexual orientation and gender identity/expression; and (4) other cruel, inhuman or degrading treatment. This section elaborates on these four categories, and sets out a number of testimonies that illustrate the multiple forms of mistreatment that respondents reported.

1. Arbitrary accusations and detentions

Many respondents described being subjected to arbitrary accusations and detentions. In those instances, the police have accused respondents of violating the law even when they could point to no evidence of wrongdoing other than the victims being LGBTQ individuals. Yet, arresting and detaining someone based on their actual or perceived sexual orientation or gender identity/expression amounts to an arbitrary arrest and detention that violates international human rights standards.82

Respondents have been told that they violated a Shadow Law simply by being gay or transgender and outside at night. As one respondent explained, the police stereotype LGBTQ people as criminals: “A police officer told me that the crime rate is high because of transwomen and gays [and] LGBTQ people.”83

Another respondent recounted that when she was arrested the police gave her no reason for it except to say that she should not be outside at night. When she asked the police why she had been arrested, they said: “Because you are a trans woman! Because you are gay!”84 Other respondents reported comparable experiences of being arrested, or being threatened with arrest, for no reason other than being LGBTQ.85

Police officers also sometimes accuse people of violating Section 377, regardless of whether they have any evidence to support their accusations. For example, a respondent named Lin Lin reported that in June 2016, in a small district in the Sagaing region, police officers followed her home from a tea house to arrest her. According to Lin Lin, the police said, “we know you are transgender, so you need to

82 See notes 188-189 and accompanying text.
83 Interview with Respondent No. 24, 27 September 2018.
84 Interview with Respondent No. 38, 27 September 2018.
follow us.” After arriving at the police station, the police told Lin Lin she was under arrest under Section 377. Lin Lin explained that the police did not have any evidence of sexual activity. Instead, the arresting officer, displaying stereotypical and prejudicial views, stated: “all transwomen engage in anal sex and are bottoms [i.e., the ones who are penetrated during penetrative anal sex]”, and are therefore in violation of Section 377.86 After arresting Lin Lin and other transgender women, a police officer slapped some of the transgender women and beat them in the head. He also threatened them by saying, “you are very active in sex, I will get all the inmates to have sex with you.” At that time, Lin Lin recognized an officer in the group who had previously raped her, and she said, “please arrest that police officer, sir, he has raped me before.” Eventually the police released the group of transgender women from custody. According to Lin Lin, the police did not follow up to investigate her rape accusation and provide redress.

The threat of arbitrary accusations and detention is not limited to the abuse of the Shadow Law and Section 377. For example, in one case, a community leader reported that a transgender woman found a mobile phone and handed it over at a police station.87 However, the police accused her of stealing the phone. Other respondents also reported cases of false accusations of violating the law. Some respondents reported being arrested without ever being told what crimes the police suspected them of having committed. As illustrated by the testimony of Myat Thiri, in the text box below (p. 30), such arbitrary arrest can lead to arbitrary detention, ill-treatment and other abuse at the hands of law enforcement officers.

Representatives of LGBTQ organizations told researchers that arbitrary arrests tend to occur toward the end of each month. This has led them to suspect that LGBTQ people are easy targets for the police who carry out arrests to satisfy suspected monthly arrest quotas.

2. Physical, Sexual and Verbal abuse

Many respondents recounted being physically, sexually and/or verbally assaulted by law enforcement officers. Twenty respondents reported that they had been physically hurt by police officers and considered that the police had harmed them because they either knew or suspected that they were LGBTQ people. Physical assaults were

86 Interview with Respondent No. 35, 27 September 2018.
87 Interview with Respondent No. 26, 27 September 2018.
committed in a variety of ways. For example, respondents reported being kicked,\textsuperscript{88} slapped,\textsuperscript{89} beaten with a stick,\textsuperscript{90} tasered,\textsuperscript{91} spat on\textsuperscript{92} and burned with cigarettes.\textsuperscript{93} Numerous respondents complained of being sexually assaulted, for example, by being groped\textsuperscript{94} and even raped by police officers.\textsuperscript{95} Respondents also complained about being threatened with sexual assault.\textsuperscript{96} Forty respondents said that they had personally experienced verbal abuse from the police because the police either knew or suspected that they were LGBTQ individuals. The reported verbal abuse included name-calling,\textsuperscript{97} being cursed at,\textsuperscript{98} and denigrated as being criminal\textsuperscript{99} or sexually deviant.\textsuperscript{100}

Soe Soe Aung’s testimony is illustrative of the physical and sexual abuse meted out by the police against people because of their real or perceived sexual orientation and gender identity.

\textsuperscript{88} E.g., Interview with Respondent No. 11, 26 September 2019; Interview with Respondent No. 11, 19 December 2019; Interview with Respondent No. 14, 26 September 2018; Interview with Respondent No. 38, 27 September 2018; Interview with Respondent No. 47, 13 November 2018; Interview with Respondent No. 53, 13 November 2018.

\textsuperscript{89} E.g., Interview with Respondent No. 10, 25 September 2018; Interview with Respondent No. 11, 26 September 2019; Interview with Respondent No. 11, 19 December 2019; Interview with Respondent No. 40, 27 September 2018; Interview with Respondent No. 53, 13 November 2018; Interview with Respondent No. 66, 15 November 2018; Interview with Respondent No. 68, 15 November 2018.

\textsuperscript{90} E.g., Interview with Respondent No. 3, 24 September 2018; Interview with Respondent No. 5, 25 September 2018; Interview with Respondent No. 66, 15 November 2018.

\textsuperscript{91} Interview with Respondent No. 5, 25 September 2018.

\textsuperscript{92} Interview Respondent No. 53, 13 November 2018.

\textsuperscript{93} Interview Respondent No. 5, 25 September 2018.

\textsuperscript{94} E.g., Interview with Respondent No. 14, 26 September 2018; Interview with Respondent No. 66, 15 November 2018; Interview with Respondent No. 68, 15 November 2018.

\textsuperscript{95} E.g., Interview with Respondent No. 20, 27 September 2018; Interview with Respondent No. 35, 15 September 2018; Interview with Respondent No. 53, 13 November 2018; Interview with Respondent No. 68, 15 November 2018.

\textsuperscript{96} E.g., Respondent No. 47, 13 November 2018; Interview with Respondent No. 53, 13 November 2018; Interview with Respondent No. 61, 14 November 2018.

\textsuperscript{97} - 100 Interviews with various respondents
Soe Soe Aung identifies as a transgender woman. One night in 2011, she was out with a few other transgender friends when two police officers arrived; her friends managed to flee, but Soe Soe Aung was left behind. The police ended up driving Soe Soe Aung to a toll gate. Then, according to Soe Soe Aung:

“They started slapping my face and kicking my stomach. They asked me if I am male or female, and I responded I was born as male, but I am female. They said, ‘if you have a dick, why are you dressing as a female?’ They slapped me again and I saw stars in my eyes. They were kicking me non-stop and it was so, so very painful. Again, I told them that I was born as a man, but I love to dress up as a female. One officer was so angry about my response that he put a knife to my throat. He then said I could go home if I gave the police officer and two gate-keepers massages and hand jobs. I did it, and then they allowed me to go home at around 3 in the morning. Afterwards, I felt so embarrassed and scared.”

In 2012, she had a run-in with the police again and, this time, they handcuffed her and raped her.101

Transgender respondents also reported being verbally abused, for instance, through derogatory questions about their gender and their bodies.102 Forty respondents said that they had personally experienced verbal abuse from the police because the police either knew or suspected them of being LGBTQ. The reported verbal abuse included name-calling,103 being cursed at,104 and denigrated as being criminal105 or sexually deviant.106

101 Interview with Respondent No. 53, 13 November 2018.
102 E.g., Interview with Respondent No. 11, 26 September 2019; Interview with Respondent No. 11, 19 December 2019.
103 E.g., Interview with Respondent No. 58, 14 November 2018; Interview with Respondent No. 64, 15 November 2018.
104 E.g., Respondent No. 47, 13 November 2018; Interview with Respondent No. 53, 13 November 2018.
105 Interview with Respondent No. 24, 27 September 2018.
3. Forcible disavowal of sexual orientation and gender identity/expression

There were also numerous complaints that law enforcement officers had forced transgender women to perform certain acts to make them disavow their gender identity/expression. For example, a transgender woman reported being forced to repeatedly shout out loud, “I am a male! I am a male!” Transgender women also reported that the police had forced them to cut their hair or held them in detention cells destined to hold male inmates, as well as being made to change out of what police officers thought was women’s clothing into what they considered to be men’s wear, and ‘biologically appropriate’.

Some transgender men also spoke about the pressure police officers put on them to behave according to rigid gender stereotypes. As one transgender man named Myint Thein explained: “At the police station, we refer to ourselves as ‘male,’ but the police keep calling us ‘daughter’ (တို့) and ‘sister’ (ညီမ) [which is a customary way of addressing women in Myanmar], and they use the title ‘miss’. I do have my own experience with the police… I needed to tell them that I am female. We have to tell them we are female. That is how we protect ourselves, so that they will not touch us and they will leave us alone.”

Transgender women and cisgender gay men reported being forced by the police to repudiate their self-identified gender identity/expression or their sexual orientation. However, more broadly, law enforcement bias also pressures other LGBTQ individuals to suppress their identities. For example, some respondents reported that due to prevalent cultural norms, law enforcement agents will treat cisgender women—including lesbians—and transgender men respectfully, as long as they conceal or deny being lesbians or transgender, respectively. Likewise, a bisexual man and gay men reported that they could avert being mistreated by “passing” as heterosexuals. The spectre of law enforcement mistreatment pressures people to suppress and/or conceal their LGBTQ identities. This, in turn, can strip individuals of their sense of self-worth and dignity.

108 E.g., Interview with Respondent No. 14, 26 September 2018; Interview with Respondent No. 19, 27 September 2018.
109 E.g., Interview with Respondent No. 9, 25 September 2018; Interview with Respondent No. 14, 26 September 2018; Respondent No. 61, 14 November 2018.
110 E.g., Interview with Respondent No. 60, 14 November 2018; Interview with Respondent No. 66, 15 November 2018.
111 Interview with Respondent No. 29, 27 September 2018.
4. Other cruel, inhuman or degrading treatment

A number of respondents reported that law enforcement officers demanded that they perform humiliating tasks as a way of punishing or degrading them because of their sexual orientation or gender identity/expression. For example, one respondent, a gay man, was required to sing and dance on command; at least two transgender women and one gay cross-dresser complaining that they were made to remove their clothing; and at least three respondents were made to do frog jumps or squats by the police. In addition, at least two transgender women were made to crawl around the police station on their knees; and three transgender women respondents were made to do cleaning or perform other tasks at the police station under duress. Two transgender women also said the police confiscated their personal property and, without justification, refused to return it.

Numerous respondents—especially transgender women—reported a range of other mistreatment, such as the discriminatory withholding of basic provisions, which, in turn, the police would normally allow cisgender heterosexual inmates to have. For example, one transgender woman complained that the police had denied her food while they had served meals to other inmates who were cisgender. Another four transgender women respondents said that they were not allowed to communicate with their families during their detention, even though cisgender inmates held alongside them were permitted to phone their relatives. Another transgender woman respondent said she had been refused access to a toilet. Finally, one cisgender male respondent who works with LGBTQ communities stated that he had witnessed police officers making transgender defendants walk to a court hearing, as an act of public shaming, whereas cisgender heterosexual defendants were transported by car.

112 Interview with Respondent No. 64, 15 November 2018.
113 E.g., Interview with Respondent No. 5, 25 September 2018; Interview with Respondent No. 14, 26 September 2018; Interview with Respondent No. 61, 14 November 2018.
114 E.g., Interview with Respondent No. 3, 24 September 2018; Interview with Respondent No. 66, 15 November 2018.
115 E.g., Interview with Respondent No. 9, 25 September 2018; Interview with Respondent No. 14, 26 September 2018.
117 E.g., Interview with Respondent No. 5, 25 September 2018; Interview with Respondent No. 68, 15 November 2018.
120 Interview with Respondent No. 58, 14 November 2018.
121 Interview with Respondent No. 1, 24 September 2018.
Sandar Thein, a transgender woman who works in a beauty salon in Yangon was on her way back from a house call, one night in November 2017. She worked late at night providing hair care and treatment to her clients. That night, both Sandar Thein and a friend, who also identifies as a transgender woman, were arrested on their way home from work for allegedly violating a ‘Shadow Law’. She recalled being stopped by a plain, unmarked car. Sandar Thein stated that the car was not a police car, however two men in the car identified themselves as police. According to her, the two policemen then proceeded to take photographs of her and her friend, and told them to get in the car with them. But neither at the time they were arrested nor later did the police ever mention the specific provision of the Police Act or the Rangoon Police Act they suspected Sandar Thein and her friend of having violated. She described her treatment:

“The police forced us to clean their station and to shout out loud ‘I am a man’, but my voice is very soft and not strong as a man’s. Then the police told me I must shout as a man. It was very humiliating to shout this way in the public area of the station.”

The same night, two cisgender men were also arrested. The police gave those men food, allowed them to contact their families, and ultimately released on bail. When Sandar Thein asked the police why she was not given any food, and was not allowed to contact her family, “the police replied, ‘because you are transgender!’”

Arrested, detained and beaten in 2017

Myat Thiri

In 2017, police arrested Myat Thiri when she was sitting outside at night with her friend at a popular hangout. Myat Thiri and her friend both identify as transgender women. According to Myat Thiri:

“The police pulled my hair, slapped my face, and beat me with their rubber baton. I felt so embarrassed, and I was so very scared because I did nothing wrong. I asked what is my offence—why am I being arrested? They said I had no right to respond and no right to ask questions. They beat my leg again. I hurt so bad that I contemplated suicide. A large truck crossed the road and I wanted to throw myself under it to kill myself. Sadly, or luckily, one of the police officers grabbed my arms before I could do that, and then they beat me again. They then handcuffed me and put me in their car with my transgender friend. When we arrived at the police station, the police forced us to change our clothes into men’s shirts that were very dirty and smelly. Before they sent us to the cell, the police made us jump like frogs. While my friend was changing her clothes, the police touched her breast and butt, and asked if they were real. They also tried to touch my breasts. I said if you try to touch me, I will commit suicide. It was so embarrassing. I was forced to stay in a tiny police station cell for 15 days with my friend without knowing anything at all. We had no ability to communicate with our family members. On the fifteenth day, we were transferred to a holding area at the court. By coincidence, my friend saw her sister at the court. Her sister happens to be a lawyer and, thankfully, she successfully negotiated our release.”

123 Interview Respondent No. 66, 15 November 2018.
Khin Maung Htun identifies as a cisgender gay man. In 2018, he happened to be using his phone outside at night. He did not realize that several young men had got into a fight not far from him. The police arrived to arrest the men who were fighting; among the police officers attending at the scene there was one officer who happened to know that Khin Maung Htun was gay because they had mutual acquaintances. According to Khin Maung Htun:

“...that officer pointed at me and said ‘he is gay, so arrest him too.’ They said I was arrested under the Shadow Law. When we arrived at the police station, the police made all of us kneel and they kicked us one by one, but I was also singled out for being gay. The police asked me in front of everyone why I am gay. I responded that ‘I am gay just because I am,’ and then the officer slapped me. All the other men were permitted to communicate with their family and make a bail payment (a payment of a personal bond at the police station), 124 but the police said I was not allowed to do the same because I am gay. It was not until much later that the police finally let me call my family.” 125

C. Mistreatment Breeds Mistrust

LGBTQ people have come to mistrust the police and GAD because of their biased, discriminatory and often violent behaviour towards them. As a result, LGBTQ people are often reluctant to file complaints with the police when they are victims of police misconduct. This reluctance extends also to their filing complaints with the police about human rights abuses at the hands of non-State actors of which LGBTQ individuals are often victims, partly or wholly, because of bias, animus, hostility and hatred against their real or imputed LGBTQ identity.

There is a discernible pattern among LGBTQ respondents who had experienced mistreatment from the MPF or GAD. Respondents generally did not file complaints

124 Section 57(2) of the Criminal Procedure Code (India Act V 1898)
about mistreatment because they believed that, at best, their complaints would be ignored. Furthermore, some of them expressed their fear that filing complaints with the authorities would expose them to a risk of reprisals from the MPF or GAD officers who had mistreated them in the first place.

Fears of reprisals are not unfounded. One respondent reported that a police officer warned her not to report what he had done to her to anyone, saying that the police would seek revenge. 126 Another respondent, a transgender woman, said that after she posted a Facebook video complaining about her friends and herself being mistreated by the police, the police arrested her and broadcast her arrest via Facebook Live. The police explicitly told her that she “deserved” to have her face shown on Facebook Live because she had previously used Facebook to shame the police. 127

In one case, which unfortunately appears to be an exception, a transgender woman named Moe Thida complained about her experience of police mistreatment. A police officer had arrested her accusing her of violating The Rangoon Police Act; he had beaten her with a wooden stick until it had broken, and had humiliated her by making her perform 100 squats. Because Moe Thida’s uncle is a high-ranking government official, he was able to secure her release without paying any money. Following her release, Moe Thida complained to the GAD and the perpetrator was transferred to a different police precinct. 128 However, Moe Thida’s complaint did not result in a criminal investigation, let alone criminal proceedings being opened against her abuser. Furthermore, among the reports collected during the research, Moe Thida’s case was exceptional, and it appears that its outcome was due to her personal connections.

Fear of discriminatory and violent behaviour from law enforcement officers also affects the way that LGBTQ people view the police when they are themselves victims of crimes committed by non-State actors. LGBTQ respondents who cannot or do not wish to “pass” as cisgender heterosexuals reported that they avoid seeking police assistance due to their fears about the police’s reaction. One transgender woman stated, “they should be protecting us from criminal perpetrators, but the police themselves are the perpetrators of criminal offences [against transgender women], and that is why I cannot trust the police.” 129 Other LGBTQ respondents said that they would strategically attempt to “pass” as cisgender heterosexuals when interacting with the police.

126 Interview Respondent No. 61, 14 November 2018.
127 Interview Respondent No. 14, 26 September 2018.
129 Interview with Respondent No. 47, 13 November 2018.
Part Five  
Obstacles to Fair Adjudication

Many of the respondents described Myanmar’s criminal courts as an obstacle to justice. This complaint is consistent with existing critiques of the overall weaknesses plaguing Myanmar’s judicial system.130 Systemic corruption within the justice system has created an environment where bribery, delays and obstructions are commonplace,131 creating barriers to justice for all individuals in Myanmar. Still, respondents reported additional obstacles beyond those that characterize Myanmar’s court system more generally. This chapter examines the ways in which the court system unfairly treats LGBTQ defendants in criminal cases.132

A. Discriminatory Treatment in Court

Several respondents stated that either they, or another LGBTQ person they knew, had been unduly induced by the police to confess to alleged crimes in court, even though they were innocent.133 According to these testimonies, the police told the defendants that they would receive lighter sentences if they confessed to their crimes before a judge. Once in court charged with committing a criminal offence, LGBTQ defendants did not receive any directions from judges discouraging them from admitting to crimes they had not committed. Nor did they have access to a lawyer who might have explained their rights to them.

Several respondents said that they have witnessed judges or court staff openly treat LGBTQ people with disdain. Hnin, a staff member of an LGBTQ organization, told

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131 Ibid, page 5


133 E.g., Interview with Respondent No. 4, 24 September 2018; Interview with Respondent No. 5, 25 September 2018; Interview with Respondent No. 14, 26 September 2018; Interview with Respondent No. 58, 14 November 2018.
researchers: “I’ve seen a lot of judges bullying accused LGBTQ persons. The judge will say ‘you guys are just criminal people.’ This is very common.” Hnin said that, in addition to judges, courtroom staff would mock LGBTQ persons. Other respondents corroborated Hnin Hnin’s observations. For example, one transgender woman reported that the judge presiding over her case and the courtroom staff both derided her. She said, “they blamed me [and said] a man should behave as a man.” Another transgender woman said of the courtroom staff, “they jeered me for dressing as a woman; they saw me as a joke.”

The negative comments made by judges presiding over cases involving LGBTQ defendants and by courtroom staff give rise to concern that Myanmar’s adjudication system is tainted by homophobia and transphobia, which, in turn, creates a real risk of discriminatory, biased and unfair adjudication of cases involving LGBTQ defendants, to the point where their rights to a fair trial and to equality before the law and equal protection of the law without discrimination are threatened.

Beyond insults and derision, reports of discriminatory treatment were also common among respondents. One transgender woman reported that when she was accused of committing a crime, she sought to have another transgender woman called to give evidence as a witness on her behalf. However, a policeman told her bluntly that LGBTQ people could not stand as witnesses. According to the community member working on the case: “The courts don’t consider us as credible witnesses; if we want to stand as a witness, the court won’t accept us.”

Another advocate described a different and more subtle way in which the courts fail to treat transgender people with dignity and respect. The advocate explained how judges and courtroom staff would generally refuse to address transgender people using pronouns and other language recognizing the gender with which the person concerned self-identified. He said that even if a transgender woman referred to herself using feminine pronouns, the judge would refer to her as a man.

Despite the reported discriminatory attitudes of judges and courtroom staff, some LGBTQ defendants have successfully challenged in court spurious criminal charges brought against them. One advocate explained that in cases where he helped to defend a number of transgender women, the judges released the women from

134 Interview with Respondent No. 4, 24 September 2018.
135 Written Survey Response No. 68.
136 Written Survey Response No. 47.
137 Interview with Respondent No. 26, 27 September 2018.
139 Interview with Respondent No. 1, 24 September 2018.
police custody upon a verbal agreement that the women would not go outside again at night. The judges, however, refused to enter a formal acquittal.\textsuperscript{140}

\textbf{B. ‘Avoiding the court’ whenever possible}

The majority of respondents who had been accused of crimes sought to resolve their cases outside of court. Among the respondents who avoided court appearances, some decided to pay a “fine” to the police in order to be released. Others explained that they had managed to be released by directly confronting the police about the spurious allegations of criminal behaviour the police had made against them, usually with the help of professional LGBTQ advocates, lawyers found by community members, or some other third party. In addition, while most respondents had no personal experiences in court, a troubling number of them reported they were aware of unfair treatment in court of others.

Indeed, LGBTQ people are generally sceptical of the judicial system, and are particularly reluctant to appear in court. As one respondent put it: “Even if we do not have personal experience with lawyers and court and judges, that doesn’t mean we do not have any problems with them. They never recognize our identity. Even if we go to court, we would only get their disrespect in return, and that’s why we never bring our cases to court.”\textsuperscript{141} Another respondent echoed this sentiment, stating “the judge—she or he doesn’t care whether the case [against transgender persons] is true or not... Whenever a transgender case is brought before the court, the court will always convict us.”\textsuperscript{142}

It is very rare to hear of cases and legal challenges filed by LGBTQ persons, especially in cases raising human rights issues.\textsuperscript{143} Technically, the courts have the power to uphold LGBTQ people’s constitutional rights. The Supreme Court of Myanmar has limited jurisdiction over constitutional matters, and should refer constitutional questions to the Constitutional Tribunal.\textsuperscript{144} However, such referrals entail a cumbersome process and rarely occur.\textsuperscript{145} Mistrust of the court system also deters LGBTQ individuals from seeking justice in court.

\textsuperscript{140} Id.

\textsuperscript{141} Interview with Respondent No. 32, 27 September 2018.

\textsuperscript{142} Interview with Respondent No. 48, 14 November 2018.

\textsuperscript{143} As mentioned in the methodology section, court records of cases are also extremely difficult to access. The Supreme Court – Myanmar’s apex court –only recently started providing public access to written decisions in select commercial cases, and it produces a digest of selected cases on an annual basis.

\textsuperscript{144} Section 322 of the 2008 Myanmar Constitution.

\textsuperscript{145} The process is laid out in Section 325 and 326 of the 2008 Constitution.
Part Six
Myanmar’s obligations under international human rights law

Myanmar, as a party to several human rights treaties is obligated to respect, protect and fulfil LGBTQ people’s human rights. This duty requires Myanmar to protect LGBTQ persons from human rights violations carried out by state actors, private actors, and other third parties. Treaties by which Myanmar is bound include the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD). While to date Myanmar is not yet a party to the International Covenant on Civil and Political Rights (ICCPR), the NLD-led Government has stated that it plans to accede to the Covenant, and is reportedly taking steps toward doing so. Full accession, however, is expected to take a number of years.

Several key human rights principles are reflected in Myanmar’s Constitution. The 2008 Constitution of Myanmar identifies equality, liberty, and justice as three “eternal principles” for which the country strives. The Constitution refers to these principles in its Preamble and twice in Chapter I’s enumeration of Basic Principles. For example, section 21(a) states that “Every citizen shall enjoy the right of equality,
the right of liberty and the right of justice, as prescribed in this Constitution.” ¹⁵¹

Regardless of an individual’s citizenship status, section 347 of the Constitution states that: “The Union shall guarantee [emphasis added] any person to enjoy equal rights before the law and shall equally provide legal protection.” ¹⁵²

The treatment of LGBTQ people under Myanmar’s criminal law and justice system contravenes Myanmar’s constitutional commitments to equality, liberty and justice, and amounts to a violation of binding international human rights law.

Moreover, the situation of LGBTQ people in Myanmar compares negatively with the growing advancements in human rights protection from which LGBTQ persons in other jurisdictions around the world have benefitted in recent years.

The following section will draw on international human rights law and standards to analyse the ways in which Myanmar’s criminal law and justice system violates the interrelated principles of equality, liberty and justice set out in the Constitution.

A. Rights to Equality and Non-discrimination

International human rights treaties require Myanmar to respect, protect and fulfil, among others, the twin principles of equality and non-discrimination as they relate to sexual orientation and gender identity/expression. The International Covenant on Civil and Political Rights ¹⁵³ (ICCPR) and the International Covenant on Economic, Social and Cultural Rights ¹⁵⁴ (ICESCR) are among the core human rights treaties prohibiting SOGIE-based discrimination.

While Myanmar is one of the few States that has yet to become a party to it, the ICCPR, with 173 States parties to date, reflects the contemporary universal standard with respect to the rights to equality and non-discrimination, including the right to equality before the law and equal protection of the law without discrimination. In addition, the jurisprudence produced by its supervisory body, the UN Human Rights Committee, is an authoritative source for identifying the scope and content of these

¹⁵¹ Id., Preamble, Sections 6, 21(a). Many of the rights including in the Constitution are paired with a clause designed to enable contravention of this right in certain circumstances. However, international and comparative law suggest that there are no legitimate ground for restricting the LGBTQ human rights discussed in this chapter of the report.

¹⁵² For a discussion, see: ICJ, “Citizenship and Human Rights in Myanmar: Why Law Reform is Urgent and Possible,” June 2019, pp. 7.

¹⁵³ International Covenant on Civil and Political Rights (ICCPR), 999 UNTS 171, entered into force 23 March 1976.

rights under general international law. Indeed, the fundamental aspects of the non-discrimination principle and the right to equality before the law and equal protection of the law, contained in Article 2 and 26 of the ICCPR, respectively, constitute customary international law, and are thus binding on Myanmar.

Both the ICCPR and ICESCR do not explicitly refer to sexual orientation or gender identity/expression, but they are nonetheless understood to prohibit SOGIE-based discrimination. For example, the UN Human Rights Committee has held that the ICCPR’s prohibition of discrimination based on “sex” in Articles 2 and 26 of the Covenant should be read to include discrimination based on sexual orientation.\textsuperscript{155} The Committee has also confirmed that the ICCPR prohibits discrimination based on gender identity.\textsuperscript{156} Similarly, the UN Committee on Economic, Social and Cultural Rights has stated that the ICESCR’s prohibition of discrimination based on “other status” in Article 2(2) includes sexual orientation; and it has also affirmed that “gender identity is recognized as among the prohibited grounds of discrimination”, even though it is not explicitly listed among those grounds in Article 2(2).\textsuperscript{157}

Myanmar is also bound by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).\textsuperscript{158} Although CEDAW does not explicitly refer to sexual orientation or gender identity/expression, the UN CEDAW Committee has stated repeatedly that CEDAW’s prohibition of sex discrimination requires protecting lesbians, bisexual and transgender women from discrimination.\textsuperscript{159} Myanmar is also bound by the Convention on the Rights of the Child (CRC).\textsuperscript{160} Although the CRC does not explicitly mention sexual orientation or gender identity/expression, the UN Committee on the Rights of the Child has stated that the CRC requires protecting young people against discrimination on the grounds of sexual orientation.

\begin{footnotes}
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orientation and gender identity,"161 which should be understood to include gender expression as well.162

The impermissibility of SOGIE-based discrimination under international human rights law is further clearly articulated in the Yogyakarta Principles,163 an influential restatement on the application of international human rights law to SOGIE issues.164 The Yogyakarta Principles Plus 10 also recognize the right to State protection from violence, discrimination and other harm by State and non-state actors.165 Accordingly, Myanmar has a clear obligation under treaty-based international human rights law to prohibit and combat SOGIE-based discrimination.166

Myanmar may also wish to consider how other countries’ domestic laws have recently advanced the protection of LGBTQ persons’ human rights. In parallel with analogous


162 On the relationship between gender identity and gender recognition, see the Preamble of the Yogyakarta Principles Plus Ten (discussed below in note 94), which notes that “‘gender expression’ is included in the definition of gender identity in the Yogyakarta Principles and, as such, all references to gender identity should be understood to be inclusive of gender expression as a ground for protection.” Similarly, this report takes the view that the prohibition of discrimination based on gender identity should be understood to include the proscription of discrimination on the ground of gender expression.

163 The International Commission of Jurists and the International Service for Human Rights, on behalf of a coalition of human rights organizations, undertook a project to develop a set of international legal principles on the application of international law to human rights violations based on sexual orientation and gender identity to bring greater clarity and coherence to States’ human rights obligations. In 2006, in response to well-documented patterns of abuse, a distinguished group of international human rights experts met in Yogyakarta, in Indonesia, to outline a set of international principles relating to sexual orientation and gender identity. The result was The Yogyakarta Principles on the Application of International Human Rights law in relation to Sexual Orientation and Gender Identity: a universal guide to human rights which affirm binding international legal standards with which all States must comply. The Yogyakarta Principles outline the ways in which international human rights law applies to issues concerning sexual orientation and gender identity. They describe sexual orientation and gender identity, respectively, as follows: “(s)exual orientation is understood to refer to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender”; “(g)ender identity is understood to refer to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, and mannerisms.

164 The Yogyakarta Principles are often regarded as an authoritative statement and have been cited by numerous national and international tribunals. In 2017, international human rights experts updated the Yogyakarta Principles by adopting the Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles (also known as the “Yogyakarta Principles Plus Ten” and “YP+10”). The Yogyakarta Principles andYP+10 are available at https://yogyakartaprinciples.org.

165 Yogyakarta Principles, principles 5 and 7; Yogyakarta Principles plus 10, principle 30.

166 As noted in the Yogyakarta Principles, Principle 2(a): “[States shall] embody the principles of equality and non-discrimination on the basis of sexual orientation and gender identity in their national constitutions or other appropriate legislation, if not yet incorporated therein, including by means of amendment and interpretation, and ensure the effective realisation of these principles.”
developments in the context of international human rights law and standards, several foreign courts have interpreted their countries’ constitutional protections against discrimination to encompass a prohibition of discrimination based on sexual orientation and/or gender identity even though their constitutional texts do not explicitly list sexual orientation or gender identity as protected categories. 167

In Asia, in recent years, the apex courts of Hong Kong, India, Nepal, the Philippines, and Taiwan have ruled that sexual orientation discrimination is unconstitutional even though their constitutions do not explicitly mention sexual orientation.168 India’s Supreme Court has ruled that the country’s Constitution prohibits gender identity discrimination as a form of sex discrimination.169 Similarly, Nepal’s highest court has ruled that its interim Constitution prohibited gender identity discrimination even though gender identity was not explicitly mentioned in the text.170 In Thailand, the Constitutional Drafting Assembly stated in its report, “Intentions of the Constitution of the Kingdom of Thailand B.E. 2550 (2007),” that the Constitution’s reference to “sex” in its non-discrimination clause encompassed discrimination based on “sexual identity,” “gender,” and “sexual diversity.”171

Examples of judicial interpretation of SOGIE related constitutional provisions are provided (next page):

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169 National Legal Services Authority (NALSA) v. Union of India.

170 Sunil Babu Pant and others v Nepal Government and Others.

India

Article 15 of India’s constitution protects equality by stating that “The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.” Like Myanmar’s constitutional provisions concerning equality and non-discrimination, Article 15 of India’s constitution does not explicitly refer to sexual orientation or gender identity. However, in *National Legal Services Authority (NALSA) v. Union of India*, the Supreme Court of India ruled that the Constitution’s prohibition of sex discrimination encompasses discrimination based on gender identity. Similarly, the Supreme Court stated in *Navtej Singh Johar v. Union of India* that the constitutional prohibition on sex discrimination covers sexual orientation discrimination.

Nepal

Nepal’s Interim 2063 (2007 AD) Constitution did not explicitly refer to sexual orientation or gender identity. Nonetheless, pursuant to that constitution’s protection of equality, the Constitutional Court of Nepal stated that the government should annul all laws that discriminate against LGBTI persons.

In its 2007 landmark decision in the case of *Sunil Babu Pant and others v. Nepal Govt and Others*, the Supreme Court directed the government of Nepal to take necessary measures to ensure that people of diverse identities and sexual orientations could fully enjoy their rights without discrimination. Such measures were to include the adoption of new laws or amending existing laws.

Myanmar’s Constitution states that, “The Union shall guarantee any person to enjoy equal rights before the law and shall equally provide legal protection.” It also requires that: “The Union shall not discriminate any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, official position, status, culture, sex and wealth.” As evident from international and comparative law jurisprudence, SOGIE-based discrimination is both a form of sex discrimination and a form of status discrimination.
discrimination. Accordingly, Myanmar’s constitutional prohibition of sex and status discrimination should be understood to prohibit SOGIE-based discrimination.

The prohibition of discrimination on the grounds of real or imputed SOGIE gives rise to numerous obligations under international human rights law. Crucially, Myanmar must “respect, protect and fulfil” LGBTQ people’s rights to non-discrimination and to equality before the law and equal protection of the law without discrimination, among others. This obligation entails not only providing redress for discrimination after it happens, including through ensuring effective access to justice and judicial remedies in certain circumstances, but also taking steps to prevent discrimination from occurring. Indeed, in a 2015 report about discrimination and violence against individuals based on their sexual orientation and gender identity, the Office of the UN High Commissioner for Human Rights (OHCHR) affirmed that: “States have an obligation to ensure that laws, policies and programmes executed by State authorities do not discriminate against individuals. They also have an obligation to address discriminatory practices, including by private actors, and to take action to prevent, diminish and eliminate the conditions and attitudes that contribute to substantive or de facto discrimination.”

Conversely, however, multiple aspects of Myanmar’s criminal law and justice system continue to foster and give rise to discrimination against LGBTQ people. Myanmar must address these problems. Section 377 of the Penal Code is discriminatory insofar as it criminalizes consensual same-sex sexual conduct. With respect to this, the CEDAW Committee, the Committee on Economic, Social and Cultural Rights and CRC Committee have all emphasized the importance of repealing discriminatory laws that criminalize people based on sexual orientation or gender identity. This is relevant because Myanmar is bound by CEDAW, ICESCR and the CRC.

By repealing Section 377, Myanmar would join a growing number of States around the world that have repealed or otherwise abolished laws that criminalize consensual same-sex sexual conduct.
Other aspects of Myanmar’s criminal law and justice system also discriminate against LGBTQ people. As detailed in previous chapters, such discrimination is the trigger for police targeting of LGBTQ individuals through the prejudicial enforcement of the law. As mentioned earlier, judges and court staff too often discriminate against LGBTQ people by treating them less favourably than other people partly or wholly because of bias, animus, hostility and hatred against their real or imputed LGBTQ identity. Myanmar must take steps to prevent such discrimination and provide a remedy when it occurs.

In sum, the government of Myanmar must prohibit SOGIE-based discrimination. Doing so would be an initial, critical step toward greater compliance with international human rights law, including, in particular, the country’s treaty obligations under the ICESCR, CEDAW and CRC. Such a move would also bring Myanmar’s legislative discrimination framework closer to the practice of a growing number of jurisdictions both within Asia and around the world.

179 See Chapter III.1.
180 See Chapter IV.
The right to challenge administrative decisions

It is a general principle of law that courts have competency to review procedural questions, and that people challenging administrative procedures should have effective access to a judicial authority. LGBTQ individuals in Myanmar have constitutional rights to seek judicial review of administrative decisions by executive powers, including those taken by ministers, civil servants and statutory bodies.

Constitutional writs are a mechanism for the judicial review of decisions taken by administrative bodies in their exercise of executive power.

In Myanmar, the Supreme Court may issue a prerogative writ (an order) either by its own initiative or in response to the application of an individual. Five different constitutional writs may be issued by a Court:

- **Certiorari**: to cancel an unlawful decision by an executive power.
- **Prohibition**: to prohibit and prevent an illegal act by an executive power.
- **Mandamus**: to direct an official to perform their duties or correct an illegal action.
- **Habeas corpus**: to review the legality of an individual’s detention.
- **Quo warranto**: to prevent a person from carrying out unauthorized acts.

Constitutional writs can be a powerful tool as a check on executive power. However, there are significant barriers to utilizing writs in practice. A court acting suo moto may provide another pathway to reviewing and potentially altering an administrative decision. **Suo moto** describes a situation where a court acts of its own initiative, rather than being seized of a particular matter through an application to the court in a given case.

Early jurisprudence in Myanmar includes cases where judges have sought to act suo moto. Some current judges say they have a right to act suo moto; however, it is unclear if they have applied this principle in practice.

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181 Article 18, 296, 378 of the Myanmar 2008 Constitution


183 A preliminary study of available jurisprudence did not establish if these acts had been upheld. For an example of its intended application, see: Pwa Thein v. Tin Shwe, Burma Law Reports (1956) pp. 228
B. Rights to Privacy, Freedom from Arbitrary Arrest and Detention, Freedom of Movement, and Other Protected Liberties

Liberty is the second “eternal principle” in Myanmar’s Constitution. The principle of liberty, as expressed in the Constitution, encompasses numerous rights that are protected by international human rights law, including the rights to: liberty and security of person, in particular freedom from arbitrary arrest and detention; to privacy; and to freedom of movement and security.

The right to privacy safeguards a person’s ability to make decisions about one’s own private life. Section 357 of the Constitution of Myanmar protects people’s “privacy and security of home.” As the UN Human Rights Committee explained in Toonen v. Australia, the criminalization of consensual same-sex conduct violates both the right to privacy and the right to be free from discrimination based on sexual orientation.

Regional human rights bodies and many apex domestic courts have similarly concluded that the criminalization of consensual same-sex sexual conduct conflicts with both equality and privacy rights.

As mentioned above, the principle of liberty also encompasses people’s right to be free from arbitrary arrest and detention. The Universal Declaration of Human Rights provides in Article 9 that “no one shall be subjected to arbitrary arrest, detention or exile.” Subsequent treaties echo this principle. Moreover, as the United Nations Working Group on Arbitrary Detention has explained: “the prohibition of all forms of arbitrary deprivation of liberty forms a part of international customary law and constitutes a pre-emptory or jus cogens norm.” Thus, the rule against arbitrary arrests and detention applies to States regardless of whether or not they are a party to relevant treaties.

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189 Id. at p. 2.
The UN Office of the High Commissioner for Human Rights has stated that: “[a]rrests and the detention of individuals on charges relating to sexual orientation and gender identity—including offences not directly related to sexual conduct, such as those pertaining to physical appearance or so-called ‘public scandal’—are discriminatory and arbitrary.”¹⁹⁰ According to this reasoning, the use of vague Shadow Laws to arrest and detain LGBTQ people is both discriminatory and arbitrary. Myanmar must remedy and prevent such arbitrary practices.¹⁹¹

International human rights law also requires that the enforcement of the criminal law should only result in the deprivation of an individual’s liberty when doing so comports with the principle of legality, which is a general principle contained in almost every international human rights instrument,¹⁹² and a basic tenet of criminal law.¹⁹³ It requires that crimes – and corresponding sanctions – be defined in law in an intelligible manner, and that conduct that is criminalized be clearly defined. Vague and overbroad laws purporting to prevent intangible social harms, such as Myanmar’s Shadow Laws, which can be used to punish a wide range of behaviours and enforced in an abusive manner, violate the principle of legality.¹⁹⁴

As discussed in Chapter III, Shadow Laws also restrict LGBTQ individuals’ freedom of movement. Under the CEDAW Convention, for example, Myanmar has an obligation to provide women with the same rights pertaining to the freedom of movement of men.¹⁹⁵ Yet, Shadow Laws disproportionately impinge upon transgender women’s freedom of movement.

¹⁹⁰  Toonen v. Australia (note 97), paras. 8.1-11. See also OHCHR (note 111), para. 43
¹⁹¹  For further discussion on states’ obligation to prevent and remedy arbitrary deprivations of liberty based on SOGIE status, see Yogyakarta Principles (note 163), Principle 7.
¹⁹²  See, ICCPR, e.g. Article 15(1) in respect of the principle of nullum crimen sine lege.
¹⁹³  See S Lamb, ‘Nullum Crimen, Nulla Poena Sine Lege in International Criminal Law’ in A Cassese & P Gaeta, et al. (eds.). The principle of legality covers several rules, which are interconnected and sometimes overlapping. First, the prohibition on the retroactive application of the criminal law: no act may be punished as a crime that was not a criminal offence under a law applicable to the accused at the time of the act, and the rule that upon conviction the accused may not be punished with a higher penalty than that which was provided in law when the action took place. Second, the rule that the criminal law must be sufficiently clear to provide notice that the act was prohibited at the time it was committed (principle of lex certa). Third, the rule that a crime may not be created through analogous application of criminal law (prohibition against analogy or lex stricta). Fourth, in line with these rules, it is often also accepted that only criminal law statutes can define a criminal offence and prescribe a penalty (principle of lex scripta). See, Piet Hein van Kempen, ‘Introduction – Criminal Law and Human Rights’, in: P.H.P.H.M.C. van Kempen (ed.), Criminal Law and Human Rights, The International Library of Essays on Criminal Law, England/USA: Ashgate, 2014, p. XI-XXIII. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2953285. See also, some of the general principles of criminal law enshrined in the Rome Statute of the International Criminal Court, e.g., Article 22 Nullum crimen sine lege, Article 23 Nulla poena sine lege, Article 24 on non-retroactivity ratione personae, and Article 25 on individual criminal responsibility.
¹⁹⁵  CEDAW Art. 15(4).
International human rights law also sets standards concerning States’ treatment of persons who are deprived of their liberty. There is a peremptory norm against torture and other cruel, inhuman or degrading treatment or punishment.196 The preceding chapters recounted reports of LGBTQ respondents’ mistreatment at the hands of law enforcement officials, including in detention. Certain forms of mistreatment may amount to violations of prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Because the norm is peremptory, it applies without exception to Myanmar. The law and the practice in Myanmar should be reformed in compliance with this international obligation.

Effectively obliging LGBTQ persons to conceal and or to renounce their SOGIE identities constitutes the suppression of a fundamental aspect of one’s personhood.197 As the Court of Justice of the European Union explained in the cases of X, Y AND Z v Minister voor Immigratie en Asiel, “requiring members of a social group sharing the same sexual orientation to conceal that orientation is incompatible with the recognition of a characteristic so fundamental to a person’s identity that the persons concerned cannot be required to renounce it”.198 The same can be said of gender identity. When state actors pressure someone to conceal their sexual orientation or gender identity, the individual’s liberty to live as their authentic self is severely compromised.199

C. Right to access to justice and effective remedies

Justice is the third “eternal principle” in Myanmar’s constitution. The right of access to justice and effective remedies requires States to provide victims of human rights abuses not only fair and effective adjudicatory mechanisms, but also with effective remedies for such abuses.200 This right is enshrined in numerous international human rights instruments.

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197 For elaboration on this point, see International Commission of Jurists, Refugee Status Claims Based on Sexual Orientation and Gender Identity, a Practitioner’s Guide, page 58.

198 Ibid, Joined Cases C-199/12, C-200/12, C-201/12 X, Y and Z v. Minister voor Immigratie en Asiel, Court of Justice of the European Union, Fourth Chamber, 7 November 2013, para 70

199 Refugee Status Claims Based on Sexual Orientation and Gender Identity, a Practitioner’s Guide by ICJ, page 60

For example, the Universal Declaration of Human Rights states: “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” This principle is echoed in a host of international human rights treaties. Because Myanmar is a party to CEDAW, it is worth noting that the CEDAW Committee has held that CEDAW requires States parties to guarantee the right to justice of all women, including lesbians and transgender women.

The right to access to justice requires providing people with effective access to justice both de jure and de facto. Writing about access to justice for people living in poverty, the Special Rapporteur on extreme poverty and human rights put it well:

States have an obligation to construct a legal and institutional framework which facilitates access to independent and effective judicial and adjudicatory mechanisms and ensures a fair outcome for those seeking redress, without discrimination of any kind. However, guaranteeing de jure access to judicial and adjudicatory mechanisms is not sufficient to ensure that all individuals have de facto access to justice. States must also take positive measures to ensure laws and policies are substantively non-discriminatory, including measures to eliminate conditions, which cause or help to perpetuate discrimination.

The Special Rapporteur’s observations about States’ obligation to provide de facto access to justice to people living in poverty are equally applicable to all LGBTQ people in Myanmar.

The UN Human Rights Committee has also recommended that all States must ensure “LGBT persons have access to justice, and that all allegations of attacks and threats against individuals targeted because of their sexual orientation or gender identity are thoroughly investigated”.

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201 UDHR, Art. 8.
203 CEDAW Committee, General Recommendation No. 33 (note 158), para. 8.
204 See e.g., id., para. 15(b).
In previous chapters, this report has documented accounts of anti-LGBTQ biases among law enforcement officials, judges and courtroom staff. These prejudices hinder LGBTQ people’s ability to receive fair treatment if they try to report mistreatment and enforce their human rights. Indeed, many respondents said they lack confidence in Myanmar’s justice system, and therefore decline to seek assistance from it when they became victims of crime. Myanmar must address this situation by dismantling the barriers to justice faced by LGBTQ people.

207 See Chapters III & IV.
This report has summarized and analysed respondents’ accounts concerning LGBTQ people’s experiences with Myanmar’s criminal law and justice system. The report has also discussed the ways in which these lived experiences at times constitute violations of LGBTQ persons’ human rights under international and domestic law. Critical areas of human rights violations that need to be addressed relate to freedom from discrimination, equality before the law, equal protection of the law without discrimination, liberty and security of person, freedom from torture or other ill-treatment, and the right to access to justice and effective remedies for human rights violations, the right to privacy, the right to freedom of movement and the right to freedom of expression and association, among others. These rights are enshrined in constitutional and international human rights law binding on Myanmar. In light of the preceding analysis, the following section sets out recommendations to the authorities of Myanmar with a view to addressing the concerns documented in the report.

To the Parliament of Myanmar

a. To repeal Section 377 of the Penal Code, the provision for ‘unnatural offences’.

An important and urgent reform to pursue is repealing Section 377 of the Penal Code, at least insofar as it criminalizes consensual same-sex sexual conduct.

Section 377 must be repealed or at the bare minimum amended to meet Myanmar’s international law obligations because it violates the
non-discrimination principle, the right to equality before the law and equal protection of the law without discrimination, as well as the rights to liberty and security of person and to private life, among other rights, and contributes to the stigmatization of LGBTQ people. This lends false legitimacy to the anti-LGBT prejudice common throughout Myanmar’s criminal justice system.

b. To enact anti-discrimination legislation in Myanmar.

c. To become a party to nine core international human rights treaties.209

d. To establish legal gender recognition for transgender persons.

e. To reform vague and discriminatory laws.

Parliament should review and repeal or reform vaguely worded laws that invite discriminatory application, especially where such laws enable arrests to be made solely based on prejudice, discrimination, etc. on SOGIE grounds. Specifically, Section 35 of the Police Act 1945, Section 30 of the Rangoon Police Act 1899 (the so-called Shadow Laws) are legal provisions that should be amended or repealed as a matter of priority.

To the Myanmar National Police and General Administrative Department

a. To cease discriminatory arrests and detentions.

The Myanmar National Police (MPF) officers must stop arresting members of the LGBTQ communities on the mere suspicion of ‘engaging in unnatural sex’. MPF officers must also cease applying laws selectively to target individuals for their assumed sexual orientation or gender identity/expression, especially with regard to Section 30 of the Rangoon Police Act and Section 35 of the Police Act.

b. The police have a duty to promptly, thoroughly, independently and impartially investigate all crimes and human rights violations.

209 Please refer to page 36, footnote 150
perpetrated against LGBTQ individuals. These investigations should be carried out with a view to identifying those responsible and bringing them to justice in proceedings that comply with international fair trial standards. This will include offences perpetrated by GAD officers.

c. Crimes perpetrated by police, the military and other law enforcement agencies should be tried exclusively by civilian courts, especially gross violations of human rights. Civilian courts must be empowered by law to be able to conduct inquiries, prosecute and try members of the police force, the military and other law enforcement agencies, as a decisive step towards combating all forms of impunity.

d. Undertake sensitivity training.

The Government of Myanmar should provide mandatory training to MPF and GAD officers with a view to dismantling prejudicial attitudes and behaviours toward LGBTQ people.

To the Judiciary, Lawyers and Other Actors in the Court System

a. To proactively prevent discrimination.

The judiciary, lawyers and other actors in the court system should take an active role in preventing discrimination against LGBTQ persons involved in court proceedings.

b. To issue writs to uphold constitutional rights and international human rights.

The Supreme Court should ensure that LGBTQ detainees can file writ petitions to the Court to challenge the legality of their arrest. The Court must independently and impartially hear these cases, and issue writs to uphold constitutional rights and international human rights. The Court’s reasoned decisions in these cases should be made available through publicly accessible judgments.

c. To ensure the security of LGBTQ individuals and to guarantee their right to a fair trial.
Ensure the right of LGBTQ individuals who are defendants in criminal proceedings to be tried in proceedings complying with international fair trial standards, including, in particular, the right to adequate legal advice and representation, the right to be brought before the court in a dignified manner free from discrimination and the right to a fair hearing. This must ensure that LGBTQ individuals who suffer human rights violations while in detention are able to seek accountability and reparation without fear of reprisal.

d. The members of the legal profession should provide LGBTQ defendants with adequate, fair and dignified legal representation.

The members of the legal profession must recognize that discrimination based on sexual orientation and gender identity or expression is baseless and unwarranted, and creates a barrier to justice for LGBTQ people. The members of the legal profession should provide LGBTQ defendants with adequate, fair and dignified legal representation and pro bono legal aid service, whenever necessary and possible, and without discrimination.

To the Myanmar National Human Rights Commission (MNHRC)

a. To ensure its policy, public statements, reports and investigations actively address violence and discrimination based on sexual orientation and gender identity.

The MNHRC must ensure that the human rights of lesbian, gay, bisexual, transgender and queer persons feature in its national strategy, policy and objectives with the view to addressing the stigmatization, discrimination, violence and other abuse LGBTQ persons face.

b. To ensure transparent, timely and expedient availability of reports that are accessible by the public.

The MNHRC must make its investigations, especially its investigations in cases of LGBTQ persons publicly available, while ensuring their protection, the confidentiality of their complaint and the prioritization of their personal security.
c. To create and implement a plan of action on discrimination and violence based on sexual orientation and gender identity/expression.

The MNHRC should conduct an inquiry with the objective of documenting human rights violations faced by LGBTQ persons in Myanmar. This should include recommendations aimed at providing better public awareness about such violations as well as greater protection and security for LGBTQ individuals. It is critical that such an inquiry includes adequate and detailed consultation with LGBTQ persons.

d. To increase accessibility of the public to the MNHRC’s complaint mechanisms, it is recommended that regional and state offices are created throughout Myanmar. This is to ensure that the Commission will be able to receive complaints and develop policies that are reflective of the country’s diverse religious, ethnic groups, and LGBTQ people from all around Myanmar will be able to access these mechanisms with little difficulty.
Appendices

Appendix A: Identity Terminology

Myanmar has long had local terms to refer to SOGIE minorities, such as *apwint* and *apôn*.\(^{210}\) Representatives from community organizations, however, informed the research team that a growing number of SOGIE minorities in Myanmar reject these labels because of their negative connotations. Representatives from community partners urged researchers to refer to respondents using the terms *lesbian*, *gay*, *bisexual*, *transgender*, and *queer*, in lieu of Myanmar’s local terms.\(^{211}\)

SOGIE minorities in Myanmar are increasingly adopting the terms *lesbian*, *gay*, *bisexual*, *transgender*, and *queer* into local discourse. Yet, local definitions of these terms have been inconsistent. For example, some people in Myanmar use the term “lesbian” to refer to all women who are attracted to other women. Meanwhile, others use the term “lesbian” to refer only to women who are attracted to other women and also present themselves in a manner that is culturally coded as feminine. For the sake of clarity, this report adopts the following definitions, which draw primarily from the definitions provided in the Yogyakarta Principles and used by United Nations agencies. Because the term ‘third gender’ has not gained popularity and is not widely used in Myanmar, this report does not use it.

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\(^{210}\) *Apwint* are “biological males who identify in public and private as feminine,” and *apôn* are “biological males who identify as feminine but maintain a masculine appearance in all or most spheres of life.” Chua & Gilbert (note 24), p.12.

\(^{211}\) On 23 February 2019, the research team carried out a workshop on terminology with the SOGIE community leaders in Myanmar. This report’s perspective on terminology is informed heavily by the input that the research team received during the workshop.
Gay

Gay is a term used to describe a man whose enduring physical, romantic and/or emotional attraction is to other men, although gay can also be used to describe both gay men and women (lesbians).^{212}

Lesbian

Lesbian is a woman whose enduring physical, romantic and/or emotional attraction is to other women.^{213}

Bisexual

Bisexual describes an individual who is physically, romantically and/or emotionally attracted to both men and women.^{214}

Transgender

Transgender describes people whose gender identity differs from the biological sex they were assigned at birth.^{215} The term transgender refers to a person’s gender identity, not the person’s sexual orientation. Thus, a transgender individual may be heterosexual, gay, lesbian, or bisexual. A transgender man is someone who identifies as a man, but was assigned female at birth. A transgender woman is someone who identifies as a woman, but was assigned male at birth.

Cisgender

Cisgender describes people whose gender identity matches the biological sex they were assigned at birth.

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^{212} This definition derives from the UNHCR Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 23 October 2012, HCR/GIP/12/01 (hereafter: the UNHCR SOGI Guidelines).

^{213} See UNHCR SOGI Guidelines.

^{214} See UNHCR SOGI Guidelines.

^{215} See UNAIDS, Transgender People, 16 October 2014, http://www.unaids.org/en/resources/documents/2014/Transgenderpeople. See also UNHCR SOGI Guidelines (“Transgender describes people whose gender identity and/or gender expression differs from the biological sex they were assigned at birth. Transgender is a gender identity, not a sexual orientation and a transgender individual may be heterosexual, gay, lesbian or bisexual, NB: the term transgender may include, but is not limited to, transsexuals (an older term which originated in the medical and psychological communities), cross-dressers and other gender variant people.”).
Appendix A
Systemic injustice based on sexual orientation and gender identity/expression in Myanmar

Queer

Queer is a term used by this report as an umbrella term to refer to all SOGIE minorities who do not identify themselves as gay, lesbian, bisexual, or transgender. This includes (but is not limited to) individuals who identify as asexual or questioning.

Gender Identity

Gender identity refers to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth.216

Gender Expression

Gender expression refers to each person’s presentation of the person’s gender through physical appearance—including dress, hairstyles, accessories, cosmetics—and mannerisms, speech, behavioural patterns, names, and personal references.217

Sexual Orientation

Sexual orientation refers to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.218

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216 See Yogyakarta Principles (note 163).
217 See id.
Appendix B: Excerpts from Legal Codes

Myanmar’s 2008 Constitution

348. The Union shall not discriminate any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, official position, status, culture, sex and wealth.

352. The Union shall, upon specified qualifications being fulfilled, in appointing or assigning duties to civil service personnel, not discriminate for or against any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, and sex. However, nothing in this Section shall prevent appointment of men to the positions that are suitable for men only.

359. The Union prohibits forced labour except hard labour as a punishment for crime duly convicted and duties assigned by the Union in accord with the law in the interest of the public.

368. The Union shall honour and assist citizens who are outstanding in education irrespective of race, religion and sex according to their qualifications.

Criminal Law Provisions Referenced in Chapter II of this Report

1861 Penal Code, Section 377

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

1945 Police Act, Section 35

(a) Any person found armed with any dangerous or offensive instrument whatsoever, who is unable to give a satisfactory account of his reasons for being so armed;

(b) any reputed thief found between sunset and sunrise remaining or loitering in any bazaar, street, road, yard, thoroughfare or other place, who is unable to give a satisfactory account of himself;
(c) any person found between sunset and sunrise having his face covered or otherwise disguised, who is unable to give a satisfactory account himself;

(d) any person found within the precincts of any dwelling-house other building whatsoever, or in any back-drainage space, on board any vessel, without being able satisfactorily to account for his presence therein; and

(e) any person having in his possession, without lawful excuse, any implement of housebreaking, may be taken into custody by any police-officer without a warrant, and shall be punishable on conviction with imprisonment for a term which may extend to three months.

1899 Rangoon Police Act, Section 30

(a) Any person found armed with any dangerous or offensive instrument whatsoever, and who is unable to give a satisfactory account of his reasons for being so armed;

(b) any reputed thief found between sunset and sunrise lying or loitering in any bazaar, street, road, and, thoroughfare or other place, who shall not give a satisfactory account of himself;

(c) any person found between sunset and sunrise having his face covered or otherwise disguised and who is unable to give a satisfactory account of himself;

(d) any person found within the precincts of any dwelling-house or other building whatsoever, or in any back-drainage space, or on board any vessel, without being able satisfactorily to account for his presence therein; and

(e) any person having in his possession, without lawful excuse, any implement of house-breaking, may be taken into custody by any police-officer without a warrant, and shall be liable to imprisonment which may extend to three months.
Additional Criminal Provisions

The following are additional criminal provisions that may be applied in ways that harm LGBTQ persons.219

1861 Penal Code, Sections 269, 270, 290, 292, 294, 312(c), 375, 496

269. Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

270. Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

290. Whoever commits a public nuisance in any case not otherwise punishable by this Code shall be punished with fine . . .

292. Whoever (a) sell, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purpose of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

294. Whoever, to the annoyance of others, (a) does any obscene act in any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

312(c). Whoever voluntarily allows oneself to be sterilized by surgery, unless such sterilization is certified by the Board appointed by Government on this behalf to be necessary for reasons of physical or mental health, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

219 Most of these provisions were previously discussed in Colors Rainbow’s 2015 report concerning transgender, gay, and bisexual men in Myanmar. See Colors Rainbow (note 24), pp. 14-15.
375. A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions

First. – Against her will.

Secondly. – Without her consent.

Thirdly. – With her consent, when her consent has been obtained by putting her in fear of death or of hurt.

Fourthly. – With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. – With or without her consent, when she is under sixteen years of age.

Explanation. – Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception. – Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape. 220

496. Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven-years, and shall also be liable to fine.

2005 The Anti - Trafficking in Persons Law

11. In order not to adversely affect the dignity of the trafficked victims: (a) if the trafficked victims are women, children and youth, the relevant Court shall, in conducting the trial of offences of trafficking in persons, do so not in open Court, but in camera for the preservation of their dignity, physical and mental security.

220 Punishment for rape. 376 of the Penal Code. (1) Whoever commits rape except the offences of rape contained in sub-sections (2) and (3), shall be punished with imprisonment for a term of twenty years, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(2) Whoever commits rape against a woman who is his own wife and is not under twelve years of age, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. (3) Whoever commits rape against a woman who is under twelve years of age shall be punished with imprisonment for life, or with imprisonment for a term of twenty years.
In the shadows

Systemic injustice based on sexual orientation and gender identity/expression in Myanmar
TAB 14
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Burma

Burma’s new government led by the National League for Democracy (NLD) took office in March 2016 after sweeping the November 2015 elections. Headed by State Counsellor Aung San Suu Kyi and President Htin Kyaw, the NLD controls a majority of both upper and lower house parliamentary seats in the country’s first democratically elected, civilian-led government since 1962. However, the new government inherited deep-rooted challenges, including constitutional empowerment of the military, repressive legislation, weak rule of law, and a corrupt judiciary.

The political transition began promisingly, with the April release of over 200 political prisoners and detainees. Nonetheless, the NLD-led government has thus far not capitalized on its initial momentum in guiding the country toward substantive reform or the creation of democratic institutions.

Fighting between the Burmese armed forces and ethnic armed groups intensified or flared up in several regions during the year, resulting in abuses against civilians and massive displacement. Violent attacks by unknown insurgents against border guard posts on October 9 in Maungdaw, northern Rakhine State, resulted in the deaths of nine officials and sparked the most serious humanitarian and human rights crisis in Rakhine State since the October 2012 “ethnic cleansing” campaign against the Rohingya.

Under the deeply flawed 2008 constitution, the military retains autonomy from civilian oversight and extensive power over the government and national security, with control of the Defense, Home Affairs, and Border Affairs Ministries. It is guaranteed 25 percent of parliamentary seats, which constitutes an effective veto over any constitutional amendments, and is authorized to assume power in a national state of emergency.

**Ethnic Conflict and Armed Forces Abuses**

Fighting between the Tatmadaw (Burmese armed forces) and ethnic armed groups worsened over the year in Kachin, Rakhine, Karen, and Northern Shan States, displacing thousands of civilians. Government forces have been responsible for serious abuses, including extrajudicial killings, torture, sexual violence,
“The Farmer Becomes the Criminal”

Land Confiscation in Burma’s Karen State
and destruction of property. Government shelling and airstrikes have been conducted against ethnic areas, in violation of the laws of war. Both government and non-state groups have been implicated in the use of anti-personnel landmines and forced recruitment, including of children.

The legacy of the Burmese military’s “divide and rule” approach persists, as the conflict’s spillover and ensuing abuses compound tensions among ethnic groups.

The Nationwide Ceasefire Agreement (NCA) orchestrated under the previous Thein Sein government was signed in October 2015 by eight non-state armed groups, fewer than half of the country’s total. Since its adoption, military operations and clashes between signatory and non-signatory armed groups have continued.

From August 31 to September 3, Aung San Suu Kyi presided over the 21st Century Panglong Conference, billed as a forum for re-engaging armed groups and other national stakeholders in the country’s peace process. Intensified fighting on the ground has continued unabated since the conference.

In Northern Shan State, fighting between the Ta’ang National Liberation Army and the Restoration Council of Shan State/Shan State Army-South, at times with the support of the Tatmadaw, flared throughout the year.

Fighting between the military and the Kachin Independence Army (KIA) in Kachin State increased steadily since mid-August. In September, fighting between ethnic armed groups and government forces in Karen State displaced about 5,900 civilians.

Violence over the past five years has left 220,000 people displaced nationwide—120,000 in Rakhine State and 100,000 in Shan and Kachin States.

Security threats, weak infrastructure, and restrictions imposed by government and non-state authorities regularly impeded access by humanitarian agencies to civilians displaced in conflict-affected areas. Restrictions on access to Internally Displaced Persons (IDPs) in Kachin and Shan States increased in late 2016.
Abuses against Rohingya

Muslim minorities in Burma, in particular the 1.2 million ethnic Rohingya, continue to face rampant and systemic human rights violations.

Outbreaks of violence in Maungdaw district in northern Rakhine State escalated following an October 9 attack on three border outposts that left nine police officers dead. Asserting that both the initial and subsequent attacks were carried out by armed Rohingya militants, the government initiated “clearance operations” to locate the alleged attackers while locking down the area, denying access to humanitarian aid groups, independent media, and rights monitors.

The security operations led to numerous reports of serious abuses by government security forces against Rohingya villagers, including summary killings, rape and other sexual violence, torture and ill-treatment, arbitrary arrests, and arson. The military employed helicopter gunships during a series of clashes beginning on November 11. At time of writing, the government said it had arrested over 300 alleged suspects. Local groups reported the use of torture and a number of deaths in custody.

Satellite imagery in November revealed widespread fire-related destruction in Rohingya villages, with a total of 430 destroyed buildings in three villages of Maungdaw district.

Government travel restrictions placed on humanitarian agencies have led to critical food insecurity and malnutrition, and an estimated 30,000 Muslim villagers remain displaced.

The government has continually failed to adequately or effectively investigate abuses against the Rohingya, and did not act on recommendations to seek UN assistance for an investigation into the violence.

The ongoing crisis in Maungdaw represents the most serious and widespread violence against the Rohingya since the ethnic cleansing campaign carried out in June and October 2012. Four years after the 2012 violence, about 120,000 Rohingya remain displaced in camps in Rakhine State. Humanitarian conditions for both remaining IDPs and newly resettled persons remain dire due to restrictions on movement and lack of access to livelihoods and basic services.
The effective denial of citizenship for the Rohingya—who are not recognized on
the official list of 135 ethnic groups eligible for full citizenship under the 1982
Citizenship Law—has facilitated enduring rights abuses, including restrictions
on movement; limitations on access to health care, livelihood, shelter, and edu-
cation; arbitrary arrests and detention; and forced labor. Travel is severely con-
strained by authorization requirements, security checkpoints, curfews, and strict
control of IDP camp access. Such barriers compound the health crisis caused by
poor living conditions, severe overcrowding, and limited health facilities.

The government refuses to use the term Rohingya, which the group self-identi-
fies as but is rejected by nationalist Buddhists in favor of the term “Bengali,”
which implies illegal migrant status in Burma. Aung San Suu Kyi refers to the
group as the “Muslim Community in Rakhine State,” and has requested that in-
ternational stakeholders, including the United States, European Union, and
United Nations, follow suit.

The new Burmese government established two bodies to address sectarian ten-
sions in Rakhine State—a government committee and a nine-member
national/international advisory commission led by former UN Secretary-General
Kofi Annan, which initiated its year-long research mandate in September.

**Freedom of Expression and Assembly**

Restrictions on the rights to freedom of expression and assembly persist, amid
the government’s failure to contend with the range of rights-abusing laws that
have been long used to criminalize free speech and prosecute dissidents.

In its final months of rule, Thein Sein’s government continued arresting activists
using politically motivated charges, failing to fulfill the former president’s 2013
pledge to release all political prisoners by the end of his term. In April, the new
NLD-led government released 235 political prisoners and detainees in a series of
amnesties.

However, the nod toward a new era of openness was contradicted by the govern-
ment’s continued use of problematic legislation to restrict free speech. In April,
two Muslim interfaith activists were convicted on charges under section 17(1) of
the Unlawful Association Act and sentenced to an additional two years in prison
with hard labor. Numerous activists were arrested under section 66(d) of the
“They Can Arrest You at Any Time”
The Criminalization of Peaceful Expression in Burma
Telecommunications Act for “defaming” Aung San Suu Kyi, President Htin Kyaw, or the military in social media posts. These include Maung Saungkha, who was sentenced to six months in prison in May for a poem he posted on Facebook, and Aung Win Hlaing, sentenced to nine months in prison in September for calling the president an “idiot” and “crazy” on Facebook.

Parliament put forward a new Peaceful Assembly and Peaceful Procession Law in May, yet despite slight improvements the proposed revisions maintain regulations that allow for at-will crackdowns on peaceful protests, blanket prohibitions on certain protest speech, and criminal penalties for any violation of its restrictions.

Arrests and prosecutions for participation in peaceful assemblies have continued under the new administration. Police arrested 90 political activists in May, including student leaders of an interfaith peace walk in Rangoon; demonstrators against the Letpadaung mine in Sagaing Division; and 76 labor rights activists marching to the capital, Naypyidaw, to protest treatment by local factory owners. Fifty-one of the labor activists were charged with unlawful assembly, rioting, and disturbing public tranquility under the Burmese penal code; 15 were convicted in October and sentenced to between four and six months in prison.

Throughout the year, as many as 60 Arakanese men were arrested under section 17(1) of the Unlawful Association Act for alleged ties to the Arakan Army. From March to July, 28 were found guilty and sentenced to two to five years in prison with hard labor.

The criminalization of expression perceived as a threat to the armed forces also continued. In late June, the Ta’ang Women’s Organization was forced to cancel a press conference in Rangoon to launch a report documenting military abuses against ethnic Palaung in Northern Shan State. In August, Khine Myo Htun, an environmental activist and member of the Arakan Liberation Party, was charged with violating sections 505(b) and 505(c) of the penal code for accusing the armed forces of committing crimes against humanity. In October, veteran activist Htin Kyaw was arrested and charged with violating section 505(a) for accusing the military of committing human rights abuses.

While the relaxation of press censorship has been a key hallmark of the democratic transition, various forms of government control remain inscribed in the
legal framework and employed to restrict media freedom. In June, the Ministry of Information banned the film “Twilight Over Burma” from a human rights film festival for its depiction of a relationship it claimed would threaten ethnic and military relations.

As part of the military’s “clearance operations” in northern Rakhine State, the authorities denied independent journalists access to the region since early October. The *Myanmar Times* fired a journalist who had reported on allegations of rape by security forces in Maungdaw, reportedly under pressure from the Ministry of Information.

Burma’s national penal code criminalizes consensual same-sex behavior between adult men. In recent years police have arrested gay men and transgender women assembling in public places, and politicians have called for the “education” of gay people.

**Women’s and Girls’ Rights**

Justice for women and girls in Burma remains elusive, particularly with regard to violence related to armed conflict. Sexual violence by the military, and to some extent ethnic armed groups, has been frequent, and the renewed violent clashes in Kachin and Northern Shan States has exacerbated the problem. Such crimes are facilitated by a near total lack of accountability, and no institutionalized complaint mechanism. Few prosecutions have been publicly reported, despite allegations of more than 115 cases of sexual violence perpetrated by the Burmese army since fighting renewed.

In October and November, media and local groups reported numerous incidents of rape and other sexual assault of Rohingya women and girls committed by security forces during the “clearing operations” in Maungdaw district. The government denied all reports of sexual violence, and the military lockdown has prevented independent investigations into the abuses. This suppression is emblematic of the military’s long-standing refusal to seriously investigate cases of sexual violence.

In May, the Tatmadaw announced that an investigation into the January 2015 rape and murder of two Kachin schoolteachers by suspected army soldiers had taken place, but no public information about charges or a trial was released.
Women in conflict zones and displaced or stateless women are especially vulnerable to abductions, enforced disappearances, sexual violence, and exploitation. Despite their central role in human rights and democracy activism in Burma, women have been marginalized in the government’s various peace process initiatives, and their concerns have been noticeably absent from the negotiations. Women made up less than 10 percent of participants in the peace process, and women’s rights groups were sidelined at the 21st Century Panglong Conference. Women hold only 13 percent of seats in the new parliament; only one woman sits on the 18-person cabinet, and only 0.25 percent of village-level administrators are women.

**Key International Actors**

Burma’s political transition has triggered an enthusiastic response from international stakeholders. Since the new administration took office, there have been only limited attempts by foreign governments to press for genuine legal and policy reforms.

In May, the United States government relaxed a range of sanctions to ease US business investments and financial transactions in Burma. Following a visit by Aung San Suu Kyi in September, the US announced plans to lift most remaining sanctions, which was carried out by executive order on October 7.

The US also resumed the General System of Preferences (GSP) trade status with Burma, despite serious concerns that Burma’s labor practices do not meet GSP conditions on labor rights. In a contradictory move, the US State Department downgraded Burma in its annual Trafficking in Persons report to Tier 3, the lowest tier, in recognition of ongoing abuses related to human trafficking, child soldier recruitment, and forced labor.

The UN Human Rights Council in March once again adopted its resolution on Burma and extended the special rapporteur’s mandate, requesting that she identify benchmarks for reform. However, the EU decided not to introduce a resolution at the UN General Assembly in November, underscoring the international community’s softening approach.

As Burma’s immediate neighbor with significant business and military ties within the country, China continued efforts to strengthen its geopolitical engage-
ment with the Burmese government and advance the large-scale development projects that offer access to the country’s natural resources and strategic regional borders, often to the detriment of local populations.
TAB 15
Myanmar university investigates suicide of gay librarian

By Beh Lih Yi

KUALA LUMPUR (Thomson Reuters Foundation) - A Myanmar university said on Wednesday it had suspended three staff while it investigates the suicide of a gay employee who said he was bullied at work in social media posts widely shared in the conservative Asian country.

Kyaw Zin Win, a librarian in his 20s, took his own life on Sunday after sharing accounts on Facebook about colleagues mocking his sexuality and forcing him to publicly admit that he was gay.

Gay sex is punishable by up to 10 years in jail in the Southeast Asian country, under British colonial era legislation.

The Myanmar Imperial University, a private university where Kyaw Zin Win worked, said in emailed comments that the death was a “huge tragedy” and that it had a zero tolerance policy toward discrimination in the workplace.
“We have suspended three people,” Nandar Phyoe from the university’s human resources department told the Thomson Reuters Foundation by phone from Myanmar’s capital Yangon.

“We have been doing all of the necessary investigations and all the things that we can to support his family.”

While 2,000 people in January attended the country’s second publicly-celebrated Pride festival in Yangon, signaling growing acceptance of LGBT+ people, gay rights campaigners said they still faces discrimination in Myanmar and across Asia.

“LGBT discrimination in the workplace is unfortunately a common practice in Myanmar,” said Juan Miguel Sanchez Marin, deputy director from the Myanmar’s LGBT+ rights group, Equality Myanmar.
“Young Myanmar LGBT (people) are specially vulnerable and often left to the tough decision of leading a life of secrecy or face discrimination and violence,” he added.

Although rarely enforced, the gay sex ban - known as Section 377 - can stigmatize LGBT+ people who are often denied jobs or fired if their identity becomes known, gay rights groups said.

Malaysia and Singapore also have laws banning sexual relationships between men but a similar law in India was struck down in a landmark court ruling in 2018.

“We need to get rid of this law. Having Section 377 allows people to discriminate the LGBT community,” said Hla Myat Tun, deputy director of Yangon-based campaign group Colors Rainbow.

“Any kind of discrimination is not acceptable at any workplace or schools,” he said, calling for anti-discrimination law to be enacted in Myanmar.

Reporting by Beh Lih Yi @behlihyi; Editing by Tom Finn and Katy Migiro. Please credit the Thomson Reuters Foundation, the charitable arm of Thomson Reuters, that covers humanitarian news, women’s and LGBT+ rights, human trafficking, property rights, and climate change. Visit news.trust.org

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TAB 16
Myanmar is arresting people for being gay under colonial-era sodomy law

At least two recent arrests of LGBTI Myanmar citizens using the country's anti-gay law has shaken the community.

Police have reportedly charged a local restaurant owner and a make-up artist, who both reportedly identify as gay, in the last few months.

LGBTI community members in Myanmar, formerly called Burma, told Gay Star News they were concerned as the law has not been recently enforced.
Section 377 of Myanmar’s penal code criminalizes ‘carnal intercourse against the order of nature’. The British introduced it in 1860 and those found guilty face up to 10 years in jail.

‘It is clearly a provision that could imprison the LGBT community at any time’ LGBTI advocate Yaya Aye Myat told Gay Star News. But, they said, authorities rarely enforced it.

In September, India’s Supreme Court ruled the same British colonial law was unconstitutional. Malaysia and Singapore also have similar anti-gay legislation.

Myanmar’s LGBTI community face widespread stigma discrimination. Many people, therefore, live in the closet.

In a sign of rising acceptance, however, Myanmar this year celebrated its first LGBTI pride event in the commercial hub, Yangon.

**What has happened?**

Police charged restaurant owner and outspoken LGBTI advocate, Addy Chen, under 377. A judge denied him bail as the trial continues, according to local activists.

One of Chen’s employees accused him of sexual assault.

An online video shows Chen’s accuser detailing how Chen forced them to engage in oral and anal sex.

Mainstream media and social media users widely shared the video.

Chen is HIV positive. His access to antiretroviral drugs has been limited while he is in jail, his family members told the Washington Blade.

In a separate case, a make-up artist known as Paw Paw was charged under 377 for allegedly having sex with an underage boy, according to Yaya Aye Myat.

Paw Paw’s trial is also ongoing.

**What is the impact on LGBTI Burmese?**

LGBTI advocates say Myanmar authorities rarely use Section 377.

‘I have hardly heard of arrests under Section 377 in Myanmar these years’, said Yaya Aye Myat.

But, the advocate said, wider society ‘has not understood the negative impacts towards us with the criminalization of homosexual relationships’.

Nay Oo Lwin from advocacy group Equality Myanmar said the law had been used as a ‘money making machine by police in the past’.
They threaten to our community and asked money’, he said. But, police rarely charged individuals.

Worryingly, he said, ‘the trend is a bit changed’ with recent arrests.

The LGBTI community has also criticized local media for widely publishing Chen’s accusers’ account of events before the trial concludes.

Reports have been one-sided and biased against Chen due to his sexual identity and his HIV status, they say.

Yaya Aye Myat said they supported freedom of expression, but that this reporting may come ‘at the cost of the dignity of the [LGBTI] community’.

‘Many of the local media were illustrating these cases as LGBT community were disgusting’ said Nay Oo Lwin.

‘I feel that many people still need to understand about rule of law and LGBT rights’ he said.
TAB 17
YANGON, Myanmar — The LGBTI community in Myanmar has demand fair media coverage of a gay man with HIV who is charged under the controversial Penal Code 377 for allegedly committing sexual abuse against one of his employees.

The accused, Aung Myo Htut, aka Addy Chen, is an outspoken LGBTI rights advocates and commonly known to be HIV-positive. Chen, who also owns a restaurant in Yangon, allegedly asked one of his waiters to give him a massage and sexually assaulted him in March.

Chen was arrested on the same day the man who accused him of sexual assault filed a case against him at a local police station. Chen was charged under Section 377 of the national penal code, which makes same-sex sexual acts illegal, regardless if they were consensual or not.

Chen faces of a sentence of between 10 years to life in prison if convicted.
The media's portrayal of LGBTI people in Myanmar is unfavorable, adding to deeply rooted social stigma and stereotypes against sexual minorities and people living with HIV/AIDS. LGBTI rights advocates in the country say the portrayal of Chen's case in the mainstream media is biased against the accused and is very damaging to the LGBTI population as a whole.

"We do not see any media ethics here," says Yaya Aye Myat, a well-known transgender activist. "Many media reports Addy Chen's case as if he was already convicted. That makes the public outrageous. In fact, a person is not guilty until proven by the court of law and until then, the person is entitled to the benefits of doubt."

The Irrawaddy, an influential newspaper in Myanmar, first published a sensational video of Chen's accuser's testimony and it went viral among the country's netizens. The video shows a one-sided story in which Chen's accuser claims Chen coerced him into performing oral sex on him and later engaging in unprotected receptive anal sex.

Chen's accuser emotionally said he is just a poor rural boy trying to earn a living in the city to support his siblings. He added Chen ruined his life because he may have been infected with HIV after having unprotected sex.

The restaurant manager, who helped Chen's accuser to file the case against Chen and is also one of the key witnesses against him, also appeared in the video that has had 1.9 million views and 24,000 shares on the Irrawaddy's Facebook page.

Other Burmese language media outlets followed up in Chen's case after the video went viral.

Many people find the allegations against Chen outrageous and are demanding harsh punishment for him, even though a court has not found him guilty. Chen's accuser in the video showed HIV-preventative drugs he has been taking as suggested by a doctor, but tabloid media has mistakenly described them as antiretroviral drugs, assuming he is already HIV-positive.

Chen's family deactivated his Facebook page within a week of his arrest because of an overwhelming number of hate messages, derogatory comments and even death threats that he received.

Nay Oo Lwin, a gay rights advocate in Myanmar, says the LGBTI community is against sexual assault, regardless of whether the perpetrator is gay or straight. Lwin added he wants to see a fair trial in Chen's case.

"We respect the rule of law but we don't want to be repressed by the laws," he said. "I feel that the media reports on Addy Chen's case and discussions on social media are attacking the gay community and intensifying the stereotypes."

Although the mainstream media reports unanimously describe Chen as guilty, the recent court testimony suggests the opposite.

During a hearing that took place on Oct. 4, the court physician said he didn't find semen or any tears and lacerations on the anuses of both Chen and his accuser, in contrast to his earlier testimony in which he said Chen had penetrative anal sex with him for 20 minutes. There were also inconsistencies in testimonies by the plaintiff and witnesses.

Media reports also did not report the fact the restaurant manager and witnesses who testified owed a significant amount of money to Chen. They are now postponing payment of these debts due to the trial.

"Addy trusted the manager girl and loaned her lots of money," said Chen's relative, Myo Min Latt. "All six witnesses summoned by the plaintiff are debtors to Addy Chen. We have documents that Addy loaned them money. They also admitted to owing money to Addy during the court hearing."
The defendant’s attorney says she believes her client never abused any of his staff except for asking his accuser to give him a massage. She said the alleged victim has exploited the fact that Chen is a gay man living with HIV to frame him as an abuser.

Despite this evidence, the trials continue.

Chen’s request for bail was denied for the third time on Oct. 30.

Chen’s family says his health is now deteriorating in prison. They say he only has limited access to medicine and medical facilities that people with HIV need.

“He has been detained in prison for eight months so far,” says Latt. “He is already very depressed by the media portrayal of him as gay rapist. He is now getting frequently ill. The trials are going on although the court physician had testified of not finding any signs of abuses on the victim. In the last hearing, the plaintiff attorney requested to add an additional witness to extend the trial. I think they are deliberately delaying the final verdict.”

Myat says the court’s decision to deny Chen’s request for bail will impact the entire LGBTI community.

“There are cases, charged under Section 375 of Penal Code for accused of minor rape and the alleged perpetrators were released on bail, given their age or health condition,” she said. “But not for this particular case. So, who will hold accountable, if the accused in this case does not survive all the trials and found to be not guilty in the end?”
TAB 18
Prejudice and progress: a snapshot of LGBT rights in Myanmar

“We are rejected.”

That’s how 21-year-old transgender woman Sue Sha Shinn Thant summed up being LGBT in Myanmar – a sentiment that many people across this country are all too familiar with.

“We are verbally teased and even beaten. This scars us emotionally,” she told Weekend.

Sue Sha Shinn Thant and other LGBT friends in Mandalay recently took part in probably the closest thing to a public LGBT rights rally in Myanmar – they dressed in costume and picked up litter around their city.

“LGBT people are the black sheep of the family. So we wanted [to] promote public acceptance of the LGBT community. I felt like a pioneer,” she said.

Small steps like this can have a big impact in a country with such a fraught record of LGBT rights.

Laws of the land

Myanmar is one of many countries where same sex relationships are currently illegal. Section 377 of the colonial-era Penal Code outlaws same sex activities.

U Aung Myo Min from LGBT rights group Equality Myanmar told Weekend that Section 377 is one of the biggest roadblocks to LGBT equality in Myanmar.

“If homosexual people have sex together here, it’s a crime. So it’s seen as unnatural,” he said.

Additionally, LGBT people – especially transgender people – can be targeted under Section 35c of the Police Act, which allows authorities to stop those with their “faces covered or otherwise disguised, who are unable to give a satisfactory account of himself”. Mandalay transgender woman Daung Daung said police occasionally harass the LGBT community there after dark using Section 35c as the main pretence.

“They make arrests,” she said, adding that people are released after they are made to “remove their dress”.

Sue Sha Shinn Thant added that: “Policemen also use these laws to blackmail us for money”. Legal adviser of Legal Clinic Myanmar Daw Hla Hla Yee said these laws were at best anachronistic, and at worst, harmful.

“But we need to treat LGBT people with dignity. Mistreating LGBT people based on their identity is against the principles of human rights and basic justice,” she said.

‘Bullied and beaten’

These laws appear to influence how the general population in Myanmar views same sex relationships.
“Society looks down on the LGBT community. People mock me and embarrass me in public just because I love a man,” said U Aung Myo Min. He said this was compounded by certain religious beliefs – as it is “widely accepted that only those who commit adultery in their past life become homosexual as a form of punishment”.

“[And] some people simply say there are no LGBT people in their families or their neighbourhoods. This denial of LGBT existence is another form of discrimination,” U Aung Myo Min said. It was this environment that Sue Sha Shinn Thant – who first identified as transgender when she was 17 – grew up in.

“If a teenage boy acts in a feminine way due to their gender preference, they will be bullied and beaten by people at school. If they report this to the teacher, the same thing may happen,” she said.

“That’s why most of the LGBT kids are not happy in school. And if they are discriminated against both at home and in school, they end up on the road.”

She said as a result, many LGBT people become beauticians (where there is some level of societal acceptance) or “end up in prostitution as they have no way out”.

“There are some LGBT people who become successful despite hardships and discrimination. But, they are the minority,” Sue Sha Shinn Thant said.

U Aung Myo Min said from his time at Equality Myanmar, he found that members of the lesbian community often have the most negative experiences.

One lesbian woman that Weekend spoke to on the condition of anonymity said she faced severe workplace discrimination because of her sexual orientation.

“I worked in a company for almost three years. All my peers were promoted except me. When I asked the reason why, they said it was because I did not dress and act like a woman.”

“Most of the time, my family doesn’t discriminate against me. But, when I get into trouble, they tell me it is because – again – I don’t act like a woman.”

Sue Sha Shinn Thant also felt that professional opportunities were more limited because of her sexual orientation.

“Most transgender women [only become] make-up artists or designers. They are not accepted in other professional fields apart from these two. Due to discrimination in society and fewer job opportunities, LGBT people often have to work much harder than straight people.”

**Small steps**

But there have been some tentative steps forward.

Over the past few years, LGBT beauty pageants have become more popular and LGBT voices are being more widely publicised, especially on World AIDS Day and the International Day Against Homophobia, Transphobia and Biphobia.

“This year we celebrated International Day Against Homophobia, Transphobia and Biphobia in a shopping centre, last year it was in People’s Park. In the past, it was difficult to get permission and it was often rejected with the reason of ‘opposing Myanmar traditional culture’, one of the event organisers told Weekend.

And Tin Ko Ko and Myo Min Htet made international headlines in 2014 when they celebrated 10 years of living together by holding Myanmar’s first public LBGT wedding.

Another gay couple did the same in Bago Region last year.

Additionally, there has been an increasing number of LGBT arts and social events such as the &PROUD film festival – at a time when every opportunity to become more visible is a victory of sorts.

So despite ongoing difficulties, Sue Sha Shinn Thant is determined to stay positive.

“There are LGBT people who are standing tall. We all need to do the same. If we speak out, the opinions of other people will change.”

“Being LGBT is not a problem for our society. If we all come together, we can make an even more beautiful society.”

*Translation by Swe Zin Moe and Khine Thazin Han*
TAB 19
Abused, arrested but not giving up: transgender activist fights for equality

Nandar Aung 01 Jun 2017
Abused, arrested but not giving up: transgender activist fights for equality

Shin Thant looks into the mirror with a bright smile. She’s happy with the reflection of the woman she sees, adorned in new make-up recommended to her by a close friend.

Make-up, earrings and traditional Myanmar dress are all part of Shin Thant’s aesthetic – refined, elegant and brimming with confidence.

Though the 27-year-old is not a celebrity, she might as well be one with nearly 15,000 followers on her Facebook account.

Online and in the streets, Shin Thant is known as a vocal advocate for LGBT rights.

As a transgender woman growing up in Mandalay to a traditional Buddhist family, Shin Thant has faced innumerable challenges and discrimination, not the least of which being that her identity card still registers her as male.

Throughout her adolescence, Shin Thant hid her gender identity from friends and family.

In her youth, she had identified as a gay male, under her birth name Aung Than. But that identity didn’t quite fit.

It wasn’t until she was in her late teens that she began to see herself as the woman she had always been.

“\textit{I felt I was born in the wrong body},” she told Weekend near her home in Kyauk Myaung Township. “\textit{I felt my soul was stuck inside a man’s body. I spent lots of nights thinking and hoping that I would wake up with a female figure.}”

Though Shin Thant’s experience was isolating, she soon found a small community of transgender women in Mandalay.

“I would go down to the moats of Mandalay where lots of transgender people would meet,” she recalled. “\textit{I followed them and spent time with them; it was fun.}”

At first, Shin Thant remembers being hesitant to hang out with them, transgender women and men who had gone through the same struggles, transformations and joys as she had.
Abused, arrested but not giving up: transgender activist fights for equality | The Myanmar Times

“It was like homophobia,” she said, “I was afraid of them and pretended that I was fine. I was afraid that someone would expose my secret. I wanted to live alone. But later, I knew that I wanted to be like them, a real woman.”

Shin Thant hasn’t felt that kind of fear in years. Since 2012, she has been living authentically as a woman, despite the threat of violence and discrimination she has faced at home and elsewhere.

“I always dressed in dresses but I didn’t dare to wear one in my house,” she said. “I hid them at my workplace or at my LGBT friend’s house. But you could see my heels, make-up, bras and blouses in my backpack.”

Shin Thant would always have make-up handy in her bag as she and her friends – a tight knit community of LGBT people in Mandalay – would often spend evenings doing make-up tutorials and talking about boys.

But sometimes, after evenings spent being her full self, Shin Thant would come home to a new kind of fear and violence.

“My parents beat me when they found out I was dressing like a girl,” she said. “Sometimes my parents threatened to pour acid on me if I wore girl’s clothes but that couldn’t make me stop.”

But one of Shin Thant’s most disturbing episodes came at the hands of the Mandalay police. One night in 2012 she was arrested under Section 35c of the Police Act.

“The police officer set my boyfriend free but detained me,” she recalled.

Shin Thant described an episode of police violence – which Weekend could not independently verify – that she called “the most shameful of my life”.

“I thought to myself, why me? I felt like it was because I am transgender, the officer thinks I deserve to be treated like a criminal.”

Weekend contacted Mandalay police for comment on this case but they did not respond by deadline.

Soon after the encounter, Shin Thant was introduced to Aung Myo Min who came to Mandalay to give a class on human and LGBT rights.

From then on, a flame was lit within Shin Thant to speak out about violence in the LGBT community and to fight for her human rights.

Shin Thant’s first mission was to help her parents accept her as a woman.

“Well, they refused,” she admitted. “But I didn’t give up. I fought for it and now finally they are okay.”

With her first challenge won, Shin Thant kept going, working with local LGBT organisations to fight for LGBT rights across Myanmar.

In 2013, when a group of transgender women were arrested in Mandalay and allegedly forced to strip before being taken into custody, Shin Thant fought alongside NGO Colors Rainbow to seek justice.

Today, Shin Thant is one of the leading LGBT activists in Myanmar.

In January 2017, she helped transgender model Myo Ko Ko San who was wrongly accused of being the administrator of the controversial Cele Cele Small Facebook page which reports celebrity gossip and rumours.

“I was angry that Myo Ko Ko San was the first target. There are lots of people who could have been the admin,” she said. “I will do it again if there are similar situations of unfair accusations, profiling and assaults.”

“There are no people who stand for LGBT people. Most people don’t pay attention to the violence we face, like when I was arrested,” she continued. “I will stand up for my community as much as I can.”

In addition to her LGBT-focused activism, Shin Thant also participated in a youth conference with State Counsellor Daw Aung San Suu Kyi at the start of 2017.

“I’m proud of not only being myself but also of my LGBT community as we all have been beaten down and thought we could never rise [LGBT] can do everything just like all the others if we try hard enough. We are human”.

And even after meeting Myanmar’s leading lady, Shin Thant continues to search for other ways to have her voice heard.

She also recently participated in the Japan-East Asia Network of Exchange for Students and Youths (JENESYS) which included a nine day trip to Japan in November.

She hopes that her activism and ongoing push for inclusion will serve not only as a model for future generations, but also as a wake-up call to politicians about the needs of LGBT citizens.

“We [LGBT people] need to try harder now than ever before as the new government is changing and seems to be making positive moves,” she suggested.

“I believe sexuality and gender identity should not matter as long as everyone has a fair chance. The government should protect, promote and fulfill the lives of LGBT people in Myanmar. After that, the people will follow. In schools and elsewhere. I believe we can live together if the government bans discrimination of LGBT people.”

Shin Thant believes that in order to achieve equality, the government should take responsibility for ensuring that LGBT people are represented in every sector.

But as Shin Thant has learnt, publically standing up for the LGBT community in Myanmar today is not easy.

Without widespread support from either her family or the government, Shin Thant’s life and successes have been largely her own doing.

“We used to like to go out and have fun,” she said recalling her life before she became involved in politics and community organising.

“But now is not a time for fun for people living under threat. I wouldn’t be here today if I had remained the person I was in 2010 [a closeted gay man]. I only focus on the present, the real me.”

Nonetheless, Shin Thant has an end goal in mind with her dream of becoming the country’s first LGBT member of parliament.

“One day, I will be dressed like an elegant woman,” she said imagining her future. “I will serve my district which will see a prosperous economy ... I will do anything I can to not only serve LGBT people, but to protect everyone.”

“I know that means a lot of work ahead but I’ve decided to try my best.”

[LGBT] can do everything just like all the others if we try hard enough. We are human”.

“I’m proud of not only being myself but also of my LGBT community as we all have been beaten down and thought we could never rise [LGBT] can do everything just like all the others if we try hard enough. We are human”. [modal url="http://www.mmtimes.com//files/images/mte/2017/di551/glossary-large.jpg"]

[modal]
TAB 20
LGBTI people in Myanmar: second-class citizens

Political transition in Myanmar from a military to a civilian government holds the promise of opening up political spaces to previously marginalized groups. However, the dividend of the country’s democratization process seems to be still far off for the LGBTI community.

Talking to Heinrich Boell Foundation Myanmar, Yaya Aye Myat, the Permanent Secretary of the National Transgender People Alliance, regretted that the LGBTI community does not have any protection under the law. Even though the 2008 constitution guarantees equal rights and equal legal protection, she noted that LGBTI people do not enjoy such guarantees because they are treated like “second-class citizens”: A sentiment, which resonated with Zar Li Aye, a legal advisor with the International Commission of Jurists.

Official discrimination against the LGBTI community, particularly visible LGBTI people such as transgender women, is most visible in targeted police harassments, extortion, and arrests. In 2013, the LGBT community in Myanmar was outraged by a case where a group of gay and transgender people were assaulted by police, arbitrarily arrested, and tortured while in police custody.

When questioned about the incidence in a parliamentary session in Mandalay, the Border and Security Affairs Minister for Mandalay region, Dr. Myint Kyu, answered: “The existence of gay men who assume they are women is unacceptable and therefore we are constantly taking action to have the gays detained at police stations, educate them, then hand them back to their parents.... [W]e will be including in our operations the area as a special case.”

The police spokesperson, Soe Nyein, told the media that the police were doing a public service in stopping the community (LGBTI people) from congregating. According to the Myanmar LGBT Rights Network, the police only released the detainees after they had signed an agreement stating that they would stop dressing as women and visiting the southeast areas of the Mandalay moat, where they had been when arrested. While this case is not unique, it pointed to institutional structures, which
enable human rights violations of the LGBTI people and which continue to thrive in the new government.

**Legal documents override constitutional guarantees**

Hla Myat, the Program Director of Colors Rainbow, observed that there has not been much improvement in how the police treat the LGBTI community quoting that, “the government changed but people on the ground, such as the police, never changed”. The legal provisions that have been used over years to justify the arrest of the LGBTI people have also not changed.

In addition to the 1860 Penal Code (section 377) which essentially criminalizes same-sex intercourse, the 1899 Rangoon Police Act and the 1945 Police Act, makes liable for arrest any ‘suspicious’ activity carried out “between sunset and sunrise” and any person found at this time with “his face covered or otherwise disguised”. In practice, the three legal documents seem to override constitutional guarantees such as the right to privacy, the right of defense, and protection from police custody of more than 24 hours without remand.

The constitutional limitation which only allows the freedom of expression, peaceful assembly, and association where not contrary to “the laws, enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality”, further places the LGBTI community in a precarious position where their constitutional rights could be arbitrarily violated.

Having represented LGBTI clients in court, Zar Li Aye noted that discrimination by authorities is not limited to the police as nuanced prejudice is also visible in the court process where the presumption of innocence does not seem to apply to the LGBTI defendants. Most LGBTI people do not seek legal redress when their human rights are violated, and some do not even report it to local human rights activists or to the LGBTI network.

A gay client once told Zar Li Aye, “We are gay. Section 377 (of the Penal Code) criminalizes LGBTI, so how can we go to the court or police station?” Having experienced similar comments, Hla Myat noted that, “They (the LGBTI people) are not aware that the network can make a change as they have never experience any success stories on the legal reform promised by the new government. They think that being LGBTI, one has to be familiar with the police custody.” This disillusionment further makes the LGBTI people vulnerable to human rights violations in the society.

**Silence from the National League of Democracy**

Despite the NLD’s (National League of Democracy) promise to embrace diversity and democracy, its stance on LGBTI issues has been silence: A silence that is deafening to the LGBTI community. The Myanmar LGBTI Rights Network hopes that its advocacy, through both formal and informal channels, will culminate to positive change with regards to legal provisions and social stigma.

The network is advocating for section 377 of the Penal code to be repealed and is also working with other marginalized groups on an anti-discrimination bill which would prohibit discrimination based on gender expression and sexual orientation, among other criteria. While these efforts have energized the LGBTI community, much needs to be done by the government as the custodian of the rights of the Myanmar people.

The National Human Rights Commission’s potential in redressing human rights violations targeted at the LGBTI community is stunted by homophobic sentiments of some members of the commission.
Yaya Aye Myat notes even though the commission is independent and seems to be open-minded to some extent, it still gets its cues from the government.

She pointed Heinrich Boell Foundation to an incident in 2016 where Win Htein, a senior aide to Aung San Suu Kyi, told Colors Rainbow, "I am not interested (in LGBTI issues). We cannot give priority to that particular issue. We have thousands and thousands of problems, and that gender issue is not important"

While indeed the government has as its national priority peace and security, it should also note that its priorities can be mutually inclusive. An inclusive democracy which guarantees the human rights of all its citizens without discrimination, will contribute to sustainable peace in the country.

When accepting the role of UNAIDS global advocate for zero discrimination in 2012, Aung San Suu Kyi said,

“It is a great honour to be chosen as a champion for people who live on the fringes of society and struggle every day to maintain their dignity and basic human rights. I would like to be the voice of the voiceless.”

The LGBTI community in Myanmar is in need of this voice.

This article is part of our dossier How LGBTI activists fight for their rights worldwide.

[1] The Rangoon Police Act (Burma Act IV, 1899), article 30 c and d, and the Police Act (Burma Act VI, 1945) article 35 c and d


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by Alice Muthoni Murage and Ohnmar Nyunt (Alison)

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TAB 21
YANGON (Thomson Reuters Foundation) - When police in Myanmar’s biggest city Yangon arrested Chew Su Khin, a young transgender woman, for the third time in a year, they removed her hair extensions and set them on fire, stripped her naked and took pictures for their amusement.

“They made me remove all my clothes and perform sexual acts with other prisoners while they filmed it on their phones with the threat of more violence,” the slight 20-year-old told the Thomson Reuters Foundation in Yangon’s Bahan township.

She had to pay a fine of 35,000 kyat ($27) to be released the next day.

Before that, Chew Su Khin was detained under the so-called “shadow law”, which allows police to arrest after sunset anyone they believe is acting suspiciously.
She was kept in a male jail cell where she was raped by fellow prisoners as guards looked on.

Campaigners say lesbian, gay, bisexual and transgender (LGBT) people routinely face abuse, violence, intimidation and harassment from police officers who extort money and sexual favours from them in a country where homosexuality is banned.

The police deny harassing LGBT people. But activists say police officers use Article 377 of the Penal Code, a relic of British colonial law, which forbids “carnal intercourse against the order of nature” to persecute LGBT people.

The law, which carries a 10 year prison sentence for convicted offenders, is however rarely enforced.

When Aung San Suu Kyi’s party, the National League for Democracy (NLD), swept to power after a landslide election win last November, pledging to fight for human rights and democratic change, many activists hoped the victory would enable LGBT people to come out of the shadows.

But a year on, many have been disappointed by a lack of progress in the socially conservative Southeast Asian country.
Win Htein, an ally of Suu Kyi, said earlier this year he was “not interested” in tackling LGBT rights abuses, and that gender issues imported from the West were not important in Myanmar.

Before the historic 2015 election, Myint Kyu, the border and security affairs minister in Mandalay’s regional government, said homosexuality was “unacceptable” and threatened to detain and “educate” gay men.

Leading local LGBT rights group, Colours Rainbow, estimates that police intimidation led to 65 cases of wrongful arrests of LGBT people in three of Myanmar’s 325 townships last year.

But the real figure is likely to be much higher because many victims do not report police mistreatment, fearing further arrests, the group’s programme coordinator, Hla Myat Tun, said.

In many cases, LGBT people are sexually assaulted, or beaten up by a group of police, he said.

“How some of them were even raped by police officers in the police compound, at the back of the police station building under the banana trees,” he told the Thomson Reuters Foundation.

The Yangon police refuted allegations of abuse against them.

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“Whether you are male, female, homosexual or transgender, we act according to the law,” a spokesman told the Thomson Reuters Foundation.

Despite the scale of abuse, justice is seldom pursued, campaigners say.

A report this year by Colours Rainbow, Equality Myanmar, one of the first organisations to provide legal assistance to the LGBT community, and USAID found that “all too often, reporting a case of abuse ends up worsening the suffering of a victim”.

‘STRUGGLE WITHIN A STRUGGLE’

Hla Myat Tun said NLD lawmakers have shown greater respect of human rights, including LGBT rights, than the previous military government which ruled the former Burma for almost 50 years.

But lawmakers in favour of greater freedoms and rights “do not have enough confidence to raise the issue in parliament because they need more allies”, he said.

Many members of the country’s democracy and human rights movement think fighting for LGBT rights is not as important as other concerns, such as political prisoners, freedom of religion and expression, according to Aung Myo Min, the founder of Equality Myanmar.

“They forget to see the LGBT community is also affected from these laws,” he said.

“They think the LGBT issue is different, that it’s not a priority. It is a struggle within a struggle.”
Human rights activists have long expressed concern about the oppression of the country’s Rohingya Muslim minority.

In recent weeks, Suu Kyi’s government has come under mounting international scrutiny for its handling of a crisis in northern Rakhine State, where soldiers have blocked access for aid workers and are accused of raping and killing civilians in the Muslim-majority area.

The government of Suu Kyi, a Nobel Peace Prize winner, denies any abuses have been committed.

Transgender woman, May Zin Oo, hopes the government will eventually turn its focus towards protecting people like her.

The 25-year-old was standing outside a bar when she was arrested by police last month. She had to wash other prisoners’ clothes to earn enough money to eat and pay a bribe to be released from jail.
“We just want jobs and get on with life. I want to be able to walk in the street without violence,” she said.

“We just want to be considered human. We just want to be considered equal.”

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