

**EFFORTS TO INVESTIGATE AND PUNISH SEXUAL
AND GENDER-BASED CRIMES COMMITTED
AGAINST ROHINGYA: EVIDENCE ANALYSIS**

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I. Introduction

1. The United Nations Independent Investigative Mechanism for Myanmar (“IIMM” or “Mechanism”) was established by the UN Human Rights Council resolution 39/2 in September 2018 with a mandate to collect and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011 and to prepare files to share with national, regional or international courts that may have jurisdiction to prosecute such cases. In furtherance of its mandate, the Mechanism has collected large quantities of evidence regarding sexual and gender-based crimes (“SGBC”) committed during the 2016 and 2017 clearance operations.

2. Based on the material collected to date, the Mechanism has prepared the present Analytical Note, which examines evidence of the efforts – or lack of efforts – by the Myanmar authorities to investigate and punish sexual and gender-based crimes committed against Rohingya victims during the 2016 and 2017 clearance operations in northern Rakhine State, Myanmar.¹

3. Under international law, Myanmar has obligations to investigate and punish crimes, including SGBC.² International law also places an obligation upon those persons with authority over military forces to take all necessary and reasonable steps required to investigate and punish crimes by their subordinates.³ Jurisprudence from international courts also recognizes that rape can constitute an underlying act of genocide as it inflicts severe bodily or mental harm,⁴ can be a condition of life designed to bring about the destruction of a group,⁵ and can be a measure intended to prevent births.⁶ Therefore, the failure to investigate and punish such crimes could amount to a violation of the obligations of parties to the Convention on the Prevention and

¹ This Analytical Note has been shared with competent authorities pursuant to United Nations Human Rights Council Resolution 39/2 and subject to the Terms of Reference of the Mechanism for the purpose of facilitating judicial proceeding in national, regional or international courts or tribunals with jurisdiction over crimes within the Mechanism’s mandate.

² See, e.g. **IIMM0028034567** Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); **IIMM0028034569** CEDAW General Recommendation No. 33, para. 16 (e)-(f); **IIMM0028034568** CEDAW General recommendation No. 30, para. 38(b); **IIMM0027995638** CEDAW General Recommendation No. 35, paras. 23-24.

³ **IIMM0028034566** Convention on the Prevention and Punishment of the Crime of Genocide, arts. I, IV and V, establishes the obligation to punish the crime of genocide and those who bear responsibility for it with effective criminal penalties; **IIMM0027995692** International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law*, 2005, Volume I: Rules; Rule 153: Command Responsibility for Failure to Prevent, Repress or Report War Crimes, sets out customary law that applies in situations of non-international armed conflict; **IIMM0027995658** Draft Articles on Prevention and Punishment of Crimes Against Humanity, *Yearbook of the International Law Commission*, 2019, vol. II, Part Two, article 6(3), synthesizes customary international law from various international conventions, national laws, and the statutes and jurisprudence of international criminal courts and tribunals.

⁴ **IIMM0027998192** *Prosecutor v. Jean-Paul Akayesu*, ICTR Chamber I, ICTR-96-4-T, Judgement, 2 September 1998, paras. 706-707, 711-712.

⁵ **IIMM0027998191** *Prosecutor v. Clement Kayishema & Obed Ruzindana*, ICTR Trial Chamber II, ICTR-95-01, 21 May 1999, para. 116.

⁶ **IIMM0027998192** *Prosecutor v. Jean-Paul Akayesu*, ICTR Chamber I, ICTR-96-4-T, Judgement, 2 September 1998, paras. 507-508.

Punishment of Genocide.⁷ The conduct of State organs, institutions, and State officials acting in their official capacity are attributable to the State.⁸

II. Allegations of sexual and gender-based crimes

4. On 9 October 2016, an armed group, the Arakan Rohingya Salvation Army (“ARSA”), attacked three Border Guard Police (“BGP”) posts in Maungdaw and Rathedaung townships in northern Rakhine State.⁹ Following these attacks, Myanmar security forces, composed of the Myanmar military (“Tatmadaw”) and the BGP, initiated “clearance operations” in the northern part of Rakhine State.¹⁰ On 25 August 2017, ARSA launched attacks on a military base and up to 30 BGP outposts across northern Rakhine State,¹¹ which was immediately followed by the Myanmar security forces conducting coordinated “clearance operations” against the Rohingya population in northern Rakhine State of even greater scale than the previous year.¹²

5. Both the 2016 and 2017 clearance operations were characterised by reports of widespread and systematic SGBC perpetrated against the Rohingya civilian population. The Mechanism has collected large quantities of evidence regarding such crimes. This includes evidence from victims and eyewitnesses of sexual and gender-based violence interviewed by the Mechanism, accounts of persons who provided medical or psychosocial services to the victims, records of the UN Independent International Fact-Finding Mission on Myanmar (“FFM”) and other UN bodies, as well as the records of other organisations and documentation efforts.

6. The aim of this Analytical Note is not to set out all of the evidence of SGBC collected by the Mechanism. Rather, it is to examine the official responses and actions taken by the Myanmar authorities in response to information and evidence at their disposal, particularly public reports and condemnation of SGBC committed during the clearance operations, and their efforts to investigate and punish the perpetrators. In assessing the appropriateness of the Myanmar authorities’ response, it is important to identify the information that was available to them around the time of the alleged crimes, which will be discussed in the next section.

⁷ **IIMM0027995637** Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), International Court of Justice, Judgement of 26 February 2007, para. 299.

⁸ **IIMM0027995657** Draft Articles on State Responsibility for Internationally Wrongful Acts, *Yearbook of the International Law Commission*, 2001, vol. II, Part Two, art. 4.

⁹ **IIMM0027994557** Video from Facebook Post 562239220629291, Islamic armed group asks Rohingya to join them for jihad in Rakhine Myanmar, Wai Lwin (user ID: 100005296543913), 12 October 2016; **IIMM0027994551** Video from Facebook Post 561911683995378, Rohingya mujahideen call for weapons, Wai Lwin (user ID: 100005296543913), 11 October 2016; **IIMM0000026223** “Security tightened: Nine policemen killed, five injured, one missing in border attacks”, *Global New Light of Myanmar*, 10 October 2016, pp. 1, 3.

¹⁰ **IIMM0001138938** “Special meeting on national defence and security”, *Global New Light of Myanmar*, 15 October 2016, p. 1.

¹¹ **IIMM0000008324** Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar, A/HRC/39/CRP.2, 17 September 2018, para. 750.

¹² The Mechanism has collected evidence that the 2017 clearance operations were planned in advance of the 25 August 2017 ARSA attacks. For instance, Tatmadaw troops were deployed to northern Rakhine townships weeks prior. **IIMM0000011740** General Administration Department order, 7 August 2017 [Myanmar language]; **IIMM0000011733** General Administration Department order, 7 August 2017, stating that “Myanmar’s military, police force and Border Guard Police are being sent to garrison the villagers as reinforcement” [English translation].

III. Reports providing notice of SGBC

7. When Myanmar's security forces commenced clearance operations in northern Rakhine State following the 9 October 2016 ARSA attacks,¹³ their leadership should have been aware of the risk that their forces would commit SGBC, given the many reports that documented prior sexual abuse during Myanmar security force operations and the widespread international condemnation that followed. In June 2016, the United Nations Office of the High Commissioner for Human Rights ("OHCHR") reported to the UN Human Rights Council that "[s]exual and gender-based violence perpetrated by security forces against the Rohingya in Rakhine State has been reported for decades...", and that "OHCHR received reports of sexual violence, including rape, against women who had been arrested or detained, or in the course of law enforcement operations, such as house searches or at checkpoints".¹⁴ [REDACTED]

[REDACTED]¹⁵ In July 2016, in its concluding observations to Myanmar, the UN Committee on the Elimination of Discrimination against Women (CEDAW) recommended that Myanmar "[p]romptly investigate and prosecute cases of gender based violence targeting Rohingya women and other ethnic minority women and ensure that those convicted are punished with appropriate sanctions."¹⁶

8. By 27 October 2016 – within weeks after the start of the 2016 clearance operations – allegations were published in *The Myanmar Times*¹⁷ and *Reuters*¹⁸ that Myanmar security forces had raped dozens of Rohingya women during the clearance operations.

9. On 10 December 2016, *The Guardian* reported a Rohingya survivor account of how Tatmadaw soldiers attacked Kyet Yoe Pyin in Maungdaw township, locking children into houses and setting them on fire, and raping multiple female members of the same family.¹⁹

10. On 16 December 2016, the UN High Commissioner for Human Rights issued a statement referring to "daily reports" of alarming human rights violations against the Rohingya, including rapes.²⁰

¹³ **IIMM0001138938** "Special meeting on national defence and security", *Global New Light of Myanmar*, 15 October 2016, p. 1.

¹⁴ **IIMM0027998634** Situation of human rights of Rohingya Muslims and other minorities in Myanmar, A/HRC/32/18, 29 June 2016, para. 36.

¹⁵ [REDACTED]

¹⁶ **IIMM0000007255** Concluding Observations on the combined fourth and fifth periodic reports of Myanmar, CEDAW/C/MMR/CO/4-5, 25 July 2016, para. 45(b).

¹⁷ **IIMM0000022326** Fiona MacGregor, "Dozens of rapes reported in northern Rakhine State," *The Myanmar Times*, 27 October 2016.

¹⁸ **IIMM0000010940** "Exclusive: Rohingya women say Myanmar soldiers raped them amid crackdown on militants," *Reuters*, 28 October 2016.

¹⁹ **IIMM0027998182** "Burmese military killed seven of my children, says Rohingya refugee," *The Guardian*, 10 December 2016.

²⁰ **IIMM0000020764** Statement by High Commissioner for Human Rights, 16 December 2016.

11. On 19 December 2016, Amnesty International published a report documenting a campaign of violence by the Myanmar security forces against the Rohingya beginning on 9 October 2016, in which soldiers and police had raped women and girls.²¹

12. An OHCHR Flash Report published on 3 February 2017 (“February 2017 OHCHR Flash Report”) highlighted “devastating cruelty”²² and cases of mass gang rape committed against Rohingya.²³ Out of 204 people interviewed by OHCHR, 43 per cent reported rape, and 31 per cent reported sexual violence.²⁴ Among the 103 women and girls interviewed, twenty-four women and two girls reported having been raped themselves.²⁵

13. In April 2017, the UN Human Rights Council passed a resolution urgently dispatching an independent international fact-finding mission to establish the facts and circumstances of alleged human rights violations by Myanmar security forces, in particular in Rakhine State, including rape and other forms of sexual violence, with a view to ensuring full accountability for perpetrators and justice for victims.²⁶

14. In the months following the clearance operations that began on 25 August 2017, many reports were also issued concerning sexual violence committed by soldiers and other security forces in northern Rakhine State. On 24 September 2017, doctors treating Rohingya patients at a clinic run by the International Organization for Migration (IOM) at the Leda makeshift refugee camp in Cox’s Bazar, Bangladesh, told *Reuters* that they treated hundreds of Rohingya women with injuries from violent sexual assaults during the 2016 clearance operations, and were treating injuries from “more aggressive” sexual violence following the 2017 clearance operations.²⁷ On 25 October 2017, *Reuters* further reported that, according to Médecins Sans Frontières, “more than half the girls it has treated after sexual assaults are under 18”.²⁸

15. The UN Resident/Humanitarian Coordinator reported in 2017 that “sexual violence was committed with impunity” and that coupled with the suspension of service providers and continued lack of health care in northern Rakhine State, “survivors of violence ha[d] little to no access to life-saving response services.”²⁹

²¹ **IIMM0027998168** Amnesty International, “Myanmar: Security forces target Rohingya during vicious Rakhine scorched-earth campaign,” 19 December 2016.

²² **IIMM0027998176** OHCHR Press release, “Devastating cruelty against Rohingya children, women and men detailed in UN human rights report,” 3 February 2017.

²³ **IIMM0000005019** OHCHR Flash Report, “Report of OHCHR mission to Bangladesh Interviews with Rohingyas fleeing from Myanmar since 9 October 2016”, p. 9.

²⁴ *Ibid.*

²⁵ *Ibid.* at p. 10.

²⁶ **IIMM0000023337** A/HRC/RES/34/22, 3 April 2017.

²⁷ **IIMM0027994308** “U.N. medics see evidence of rape in Myanmar army ‘cleansing’ campaign”, *Reuters*, 24 September 2017.

²⁸ **IIMM0027994332** “Rohingya girls under 10 raped while fleeing Myanmar, charity says,” *The Guardian*, 25 October 2017.

²⁹ **IIMM0027995659** Knut Ostby, Resident/Humanitarian Coordinator Report on the Use of CERF Funds Myanmar Rapid Response Deterioration of Protection and Human Rights Environment 2017, United Nations Central Emergency Response Fund, 27 November 2017.

16. On 16 November 2017, Human Rights Watch released a report documenting that the Tatmadaw were committing widespread rape and sexual violence against Rohingya women and girls as part of the clearance operations.³⁰

17. On 28 November 2017, CEDAW requested Myanmar to submit a report on the situation of women and girls from northern Rakhine State, including specific information concerning cases of sexual violence, including rape, against Rohingya women and girls by State security forces, details on the number of women and girls who had been killed or died due to non-natural causes during the latest outbreak of violence, and information on investigations, arrests, prosecutions, convictions and sentences or disciplinary measures imposed on perpetrators, including members of the armed forces, found guilty of such crimes.³¹

18. In December 2017, the UN Human Rights Council held a special session on “the human rights situation of the minority Rohingya Muslim population and other minorities in Rakhine State and adopted a resolution that expressed “grave concern at consistent allegations of widespread sexual violence, including rape and gang rape, and call[ed] for those allegations to be investigated, for those found responsible to be held to account”.³²

19. In March 2018, the UN Secretary-General publicly listed the Tatmadaw for the first time as being a party “credibly suspected of committing or being responsible for patterns of rape or other forms of sexual violence” and urged the Government of Myanmar to prosecute suspected perpetrators of sexual violence.³³ As a listed State, Myanmar was prohibited from participating in United Nations peace operations.³⁴ The Tatmadaw has continued to be listed in subsequent UN Secretary-General reports on conflict-related sexual violence.³⁵ On 23 April 2019, the UN Security Council, in resolution 2467 (2019), welcomed the Secretary-General’s decision that all State actors repeatedly listed in his reports on sexual violence in conflict are prohibited from participating in United Nations peacekeeping operations.³⁶ On 2 May 2019, the UN Special Rapporteur on the situation of human rights in Myanmar reported to the Council that she was “extremely concerned” that Myanmar security forces were contributing three personnel to UN

³⁰ **IIMM0000001432** Human Rights Watch, “All of My Body Was Pain: Sexual Violence against Rohingya Women and Girls in Burma,” November 2017.

³¹ **IIMM0027995639** Committee on the Elimination of Discrimination against Women, “Myanmar: UN experts request exceptional report on situation of women and girls from northern Rakhine State,” 28 November 2017.

³² **IIMM0008490569** A/HRC/RES/S-27/1, 5 December 2017.

³³ **IIMM0027995660** Report of the Secretary-General on Conflict-related sexual violence, at para. 60 and Annex p. 34, S/2018/250, 23 March 2018.

³⁴ **IIMM0027995668** Report of the Secretary-General on Conflict-related sexual violence, S/2019/280, 29 March 2019, para. 5.

³⁵ **IIMM0027995668** Report of the Secretary-General on Conflict-related sexual violence, S/2019/280, 29 March 2019; **IIMM0028034570** Report of the Secretary-General on Conflict-related sexual violence, S/2020/487, 3 June 2020; **IIMM0027995670** Report of the Secretary-General on Conflict-related sexual violence, S/2021/312, 30 March 2021; **IIMM0027995671** Report of the Secretary-General on Conflict-related sexual violence, S/2022/272, 29 March 2022; **IIMM0028034571** Report of the Secretary-General on Conflict-related sexual violence, S/2023/413, 22 June 2023.

³⁶ **IIMM0027995669** S/RES/2467 (2019), para. 25.

Peacekeeping, “[g]iven the most serious allegations of commission of international crimes made against the Tatmadaw”.³⁷

20. In August 2018, the FFM released detailed findings documenting that “[r]ape and other sexual and gender-based violence were perpetrated on a massive scale during the “clearances operations” from 25 August 2017” in Rakhine State.³⁸ The FFM officially provided the report, in advance of its release, to the Government of Myanmar through its Permanent Mission in Geneva.³⁹ Myanmar representatives attended the “interactive dialogue” at the UN Human Rights Council in September 2018 where the FFM presented its report and States discussed the report’s findings, including in relation to SGBC.⁴⁰ Myanmar’s Parliament discussed the FFM’s report(s) several times.⁴¹ The FFM report received widespread international and domestic media attention in Myanmar.⁴² The FFM also issued a shorter but official version of the report in the Myanmar language.⁴³

21. On 4 July 2019, the Prosecutor of the International Criminal Court (“ICC”) requested that judges authorise the initiation of an investigation into the forcible deportation of the Rohingya from Myanmar to Bangladesh, carried out through coercive acts including sexual violence and rape.⁴⁴ On 14 November 2019, the ICC Pre-Trial Chamber granted the Prosecutor permission to open an investigation, specifically noting allegations of sexual violence, including in victim representations⁴⁵ and finding that “there exists a reasonable basis to believe that since at least 9 October 2016 widespread and/or systematic acts of violence may have been committed against the Rohingya civilian population, including ... rape, sexual violence... resulting in their large-scale deportation.”⁴⁶ In the course of proceedings before the ICC, the Pre-Trial Chamber stated that “given the level of publicity these proceedings have received, Myanmar can be

³⁷ **IIMM0027995649** Report of the Special Rapporteur on the situation of human rights in Myanmar, A/HRC/40/68, 2 May 2019, para. 60.

³⁸ **IIMM0000008324** Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar, A/HRC/39/CRP.2, 17 September 2018, paras. 920-941.

³⁹ **IIMM0008488423** Detailed findings of the Independent International Fact-Finding Mission on Myanmar, A/HRC/42/CRP.5, para. 228.

⁴⁰ **IIMM0027995642** UN Human Rights Council, “Human Rights Council holds interactive dialogue with the Independent International Fact-Finding Mission on Myanmar”, Media Announcement, 18 September 2018.

⁴¹ The following three Powerpoint slides were shown in Myanmar’s Parliament: **IIMM0000005448** Powerpoint slide: Parliament plan to respond to FFM; **IIMM0000005427** Powerpoint slide: Radkhika Coomaraswamy; **IIMM0000005419** Powerpoint slide: FFM recommendation to create the IIMM.

⁴² **IIMM0001139364** “U Zaw Htay, Spokesman of the Office of the President: the questions have been raised as to the reasons for the removal of the Facebook accounts and pages associated with Tatmadaw,” Global New Light of Myanmar, 29 August 2018, p. 6; **IIMM0028034879** “UN urges to file Myanmar Military leaders to ICC”, *BBC*, 27 August 2018; **IIMM0028034853** “The report of the United Nations Facts Finding Mission destroys the unity among the communities in Rakhine”, DMG, 1 September 2018.

⁴³ **IIMM0000015918** Report of the independent international fact-finding mission on Myanmar, A/HRC/39/64, 12 September 2018 [Myanmar language].

⁴⁴ **IIMM0027995694** Situation in the People’s Republic of Bangladesh / Republic of the Union of Myanmar, ICC Pre-Trial Chamber III, ICC-01/19, Request for authorisation of an investigation pursuant to article 15, 4 July 2019, *inter alia* paras. 68, 87, 94-101.

⁴⁵ **IIMM0027995697** Situation in the People’s Republic of Bangladesh / Republic of the Union of Myanmar, ICC Pre-Trial Chamber III, ICC-01/19, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People’s Republic of Bangladesh / Republic of the Union of Myanmar, 14 November 2019, paras. 31, 75, 77, 84, and 86.

⁴⁶ *Ibid.* at para. 92.

presumed to have been aware of the Prosecutor’s Request and the ongoing proceedings before this Chamber.”⁴⁷

22. Following numerous reports by media and NGOs, and various public pronouncements by UN bodies and officials, the Government of Myanmar and Tatmadaw had extensive notice that its security forces were being widely accused of having committed SGBC during the 2016 and 2017 clearance operations. The following section discusses the response of the Myanmar authorities to these allegations, providing further confirmation that the Myanmar authorities had knowledge of the allegations of the commission of extensive SGBC by Myanmar security forces against the Rohingya in 2016 and 2017.

IV. Responses of Myanmar authorities demonstrating knowledge and dismissing allegations

23. Upon being made aware that security forces were committing SGBC against the Rohingya, Tatmadaw and other officials of the Government of Myanmar publicly acknowledged but denied and dismissed the allegations. Where investigations into such crimes were initiated, Myanmar officials issued strong denials prior to the start of investigations and conclusively dismissed the allegations following findings from flawed proceedings absolving the security forces of any responsibility.

24. Following a 27 October 2016 *Myanmar Times* article reporting allegations of rapes of Rohingya women during the 2016 clearance operations,⁴⁸ Fiona MacGregor, the author of the article [REDACTED] dismissed from the *Myanmar Times*.⁴⁹ This followed a complaint against MacGregor by the Ministry of Information.⁵⁰ On 7 November 2016, the Office of the President of Myanmar and the *Global New Light of Myanmar* published a claim that the Rohingya women complaining of sexual violence and journalists reporting on their claims were making false allegations.⁵¹

25. On 28 October 2016, Zaw Htay, spokesperson for the President of Myanmar, Htin Kyaw, accused the Rohingya of fabricating the allegations by stating, “there’s no logical way of committing rape in the middle of a big village of 800 homes, where insurgents are hiding.”⁵² On

⁴⁷ **IIMM0027995696** Situation in the People’s Republic of Bangladesh / Republic of the Union of Myanmar, ICC Pre-Trial Chamber III, ICC-01/19, Decision on requests for leave to submit *amicus curiae* observations, 14 November 2019, para. 16.

⁴⁸ **IIMM0000022326** Fiona MacGregor, “Dozens of rapes reported in northern Rakhine State,” *The Myanmar Times*, 27 October 2016.

⁴⁹ [REDACTED]
⁵⁰ **IIMM0027994292** “Reporter’s sacking followed MoI phone call, sparking press freedom fears,” *Frontier Myanmar*, 4 November 2016.

⁵¹ **IIMM0027995721** The Republic of the Union of Myanmar President Office, “Local residents – accounts differ from fabricated media stories,” 7 November 2016; **IIMM0001138665** “Local residents’ accounts differ from fabricated media stories,” *Global New Light of Myanmar*, 7 November 2016.

⁵² **IIMM0000010940** “Exclusive: Rohingya women say Myanmar soldiers raped them amid crackdown on militants,” *Reuters*, 28 October 2016.

the same date, Colonel Sein Lwin, the police chief for Rakhine State, dismissed the claims of sexual violence as “propaganda for Muslim groups.”⁵³

26. On 16 November 2016, the Government of Myanmar formed the Information Committee to release real-time news about developments in Rakhine State. The seven-member committee was chaired by Khin Maung Tin, Deputy Minister of the State Counsellor’s Office, vice-chaired by General Soe Naing Oo from the Commander-in-Chief’s Office, and composed of officials from the Ministry of Defense, Foreign Affairs, Border Affairs, Home Affairs and the Office of the President.⁵⁴

27. On 20 December 2016, the Permanent Mission of the Republic of the Union of Myanmar to the United Nations Office and other International Organizations in Geneva sent a Note Verbale to the Secretariat of the UN Human Rights Council in Geneva, which described Kofi Annan’s briefing to the President Htin Kyaw, State Counsellor and Minister for Foreign Affairs Aung San Suu Kyi, and Commander-in-Chief of the Defense Services Senior General Min Aung Hlaing, on his findings and observations from a visit to northern Rakhine State in November 2016.⁵⁵ According to the Note Verbale, Senior General Min Aung Hlaing told Kofi Annan that “there were no murder or rape cases”.⁵⁶

28. On 24 December 2016, the Information Committee issued a press release refuting allegations of SGBC made by Rohingya women,⁵⁷ which was further disseminated on the website of State Counsellor Aung San Suu Kyi.⁵⁸ On 26 December 2016, the Information Committee published a large banner that said “FAKE RAPE” on its Facebook page, discrediting a Rohingya woman’s allegations of rape and sexual violence in northern Rakhine State.⁵⁹

29. On 11 February 2017, the Facebook page of the Commander-in-Chief of the Defense Services (CINCDs) posted a response to the “OHCHR Report”, claiming that “During [subsequent] interviews, Bengalis said that there was no rape case and that those who torched homes were Bengali terrorists.”⁶⁰

30. In a meeting

⁵³ Ibid.

⁵⁴ **IIMM0027998692** “Myanmar Creates Information Committee to Handle News About Volatile Rakhine,” *Radio Free Asia*, 16 November 2016; **IIMM0002696289** Facebook post, “Announcement of the formation of Information Committee and its committee members,” 17 November 2016.

⁵⁵ **IIMM0000011688** Note Verbale No. 552/3-27/91, 20 December 2016, the Permanent Mission of Myanmar to the United Nations in Geneva, para. 12.

⁵⁶ Ibid.;

⁵⁷ **IIMM0001138927** “Information committee refutes rumours of rapes,” *Global New Light of Myanmar*, 24 December 2016, p. 1.; **IIMM0002696069** Information Committee Facebook post, “Press release on the investigations concerning with the rumours of rape cases after the Maungdaw violent attacks,” 26 December 2016.

⁵⁸ **IIMM0027993750** “Information committee refutes rumours of rapes,” State Counsellor Office website, 26 December 2016.

⁵⁹ **IIMM0027994409** “Hounded and ridiculed for complaining of rape,” *BBC*, 11 March 2017; **IIMM0002699190** Picture of banner with the words “fake rape”; See paras. 52-53 below.

⁶⁰ **IIMM0000018478** CINCDs Facebook post, “Judges need to have fair views and make just decisions,” 11 February 2017.

31. On 6-7 September 2017, Colonel Phone Tint, Rakhine State Minister for Border Security, told a BBC journalist visiting northern Rakhine [REDACTED]

[REDACTED] “[l]ook at those women... who are making these claims - would anyone want to rape them?”⁶⁵

32. After being informed by *Reuters* in September 2017 that doctors at an IOM clinic in Cox’s Bazar, Bangladesh, were treating hundreds of Rohingya women with “aggressive” sexual violence injuries, Zaw Htay, spokesman for State Counsellor Aung San Suu Kyi, said “[t]hose rape victim women should come to us... We will investigate and we will take action.”⁶⁶

33. In April 2018, Han Do Suan, the Representative of Myanmar to the United Nations in New York, stated that the Secretary-General’s annual report on conflict-related sexual violence⁶⁷ had listed the Tatmadaw on the basis of “unverified allegations”, and that the report amounted to “irresponsible accusations, based on unsubstantiated and one-sided allegations, fake news and reports tailored for political purposes”.⁶⁸

34. In May 2018, Senior General Min Aung Hlaing met with a UN Security Council delegation. The Commander-in-Chief referred to allegations of sexual violence as “abominable on the ground of culture and religion of Myanmar,” stating that “the Tatmadaw severely punishes those offenders in these cases. No sexual violence happened in the history of Myanmar Tatmadaw.”⁶⁹ According to a statement posted on the official website of the Commander-in-Chief about discussions held with the UN Security Council delegation, Min Aung Hlaing stated that he had “heard refugees who fled to Bangladesh said they were raped by the Myanmar Tatmadaw. The Central Committee for the Implementation of Peace and Development in Rakhine State chaired by Aung San Suu Kyi has said if rape cases happen, the victims need to

⁶¹ [REDACTED]

⁶² Ibid.

⁶³ Ibid.

⁶⁴ [REDACTED]

⁶⁵ **IIMM0000001537** “Rohingya crisis: Seeing through the official story in Myanmar,” *BBC*, 11 September 2017.

⁶⁶ **IIMM0027994308** “U.N. medics see evidence of rape in Myanmar army ‘cleansing’ campaign”, *Reuters*, 24 September 2017.

⁶⁷ **IIMM0027995660** Report of the Secretary General on Conflict-related sexual violence, S/2018/250, 23 March 2018.

⁶⁸ **IIMM0027995662** UN Security Council meeting on women and peace and security, S/PV.8234, 16 April 2018, p. 58.

⁶⁹ **IIMM0001379396** “Senior General Min Aung Hlaing holds talks with permanent envoys of UNSC”, 1 May 2018. The Mechanism notes that the Ministry of Defense informed the Special Rapporteur for Myanmar that 61 members of the military were prosecuted for sexual and gender-based violence between 2011 and 2015. See: **IIMM0000006911** Report of the Special Rapporteur on the situation of human rights in Myanmar, A/HRC/31/71, 18 March 2016, para. 48.

inform the committee which will take action against all complaints. ... However, there is no complaint till today.”⁷⁰

35. In response to the August 2018 FFM report, the spokesperson for the Government of Myanmar, Zaw Htay, characterized it as containing “false allegations”.⁷¹ The Representative of Myanmar to the United Nations in Geneva gave a formal response to the FFM’s report at the UN Human Rights Council,⁷² in which he conveyed that “The Government had made it clear that it would not be able to accept the Mission’s mandate and its findings.”⁷³ When the FFM briefed the UN Security Council on its findings on 24 October 2018, the Permanent Representative of Myanmar to the UN in New York also made a presentation to the UN Security Council, rejecting the FFM’s findings.⁷⁴

36. On 7 December 2018, a Joint Communique of Myanmar and the United Nations on the Prevention and Response to Conflict-Related Sexual Violence was issued.⁷⁵ The Joint Communique set out the concerns expressed by Pramila Patten, Under-Secretary-General and Special Representative to the Secretary-General on Sexual Violence in Conflict during her visit to Myanmar on 14 to 16 December 2017, in particular regarding allegations of widespread and systematic patterns of sexual violence allegedly committed by elements of the Myanmar military, Border Guard Police and Rakhine Buddhist militias.⁷⁶ In response, the Joint Communique states that “Government officials emphasized that all forms of sexual violence are strictly prohibited under the Codes of Conduct and Rules of Engagement of Myanmar Security Forces, and expressed the commitment that all credible reports will be rigorously investigated and perpetrators held to account.”⁷⁷

37. In its February 2019 response to an exceptional request from CEDAW for a report on the situation of Rohingya women and girls, the Government of Myanmar stated that “[d]espite repeated accusations that Myanmar Security Forces committed a campaign of rape and violence against Muslim women and girls residing in Rakhine State, there is no evidence to support these wild claims.”⁷⁸

38. In an interview with *Asahi Shimbun*, on 15 February 2019, Tatmadaw Commander-in-Chief Senior General Min Aung Hlaing acknowledged that “[s]ecurity forces were accused of rapes. In fact, those of security forces are not naughty. We all are under disciplines. So, it is very

⁷⁰ **IIMM0000001984** “Discussions Between Senior General Min Aung Hlaing and Permanent Envoys of UNSC,” Commander-in-Chief of Defense Services, 4 May 2018.

⁷¹ **IIMM0027994412** “Myanmar rejects UN accusation of ‘genocide’ against Rohingya,” *BBC*, 29 August 2018.

⁷² **IIMM0027995642** UN Human Rights Council, “Human Rights Council holds interactive dialogue with the Independent International Fact-Finding Mission on Myanmar”, 18 September 2018.

⁷³ *Ibid.*

⁷⁴ **IIMM0027995645** UN Security Council, Head of Human Rights Fact-Finding Mission on Myanmar Urges Security Council to Ensure Accountability for Serious Violations against Rohingya: Myanmar’s Representative Calls Mission Flawed, Biased, Defends Counter-Terrorist Actions by Security Forces in Rakhine State, 8381st Meeting (PM), Meeting Coverage, SC/13552, 24 October 2018.

⁷⁵ **IIMM0027995667** Joint Communique of the Republic of the Union of Myanmar and the United Nations on the Prevention and Response to Conflict-Related Sexual Violence, 7 December 2018.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ **IIMM0027995648** CEDAW/C/MMR/EP/1, CEDAW, Report submitted by Myanmar under the exceptional reporting procedure, 7 February 2019, para. 11.

impossible to commit rape case. However, some rape cases may happen in line with the example like a Myanmar saying, goes: alms of Buddhist monks are mixed with waste of mice. One or two members may commit such cases. I did not use the word ‘absolute’. For example, beating or rape may happen. However, show evidences to us. We will take action against them. If not, it will be bad in saying something to discredit us. I would like to note one more point about various kinds of confessions. Many persons said it. When some organizations made interviews in Bangladesh, they faced differences of confessions in a single subject during their trips. Another one is that they told the same things in every place. Those persons told some things here and there. It means they were taught and trained. They told things they were taught. Furthermore, the subject they told in interviews differed between the first time and the second time. So it can be seen they did not actually feel it in their minds. In fact, they retold the subject they have heard. As a result, we know it was totally unconfirmed.”⁷⁹

39. The Myanmar authorities including the Tatmadaw consistently described the clearance operations as only targeting “terrorists”,⁸⁰ [REDACTED]⁸¹ and did not acknowledge any instance where Rohingya were victims of sexual violence.⁸² This narrative was widely disseminated⁸³ by officials at the Rakhine State⁸⁴ and Union level,⁸⁵ and distributed by the Ministry of Foreign Affairs to UN agencies.⁸⁶

V. Myanmar law on investigation and punishment of sexual and gender-based crimes committed by security forces

40. Article 20(b) of the 2008 Constitution gives the military “the right to independently administer and adjudicate all affairs of the armed forces”⁸⁷ and Article 343 states that “In the adjudication of Military justice: (b) the decision of the Commander-in-Chief of the Defense Services is final and conclusive.”⁸⁸

⁷⁹ **IIMM0027995724** “Senior General Min Aung Hlaing receives Asahi Shimbun of Japan, answers the questions,” Senior General Min Aung Hlaing Commander-in-Chief of Defense Services website, 17 February 2019.

⁸⁰ **IIMM0001139272** “Authorities refute AP’s report on mass graves in Buthidaung Tsp,” *Global New Light of Myanmar*, 3 February 2018.

⁸¹ [REDACTED]

⁸² **IIMM0027995724** “Senior General Min Aung Hlaing receives Asahi Shimbun of Japan, answers the questions,” Senior General Min Aung Hlaing Commander-in-Chief of Defense Services website, 17 February 2019.

⁸³ **IIMM0001139870** “Terrorists trying to destroy Maungdaw,” “At 5pm, they set fire to about 100 homes in Bengali Ward...”, “The extremist terrorists themselves torched their houses with the intention of flaming the violence to totally destroy the town,” pp. 1,7; “Extremist terrorism on the rise!”, “Extremist terrorists burnt down 42 houses, 13 shops and a village monastery...”, “extremist terrorists torched their own homes...”, “...they fled after burning down their five homes..”, p. 6, *Global New Light of Myanmar*, 28 August 2017.

⁸⁴ **IIMM0027994404** “Muslim civilians ‘killed by Burmese army,’” *BBC*, 7 November 2016; **IIMM0027994302** “Rakhine State Investigation Commission Report Says Border Guard Post Attacks Were Planned,” *Radio Free Asia*, 27 December 2016.

⁸⁵ **IIMM0000011688** Note Verbale No. 552/3-27/91, 20 December 2016, Permanent Mission of Myanmar to the United Nations in Geneva, para. 12.

⁸⁶ **IIMM0000008324** Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar, A/HRC/39/CRP.2, 17 September 2018, footnote 3000.

⁸⁷ **IIMM0001503433** Myanmar Constitution (2008), art. 20(b).

⁸⁸ *Ibid.* at art. 343(b).

41. The Military Code of Conduct instructs Tatmadaw personnel to “Stay clear of girls.”⁸⁹ The investigation and prosecution of sexual violence and rape committed by members of the Tatmadaw while on active duty is regulated by the Defense Services Act.⁹⁰ The Defense Services Act stipulates that soldiers who commit crimes of murder, homicide and rape “on active duty” should be investigated and prosecuted by courts-martial.⁹¹ Such crimes committed by military personnel while off duty would fall under the jurisdiction of civilian courts.⁹²

42. Courts martial established under the Defense Services Act⁹³ are an independent judicial body with exclusive jurisdiction over Tatmadaw personnel, according to Section 343 of the 2008 Constitution.⁹⁴ Investigation and trial by courts martial is dictated by the Defense Services Rules.⁹⁵ The courts martial are administered and staffed by officers of the Judges’ Advocates Office of the Ministry of Defense.⁹⁶

43. The BGP operates according to specific Terms of Reference, but it is administratively part of the Myanmar Police Force which falls under the overall authority of the Ministry of Home Affairs.⁹⁷ While article 17(g) of the Myanmar Police Force Maintenance of Discipline Law forbids personnel from striking or otherwise ill-treating any prisoner, any person in custody or any person detained, and prescribes, upon conviction, a prison term for up to three years for such conduct, the law does not explicitly mention sexual violence or rape.⁹⁸ The Police Code of Conduct instructs the police to “respect people” and “public tradition”,⁹⁹ “avoid rude behaviour when interacting with the public”,¹⁰⁰ “protect the rights of people in accordance with the law”,¹⁰¹ and “follow the Code of Conduct in respect of girls, boys, and wives of the public.”¹⁰² The Police Code of Conduct does not explicitly mention sexual violence or rape.

⁸⁹ **IIMM0027995712** Military Code of Conduct, point 17.

⁹⁰ **IIMM0001490590** Defense Services Act 1959.

⁹¹ Ibid.

⁹² Ibid. at para. 72 (1959).

⁹³ **IIMM0001490590** Defense Services Act 1959; **IIMM0027995695** ICC-01/19, Application pursuant to Rule 103(1) of the Rules of Procedure & Evidence, 21 October 2019 (According to a submission by the Alliance for Social Justice to the Pre-Trial Chamber of the International Criminal Court, the Office of the Tatmadaw’s Judge Advocate General has more than 150 staff members (including representatives based in regional commands), including Western Regional Command in Rakhine State. There are four types of tribunals in Myanmar’s military justice system: General Court-Martial, Summary General Court-Martial, District Court-Martial and Summary Court-Martial.)

⁹⁴ **IIMM0001503433** Myanmar Constitution (2008), art. 343.

⁹⁵ **IIMM0027995702** Myanmar Ministry of Defense, Defense Services Rules, Chapter V.

⁹⁶ **IIMM0027995700** Melissa Crouch, “States of Legal Denial: How the State in Myanmar uses Law to Exclude the Rohingya”, 51(1) *Journal of Contemporary Asia* 87-111, 2021; **IIMM0019926710** “Myanmar’s military ‘justice’ system,” *Frontier Myanmar*, 25 January 2020.

⁹⁷ **IIMM0028034866** Terms of Reference of the Border Guard Police, Myanmar Police Force, Ministry of Home Affairs, Myanmar; **IIMM0028034860** Organisation chart of the Ministry of Home Affairs, Ministry of Home Affairs, Myanmar.

⁹⁸ **IIMM0027995699** Myanmar Police Force Maintenance of Discipline Law, art. 17(g).

⁹⁹ **IIMM0028034537** Myanmar Police Force, Ministry of Home Affairs, Police Code of Conduct, 1999, “Code of Conduct in respect of the public,” point 7.

¹⁰⁰ Ibid. at point 5.

¹⁰¹ Ibid. at point 8.

¹⁰² Ibid. at point 10.

VI. Investigations by Myanmar authorities into sexual and gender-based crimes committed during the 2016 and 2017 clearance operations

44. The Government of Myanmar and Tatmadaw authorities set up a total of six investigations into the 2016 and 2017 clearance operations in northern Rakhine.¹⁰³ The 2016 Investigation Committee on Maungdaw in Rakhine State and the 2017 Tatmadaw investigation team, operated and conducted interviews in northern Rakhine State at the height of the 2016 and 2017 clearance operations.¹⁰⁴ The evidence below concerns the adequacy, impartiality and effectiveness of these investigations, particularly in relation to allegations of SGBC.

45. No criminal charges or other accountability actions for SGBC, such as demotions or dismissals¹⁰⁵ of commanders or soldiers, are known to have been brought following the conclusion of any of these domestic investigations. Each of these investigations is discussed below with a description of its particular mandate, composition, methodology, approach to SGBC and findings. These investigations do not appear to have followed any consistent methodology in regard to the investigation of SGBC, and none resulted in any further follow-up actions towards accountability for SGBC.

A. Investigations by Myanmar authorities

1) Investigation commission of the Parliament of Rakhine State

46. On 24 October 2016, the Parliament of Rakhine State announced the formation of an investigation commission.¹⁰⁶ Tun Hla Sein, a Union Solidarity Development Party (“USDP”) member of the investigation commission, stated that one of the purposes of the commission was “to help indigenous people who fled the clashes,” referring to the ethnic Rakhine population.¹⁰⁷

47. The investigation commission was comprised of six members of the Arakan National Party, an ethnic Rakhine Buddhist party; two members of the military-backed USDP; one

¹⁰³ Rakhine State Parliament investigation commission; National Investigation Committee on Maungdaw in Rakhine State; 2016 Tatmadaw investigation team; Police investigations into police and Border Guard Police conduct in northern Rakhine; 2017 Tatmadaw investigation team; Independent Commission of Enquiry (ICOE).

¹⁰⁴ The 2016 Investigation Committee on Maungdaw in Rakhine State conducted its investigations between 1 December 2016 and 31 January 2017, see: **IIMM0001139035** “Formation of Investigation Commission,” *Global New Light of Myanmar*, 2 December 2016, p. 4; **IIMM0027993728** “Formation of Investigation Commission,” The Republic of the Union of Myanmar President Office, 1 December 2016. The 2017 Tatmadaw investigation team conducted its investigations between 13 October and 7 November 2017, see: **IIMM0000305603** CINCDs Facebook post, “Information released by the Tatmadaw True News Information Team on the findings of the Investigation Team in connection with the performance of the security troops during the terrorist attacks in Maungdaw region, Rakhine State”, 13 November 2017.

¹⁰⁵ **IIMM0001320556** CINCDs Facebook page, “Press release on the actions taken on the Tatmadaw’s weaknesses in overseeing the terrorist attacks of the ARSA Bengali terrorist group on the 25th August 2017 in Rakhine State,” 25 June 2018.

¹⁰⁶ **IIMM0027998695** “Arakan State Parliament Forms Commission to Investigate Maungdaw Attacks,” *Irrawaddy*, 26 October 2016.

¹⁰⁷ *Ibid.*

member of the ruling National League for Democracy; a military appointee; and a legal advisor to the regional parliament.¹⁰⁸ There were no Rohingya members of the commission.

48. There is no information publicly available about the methodology employed by the investigation commission or the type of evidence that informed its findings. However, the impartiality and objectivity of its chairman Aung Win must be considered in light of his public statements mocking allegations of sexual violence and deriding Rohingya women. On 7 November 2016, Aung Win told the BBC that Tatmadaw soldiers could not have raped Rohingya women because they were “too dirty”¹⁰⁹ and laughed, explaining that “the Bengali or Rohingya women have a very low standard of living and poor hygiene. They are not attractive. So none of the local Buddhist men or soldiers are interested in them.”¹¹⁰

49. The investigation commission submitted its final report to the Rakhine State legislature on 26 December 2016, two months after its establishment.¹¹¹ The report focused on the attacks on the police posts and called for tighter security “at schools and in ethnic Rakhine villages where Buddhists live, as well as along security patrol routes beside the Naf River which separates Myanmar and Bangladesh.”¹¹² The report did not identify any perpetrators of abuses, did not acknowledge any abuses or violence suffered by Rohingya civilians, and made no findings related to accountability for human rights violations or violence against the Rohingya.¹¹³ The report also did not mention any allegations of SGBC. The report recommended that some of the Rohingya villages affected in the 2016 clearance operations be restructured and have their fences removed.¹¹⁴

2) *Investigation Committee on Maungdaw in Rakhine State*

50. On 1 December 2016, President Htin Kyaw announced the creation of the Investigation Committee on Maungdaw in Rakhine State (“Investigation Committee”), mandated to investigate the situation in Rakhine State, including “whether outside allegations made in connection to area clearance operations undertaken by security personnel are true,” and to report its findings by 31 January 2017.¹¹⁵ The Investigation Committee was mandated to conduct investigations in accordance with Myanmar’s Criminal Procedure and the Evidence Act.¹¹⁶

¹⁰⁸ Ibid.

¹⁰⁹ **IIMM0027994404** “Muslim civilians ‘killed by Burmese army,’ *BBC*, 7 November 2016.

¹¹⁰ Ibid.

¹¹¹ **IIMM0027994302** “Rakhine State Investigation Commission Report Says Border Guard Post Attacks Were Planned,” *Radio Free Asia*, 27 December 2016.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ **IIMM0001139035** “Formation of Investigation Commission,” *Global New Light of Myanmar*, 2 December 2016, p. 4; **IIMM0027993728** “Formation of Investigation Commission,” The Republic of the Union of Myanmar President Office, 1 December 2016.

¹¹⁶ **IIMM0001139035** “Formation of Investigation Commission,” *Global New Light of Myanmar*, 2 December 2016, p. 4.

51. The 13-member committee was led by Vice-President Myint Swe, former lieutenant general and head of military intelligence.¹¹⁷ Prior to commencing the investigation, the *Global New Light of Myanmar* reported that Myint Swe “defended the ongoing clearance operations that have been conducted since 9 October,”¹¹⁸ indicating a bias in favour of the military. One member of the Investigation Committee, Dr. Aung Tun Thet, later also served on the International Commission of Enquiry (ICOE).¹¹⁹

52. The Investigation Committee conducted visits to northern Rakhine.¹²⁰ According to reports by local groups, witness accounts and publicly released footage,¹²¹ the Investigation Committee’s members argued with villagers, told them what not to say, accused them of lying, and interviewed victims, including rape survivors, in large groups with no confidentiality.¹²²

53. Myanmar Radio and Television (MRTV), the State-run television channel, broadcast a video showing the work of the Investigation Committee.¹²³ The video shows a group of people, including Dr. Thet Thet Zin, a female member of the Investigation Committee, questioning a Rohingya woman, who was later publicly identified in the media.¹²⁴ The video also shows a male interpreter, interpreting between the Myanmar and Rohingya languages. The questioning takes place in public, with a large number of people within earshot. It was filmed in Pyaung Pike village, Ngar Sar Kyu village tract, Maungdaw township, on 11 December 2016.¹²⁵ The video does not indicate that the Investigation Committee made any efforts to blur or conceal the identity of the Rohingya woman, in order to shield her privacy or protect her from intimidation or harm.

54. The Rohingya woman is repeatedly interrupted when she speaks. After telling the Investigation Committee members that she saw Rohingya women being taken to the mountain area, she is told that “You did not see the rape. You don’t know the detail of the rape. Is it

¹¹⁷ **IIMM0001139035** “Formation of Investigation Commission,” *Global New Light of Myanmar*, 2 December 2016, p. 4.; **IIMM0027998179** “Myanmar rejects allegations of human rights abuses against Rohingya,” *Reuters*, 6 August 2017.

¹¹⁸ **IIMM0001138919** “Vice President to Rakhine commission: The world is waiting,” *Global New Light of Myanmar*, 9 December 2016, p. 3: “U Myint Swe defended the ongoing clearance operations that have been conducted since 9 October. “Tatmataw-Myanmar Police Force combined troops made a series of area clearance operations, with a view to investigating those involved in armed attacks and recapturing looted arms and ammunition, confronting frequent attacks. Starting from October 9 till now, 7 soldiers and 10 policemen were killed with 3 soldiers, 7 policemen and one civilian injured, and 2 firearms of the Tatmataw and 39 units from the police force lost.”

¹¹⁹ **IIMM0001139035** “Formation of Investigation Commission,” *Global New Light of Myanmar*, 2 December 2016, p. 4; **IIMM0001139291** “Government of the Republic of the Union of Myanmar Establishes the Independent Commission of Enquiry,” *Global New Light of Myanmar*, 31 July 2018.

¹²⁰ **IIMM0001139156** “Investigators visit Rakhine attack sites,” *Global New Light of Myanmar*, 12 December 2016, p. 1; **IIMM0001139059** “Truth about Maungdaw attacks emerging: Investigation Commission Chairman,” *Global New Light of Myanmar*, 27 December 2016, p. 1; **IIMM0002693658** Maungdaw Region Investigation Commission Press Release, 24 February 2017; **IIMM0001139622** “Maungdaw Region Investigation Commission Press Release, 24 February 2017”, *Global New Light of Myanmar*, 26 February 2017.

¹²¹ **IIMM0000348154** Video, MRTV.

¹²² **IIMM0027995691** Human Rights Watch, “Myanmar’s Investigative Commissions: A History of Shielding Abusers,” September 2018.

¹²³ **IIMM0000348154** Video, MRTV.

¹²⁴ **IIMM0001138927** “Information committee refutes rumours of rapes,” *Global New Light of Myanmar*, 24 December 2016; **IIMM0027994409** “Hounded and ridiculed for complaining of rape,” *BBC*, 11 March 2017.

¹²⁵ *Ibid.*

right?”¹²⁶ She confirms that she did not see the rape occur, and is told, “Then it [the rape] is not true.”¹²⁷ The Rohingya woman responds that when the abducted women returned, they were bleeding and points in between her legs.¹²⁸ She is told by the interpreter and by Dr. Thet Thet Zin, “Don’t say this” and “Don’t talk about the bleeding.”¹²⁹ She is repeatedly told that “You did not see the rape. You don’t know the detail of the rape.”¹³⁰ The Rohingya woman replies that she asked the Rohingya women what happened, and in the middle of her reply to the interviewers, she is interrupted by multiple people.¹³¹ The Rohingya woman is asked whether she was raped herself. She replies, “No, but they touched me everywhere inserting their hands inside my clothes. They took off my skirt and bra.”¹³² A male interviewer says in Myanmar language, “She was beaten by a stick. They were wild a bit. That is it. Nothing else happened.”¹³³ Other interviewees respond, saying “All clear now.” At the end of the footage, the Rohingya woman is told to speak into a recorder.¹³⁴ The interpreter speaks for her, saying, “She did not see the rape” and “She was not raped either.”¹³⁵

55. Following the Investigation Committee’s mission to northern Rakhine between 11 to 13 December 2017, *The Global New Light of Myanmar* ran an article claiming that Rohingya witnesses “refute[d] claims of rape”, stating that “the teams made up of commission members spoke to Muslim villagers, women and children to ask if there had taken place any cases of rape... The locals... said they did not know or see anything of the events described.”¹³⁶

56. The Investigation Committee’s interim report, released on 3 January 2017, dismissed allegations of rape due to “insufficient evidence”.¹³⁷ On 7 January 2017, the Investigation Committee released a statement about its work in northern Rakhine State, reporting that “Members of the commission Dr Daw Thet Thet Zin and Daw Kyain Ngai Man met with Muslim women of the village at the school and asked them individually whether acts of violence against women were committed during the incidents but the local women told the commission that there had not been any violence against women in their village and that there were only rumours of such things.”¹³⁸

¹²⁶ **IIMM0000348154** Video, MRTV, 0:10.

¹²⁷ Ibid. at 0:19.

¹²⁸ Ibid. at 0:30-0:40.

¹²⁹ Ibid. at 0:45-0:50.

¹³⁰ Ibid. at 0:54 and 1:00.

¹³¹ Ibid. at 1:14.

¹³² Ibid. at 1:22.

¹³³ Ibid. at 1:33.

¹³⁴ Ibid. at 1:35.

¹³⁵ Ibid. at 1:37.

¹³⁶ **IIMM0001139182** “Muslim villagers refute claims of rape and murder by British newspaper,” *Global New Light of Myanmar*, 13 December 2016, p. 1.

¹³⁷ **IIMM0001139435** “Interim Report of the Investigation Commission on Maungtaw,” *Global New Light of Myanmar*, 4 January 2017, p. 2.

¹³⁸ **IIMM0001139566** “Commission: More investigation needed on Maungtaw,” *Global New Light of Myanmar*, 6 January 2017, p. 1; **IIMM0001139492** “Investigation Commission conducts second round of field trips to northern Rakhine State,” *Global New Light of Myanmar*, 7 January 2017; **IIMM0002693658** Maungtaw Region Investigation Commission Press Release, 24 February 2017; **IIMM0001139622** “Maungtaw Region Investigation Commission Press Release, 24 February 2017”, *Global New Light of Myanmar*, 26 February 2017.

57. The Investigation Committee issued a summary of its final report on 6 August 2017, just weeks before the Tatmadaw initiated the August 2017 clearance operations.¹³⁹ The report rejected the findings of the February 2017 OHCHR Flash Report, stating that there was “no possible evidence indicating any crime against humanity or any act of ethnic cleansing”.¹⁴⁰ Myint Swe, the Head of the Investigation Committee, said that the accusations were part of a smear campaign by “external forces.”¹⁴¹ The Investigation Committee concluded that any “excessive actions” were likely committed by low-rank “individual members of the security forces”.¹⁴² In regards to allegations from 204 Rohingya who fled to Bangladesh and were interviewed for the February 2017 OHCHR Flash Report, the Investigation Committee said that OHCHR “exaggerate[d]” its findings.¹⁴³ At a press conference on 7 August 2017, Aung Kyi, Investigation Committee member and former Union Minister, said that people “will not believe exaggerated accusations such as the act of molesting, gang raping, kicking the belly of a pregnant woman... some of the cases are caused by misunderstanding, some are totally untrue and some are group-wise hatched lies.... but we have never turned a blind eye to the matter.”¹⁴⁴

3) 2016 Tatmadaw investigation team

58. Shortly following the release of the OHCHR Flash Report in February 2017, the Tatmadaw announced the establishment of a team to investigate whether there had been “unlawful acts including violations of human rights” and whether soldiers operated “within the framework of law”.¹⁴⁵ Further, the Tatmadaw stated that “if sufficient evidence is found of violating human rights, the Government will take legal actions against anyone.”¹⁴⁶

59. The Tatmadaw investigation team was led by Inspector General of the Defense Services Lieutenant General Aye Win.¹⁴⁷

60. The Tatmadaw investigation team claimed to have interviewed approximately 2,875 villagers in 29 villages in Rakhine State’s Maungdaw Township from 10 February to 4 March 2017.¹⁴⁸ As pointed out by Human Rights Watch, the Tatmadaw team would have had to interview at least 125 people each day that it was in northern Rakhine State to reach this total.¹⁴⁹

¹³⁹ **IIMM0001139562** “No evidence of crimes against humanity, ethnic cleansing”, *Global New Light of Myanmar*, 7 August 2017.

¹⁴⁰ *Ibid.* at p. 1.

¹⁴¹ *Ibid.*; **IIMM0027995691** Human Rights Watch, “Myanmar’s Investigative Commissions: A History of Shielding Abusers,” September 2018.

¹⁴² **IIMM0001139562** “No evidence of crimes against humanity, ethnic cleansing”, *Global New Light of Myanmar*, 7 August 2017, p. 1.; **IIMM0027994268** “Government dismisses claims of abuse against Rohingya,” *Al Jazeera*, 6 August 2017.

¹⁴³ **IIMM0001139562** “No evidence of crimes against humanity, ethnic cleansing”, *Global New Light of Myanmar*, 7 August 2017, p. 1.

¹⁴⁴ *Ibid.*

¹⁴⁵ **IIMM0001139386** “Tatmadaw releases reaction to OHCHR report,” *Global New Light of Myanmar*, 10 February 2017, p. 3.

¹⁴⁶ *Ibid.*

¹⁴⁷ *Ibid.*

¹⁴⁸ **IIMM0027995691** Human Rights Watch, “Myanmar’s Investigative Commissions: A History of Shielding Abusers,” September 2018.

¹⁴⁹ *Ibid.*

The team said it “recorded” the testimonies of 408 villagers and “interviewed” more than 200 soldiers and members of the Border Guard Police.¹⁵⁰

61. The Tatmadaw investigation team concluded that the allegations against the Tatmadaw in the February 2017 OHCHR Flash Report were either “totally wrong” or “found to be untrue due to false accusations and exaggerations.”¹⁵¹ The Tatmadaw investigation team’s report made no reference to allegations of SGBC committed against the Rohingya, neither in the context of its investigation nor in its findings.

4) *Police investigations*

62. Several police investigations were conducted under the auspices of the Ministry of Home Affairs into the conduct of security forces in northern Rakhine during the 2016 and 2017 clearance operations, including into complaints of sexual violence filed by Rohingya women.

63. On 12 February 2017, the Ministry of Home Affairs announced that a team of five high-ranking police officials would investigate allegations of police abuses in northern Rakhine State.¹⁵² Police Adjutant-General Chairman Brigadier General Win Tun headed the investigation, joined by Brigadier General Nay Win, Colonel Nay Tun, Lieutenant Colonel Maung Maung Lwin and Colonel Khin Maung Aye.¹⁵³ According to the announcement, the Ministry of Home Affairs instructed the police force to follow “international standards” and to complete its mission “in accordance with the Criminal Codes and police manual.”¹⁵⁴ The announcement said that if the departmental investigation found that members of the Police Force had violated human rights, they would be charged under the Police Disciplinary Law.¹⁵⁵ There is no publicly available information on the steps taken by the police team to investigate allegations of abuses, whether these allegations included SGBC, whether the investigation was completed and what findings, if any were made and whether anyone was eventually charged with a crime as a result.

64. According to the report of the Government of Myanmar submitted to CEDAW on 1 February 2019, three Rohingya women from Shey Kya village, Maungdaw, filed complaints on 23 February 2017, and three Rohingya women from Kyar Gaung Taung village, Maungdaw, filed complaints on 30 and 31 March 2017, to the Ngakura Police Station in Maungdaw township, all alleging rape committed by security forces.¹⁵⁶ Myanmar’s report to CEDAW did not contain any information about investigations or prosecutions conducted on the basis of these complaints in the almost two years since they were filed.

¹⁵⁰ Ibid.

¹⁵¹ **IIMM0000224460** CINCDS Facebook page, “Myanmar’s true situation should be apprehended: there are misjudgments resulting from wrong reports”, 23 May 2017.

¹⁵² **IIMM0001139540** “Ministry of Home affairs issues press release,” *Global New Light of Myanmar*, 12 February 2017.

¹⁵³ Ibid.

¹⁵⁴ Ibid.

¹⁵⁵ Referring to **IIMM0027995699** Myanmar Police Force Maintenance of Discipline Law.

¹⁵⁶ **IIMM0027995648** “Report submitted by Myanmar under the exceptional reporting procedure,” CEDAW/C/MMR/EP/1, 7 February 2019, para. 12.

65. To date, the Mechanism is not aware of any police investigations into SGBC committed during the 2016 or 2017 clearance operations in northern Rakhine State leading to the identification or punishment of any perpetrators among the police, BGP or other security forces.

5) 2017 Tatmadaw investigation team

66. On 13 October 2017, the Myanmar military announced another investigation led by Inspector Lieutenant General Aye Win into actions of Tatmadaw personnel in northern Rakhine State in military operations following 25 August 2017.¹⁵⁷

67. Commander-in-Chief Senior General Min Aung Hlaing stated that the investigation team would examine whether soldiers followed the military Code of Conduct¹⁵⁸ and whether they “exactly followed the command” during the operations.¹⁵⁹ The team was mandated to conduct “ground inspection to know the true situation in connection with terrorist attacks of the ARSA Bengali terrorists on 30 police outposts and an army battalion headquarters in Buthidaung, Maungtaw and [R]athedaung townships in Rakhine State on 25 August 2017 and to ascertain whether security troops conducted the military operations in accord with their duty assignments during the time the Tatmadaw was trying to restore regional peace and stability.”¹⁶⁰

68. Between 13 October and 7 November 2017, the 2017 Tatmadaw investigation team claimed to have interviewed 3,217 villagers in 58 villages in Maungdaw, Buthidaung and Rathedaung townships.¹⁶¹ The Tatmadaw investigation team would have had to interview at least 123 people each day they were in northern Rakhine State to reach this number. During the period from 13 October to 7 November 2017, clearance operations were continuing across northern Rakhine, and large numbers of Rohingya were either fleeing their homes as their villages were destroyed or emptied or sheltering other internally displaced Rohingya seeking to flee to Bangladesh.¹⁶² In this environment, the Tatmadaw investigation team recorded accounts of 804 witnesses.¹⁶³

69. The findings of the Tatmadaw investigation team, released on 13 November 2017, one month following its formation, fully exonerated the Tatmadaw of any crimes or abuse against the Rohingya.¹⁶⁴ The report produced by the Tatmadaw investigation team does not make clear the gender or qualifications of the interviewers, whether the interviewers were in uniform or

¹⁵⁷ **IIMM0000222905** CINCDS Facebook post, “Press release of Tatmadaw True News Information Team”, 13 October 2017.

¹⁵⁸ **IIMM0027995712** Military Code of Conduct, point 17.

¹⁵⁹ **IIMM0000222905** CINCDS Facebook post, “Press release of Tatmadaw True News Information Team”, 13 October 2017: “Did they follow the military code of conduct? Did they exactly follow the command during the operation? After that (the committee) will release full information.”

¹⁶⁰ **IIMM0027995705** *Tatmadaw True News Information Team*, 13 November 2017.

¹⁶¹ **IIMM0000305603** CINCDS Facebook post, “Information released by the Tatmadaw True News Information Team on the findings of the Investigation Team in connection with the performance of the security troops during the terrorist attacks in Maungtaw region, Rakhine State”, 13 November 2017.

¹⁶² **IIMM0027995690** Human Rights Watch, “40 Rohingya Villages Burned Since October,” 17 December 2017.

¹⁶³ **IIMM0027995705** *Tatmadaw True News Information Team*, 13 November 2017; **IIMM0000305603** CINCDS Facebook post, “Information released by the Tatmadaw True News Information Team on the findings of the Investigation Team in connection with the performance of the security troops during the terrorist attacks in Maungtaw region, Rakhine State”, 13 November 2017.

¹⁶⁴ *Ibid.*

armed, the languages used in interviews, or whether any qualified Rohingya interpreter was present. The Rohingya interviewed by the Tatmadaw investigation team were referred to as “Bengalis”.¹⁶⁵ There is no indication that the investigators conducted any interviews in Bangladesh, where a substantial number of victims had fled. The Tatmadaw investigation team found that its investigation “proved that all security members up from the leaders to the privates were aware of and strictly abided by the orders and directives of superior bodies, especially the rules of engagement-ROE in connection with the rights of self-defence and in discharging duties during the armed conflicts and anti-terrorist operations.”¹⁶⁶ The findings also stated that “security forces did not commit shooting at innocent villagers and sexual violence and rape cases against women.”¹⁶⁷ No follow up accountability actions or reforms were recommended by the Tatmadaw investigation team.

70. Pramila Patten, the UN Special Representative of the Secretary-General on Sexual Violence in Conflict met with Inspector General of the Defense Services, Lieutenant General Aye Win, in December 2017. According to *The Guardian* newspaper, the Special Representative wrote in an internal memo following the meeting that “[t]he military investigation, which consisted of armed men in uniform ‘interrogating’ civilians in large group settings, often on camera, and then presenting rations to communities following their testimony and cooperation, clearly occurred under coercive circumstances, where the incentive structure was not to lodge complaints...Accordingly, over 800 interviews yielded zero reports of sexual or other violence against civilians by the armed and security forces.”¹⁶⁸

6) *Independent Commission of Enquiry (ICOE)*

71. Following intensified calls for accountability from the international community,¹⁶⁹ the Office of the President of Myanmar announced on 31 May 2018 that it would form an Independent Commission of Enquiry (ICOE).¹⁷⁰ The ICOE was established to “investigate the allegations of human rights violations and related issues, following the terrorist attacks by ARSA”.¹⁷¹

¹⁶⁵ As detailed in **IIMM0027992865** Anti-Rohingya Hate Speech on Facebook: Content and Network Analysis, IIMM Analytical Note, referring to Rohingya as “Bengalis” invokes the narrative that the Rohingya name – and, by extension, the group identity – does not exist, and that the people who call themselves Rohingya do not belong in Myanmar but rather are Bengali and should live in Bangladesh.

¹⁶⁶ **IIMM0027995705** *Tatmadaw True News Information Team*, 13 November 2017; **IIMM0000305603** CINCDS Facebook post, “Information released by the Tatmadaw True News Information Team on the findings of the Investigation Team in connection with the performance of the security troops during the terrorist attacks in Maungtaw region, Rakhine State”, 13 November 2017.

¹⁶⁷ **IIMM0027995705** Ibid.

¹⁶⁸ **IIMM0027994335** “Aung San Suu Kyi ‘avoided’ discussion of Rohingya rape during UN meeting,” *The Guardian*, 27 December 2017.

¹⁶⁹ **IIMM0027995666** Security Council Press Statement on Security Council Visit to Bangladesh, Myanmar, SC/13331, Press release, 9 May 2018.

¹⁷⁰ **IIMM0001139350** “Government of the Republic of the Union of Myanmar will establish an Independent Commission of Enquiry,” *Global New Light of Myanmar*, 1 June 2018.

¹⁷¹ **IIMM0008490590** Compilations of Myanmar Government announcements.

72. The four members of the commission were named in July 2018.¹⁷² former Philippine ambassador Rosario Manalo, Japanese diplomat Kenzo Oshima and Myanmar officials Dr. Aung Tun Thet and Mya Thein. In March 2018, prior to joining the ICOE, Dr. Aung Tun Thet said that Myanmar has a “clear conscience” and that “there is no such thing in our country, in our society, as ethnic cleansing, and no genocide.”¹⁷³ As chief coordinator of the Union Enterprise for Humanitarian, Relief and Development (UEHRD), which was charged with leading reconstruction efforts in Rakhine State, Dr. Aung Tun Thet dismissed concerns that bulldozing of burned down Rohingya villages would destroy evidence of crimes, stating that there was “no desire to get rid of so-called evidence.”¹⁷⁴

73. The ICOE was described by presidential spokesperson Zaw Htay as a response “to false allegations made by the UN Agencies and other international communities.”¹⁷⁵ The ICOE Chair, Rosario Manalo said, at the ICOE’s initial press conference, “I assure you there will be no blaming of anybody, no finger pointing of anybody because we don’t achieve anything by doing that.... No saying “you are accountable!”¹⁷⁶

74. The ICOE’s methodology was never made public. However, the FFM concluded from its meeting with the ICOE Chair in March 2019 that the “information provided about the Commission’s...methodology raised serious concerns.”¹⁷⁷

75. The ICOE’s executive summary provided some insight into the work of the ICOE’s two evidence collection and verification teams (“ECVT”). The ICOE’s Yangon-based ECVT conducted 1,017 interviews with “Muslim and ethnic national witnesses” in 13 locations “encompassing more than sixty villages” in Maungdaw, Buthidaung and Rathedaung townships in northern Rakhine.¹⁷⁸ The interviews focused on thematic priority areas which included rape.¹⁷⁹ The ICOE’s Nay Pyi Taw-based ECVT interviewed “249 Muslim, Rakhine, Hindu, Daingnet, Thet, Mro, Bama and Mramagyi villagers” and 49 security officers.¹⁸⁰ Among the 49 security officers interviewed, 29 were members of the Tatmadaw and 20 were police officers.¹⁸¹

76. The ICOE reportedly faced some logistical limitations in conducting its investigation. According to the ICOE, the armed conflict between the Arakan Army (AA) and the Tatmadaw in Rakhine State “constrained the collection of evidence.”¹⁸² The ICOE claimed that it was

¹⁷² **IIMM0001139291** “Government of the Republic of the Union of Myanmar Establishes the Independent Commission of Enquiry,” *Global New Light of Myanmar*, 31 July 2018.

¹⁷³ **IIMM0027994311** “Myanmar says it has verified fewer than 400 Rohingya for repatriation,” *Reuters*, 14 March 2018.

¹⁷⁴ **IIMM0000001615** “Bulldozing Rohingya villages was not 'demolition of evidence', Myanmar official says,” *Reuters*, 26 February 2018.

¹⁷⁵ **IIMM0001139364** “U Zaw Htay, Spokesman of the Office of the President: the questions have been raised as to the reasons for the removal of the Facebook accounts and pages associated with Tatmadaw,” *Global New Light of Myanmar*, 29 August 2018, p. 6.

¹⁷⁶ **IIMM0027995674** ICOE Press conference, Nay Pyi Taw, 16 August 2018.

¹⁷⁷ **IIMM0027995650** Report of the independent international fact-finding mission on Myanmar, A/HRC/42/50, para. 100.

¹⁷⁸ **IIMM0019927717** Independent Commission of Enquiry, Executive Summary, p. 5.

¹⁷⁹ *Ibid.*

¹⁸⁰ **IIMM0019927719** Independent Commission of Enquiry, Executive Summary, p. 7.

¹⁸¹ *Ibid.*

¹⁸² *Ibid.*

unable to dispatch a team to the refugee camps in Cox's Bazar in time to collect evidence to inform its report, with the result that no Rohingya refugees who fled Myanmar during the clearance operations were interviewed by the ICOE.¹⁸³

77. On 20 January 2020, the ICOE submitted its final report to President U Win Myint and State Counsellor Aung San Suu Kyi.¹⁸⁴ To date, only the Executive Summary and Annexes 16-28 of the report have been released publicly, covering the incidents in Tula Toli/Min Gyi, Chut Pyin, Maung Nu, Gu Dar Pyin, Aleh Than Kyaw, Myin Hlut, Inn Din, Chein Khar Li and Koe Tan Kauk, Myo Thugyi, Kyauk Pandu, Maungdaw Town Wards 3, 4, 5, and southern and northern Maungdaw. The Mechanism has not received any response to its request to the Myanmar authorities for the remainder of the report.¹⁸⁵

78. The ICOE report concluded that "There were no credible statements on allegations of gang rape committed by Myanmar's security forces. Although some interviewees mentioned rape cases, these were all secondhand information heard from someone else. Additionally, some female witnesses noted that they were searched by male Myanmar's Defense Services personnel as part of the operations. This behavior may constitute sexual violence."¹⁸⁶ The ICOE made no findings in relation to other forms of sexual violence. One of the key conclusions in the ICOE report was that while individual war crimes and human rights violations may have occurred, no genocide was committed.¹⁸⁷

B. Material deficiency of investigations

79. The investigations carried out by the Myanmar authorities described above were all materially deficient in terms of the investigative measures that they undertook in relation to SGBC committed during the 2016 and 2017 clearance operations in northern Rakhine State. International criminal jurisprudence¹⁸⁸ has set out a number of benchmarks against which domestic investigations can be assessed, namely: whether shortcomings in investigative measures could have been but were not corrected;¹⁸⁹ whether operational or logistical challenges materially affected their ability to collect relevant evidence;¹⁹⁰ whether their composition included personnel from the victim group;¹⁹¹ and the existence of any efforts to refer to or cooperate with international efforts to investigate the crimes.¹⁹²

¹⁸³ **IIMM0019927720** Independent Commission of Enquiry, Executive Summary, p. 8.

¹⁸⁴ **IIMM0001136207** "Independent Commission of Enquiry hands over final report to President," *Global New Light of Myanmar*, 21 January 2020.

¹⁸⁵ **IIMM0027994469** Note Verbale 2020-IIMM-000009 from the IIMM to authorities of Myanmar, 9 March 2020.

¹⁸⁶ **IIMM0019927718** Independent Commission of Enquiry, Executive Summary, p. 6

¹⁸⁷ **IIMM0019927721** Independent Commission of Enquiry, Executive Summary, p. 9.

¹⁸⁸ **IIMM0027995693** *Prosecutor v. Jean-Pierre Bemba Gombo*, ICC Appeals Chamber, ICC-01/05-01/08 A, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III's "Judgment pursuant to Article 74 of the Statute", 8 June 2018.

¹⁸⁹ *Ibid.* at para. 180.

¹⁹⁰ *Ibid.* at paras. 172-173.

¹⁹¹ *Ibid.* at para. 172.

¹⁹² For discussion on the relevance of such efforts, see **IIMM0027998190** *Prosecutor v. Jean-Pierre Bemba Gombo*, "Judgment pursuant to Article 74 of the Statute", ICC-01/05-01/08, 21 March 2016, para. 733.

80. Warnings and concerns about these investigations in terms of their mandate, composition, methodology and neglect of SGBC¹⁹³ were widely communicated to Myanmar authorities¹⁹⁴ by UN bodies,¹⁹⁵ and human rights and civil society organizations.¹⁹⁶ It is the assessment of the Mechanism that these shortcomings could have been overcome by employing different methodologies and/or ensuring a balanced and appropriately qualified composition of the investigation teams. These steps would not have been onerous or challenging, should there have been a willingness to conduct a genuine investigation into the 2016 and 2017 clearance operations. The shortcomings resulted in superficial and insufficient investigations into SGBC allegedly committed by Tatmadaw personnel and other security forces. As former secretary of the Advisory Board to the Committee for the Implementation of the Recommendations on Rakhine State, Thai diplomat Kobsak Chutikul, observed, “This just goes on and on. Next year, it will be another commission, another board. [...] It’s all for show – there is nothing real. It is a hoax.”¹⁹⁷

81. The six domestic investigations did not face significant operational or logistical challenges that materially affected their ability to collect relevant evidence. In total, authorities claimed that at least 7,607 interviews¹⁹⁸ were conducted in northern Rakhine State between 10 February 2017 and late 2019. These interviews were reportedly conducted in many of the areas affected by the 2016 and 2017 clearance operations and occurred at the time that clearance operations were still ongoing.¹⁹⁹ The interviews were conducted with Rohingya, Rakhine and individuals from other ethnic communities living in the affected areas.²⁰⁰

82. Only one of the six domestic investigations – the ICOE – stated that its investigation was negatively affected by operational challenges in northern Rakhine State.²⁰¹

¹⁹³ **IIMM0027995689** Global Justice Center, “Myanmar’s Independent Commission of Enquiry Structural Issues and Flawed Findings,” February 2020.

¹⁹⁴ **IIMM0000011957** Report of the independent international fact-finding mission on Myanmar, A/HRC/39/64, 12 September 2018, para. 96.

¹⁹⁵ **IIMM0027995655** OHCHR Press Briefing Note on Myanmar, 10 May 2019; **IIMM0028034563** “Sexual violence in war zones at ‘worst ever’ as drive to protect women falters,” *The Guardian*, 26 November 2017.

¹⁹⁶ **IIMM0000002539** Myanmar: New Commission of Inquiry Cannot Deliver Justice or Accountability, International Response Required, International Commission of Jurists, 31 August 2018; **IIMM0027995691** Human Rights Watch, “Myanmar’s Investigative Commissions: A History of Shielding Abusers,” September 2018.

¹⁹⁷ **IIMM0027998214** “A year after the assault on the Rohingya, Myanmar’s generals are unapologetic,” *Washington Post*, 21 August 2018.

¹⁹⁸ The Investigation commission of the Parliament of Rakhine State, the Investigation Committee on Maungdaw in Rakhine State, and the police investigations into police and Border Guard Police conduct in northern Rakhine State, did not make public the number of interviews they conducted. The 2016 Tatmadaw investigation team interviewed 2,875 villagers and 200 soldiers and members of the BGP [**IIMM0027995691** Human Rights Watch, “Myanmar’s Investigative Commissions: A History of Shielding Abusers,” September 2018], the 2017 Tatmadaw investigation team interviewed 3,217 villagers [**IIMM0000305603** CINCDs Facebook post, “Information released by the Tatmadaw True News Information Team on the findings of the Investigation Team in connection with the performance of the security troops during the terrorist attacks in Maungdaw region, Rakhine State”, 13 November 2017], and the ICOE interviewed 1,017 witnesses, 249 villagers, and 49 security officers [**IIMM0019927719** Independent Commission of Enquiry, Executive Summary, p. 7]. In total, the 2016 and 2017 Tatmadaw investigation teams and the ICOE conducted 7,607 interviews.

¹⁹⁹ October-November 2016; December 2016; October-November 2017.

²⁰⁰ **IIMM0019927719** Independent Commission of Enquiry, Executive Summary, p. 7

²⁰¹ *Ibid.*

83. While the ICOE’s investigation may have been negatively affected by the conflict between the Arakan Army and the Tatmadaw in Rakhine State and its inability to conduct interviews in Cox’s Bazar, Bangladesh,²⁰² other individuals and officials of the Government of Myanmar did have access at that time to sites of the clearance operations in northern Rakhine and to Rohingya victims in Cox’s Bazar, Bangladesh. In November 2018, Rick Heizman,²⁰³ who made the film “Arakan – Ancient Buddhist Kingdom Endangered by Jihad”, said that he was given “full permission, no restrictions at all” by the military and the Government to visit northern Rakhine, including to “burnt-out villages” in Maungdaw township and Min Gyi/Tula Toli village in October 2018.²⁰⁴

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84. None of the domestic investigations made public any information about the profiles and expertise of the personnel deployed to conduct investigations and interviews. Beyond the names of their leadership, the composition of the investigative teams and whether any included Rohingya personnel have not been disclosed. The inclusion of personnel from the Rohingya community would have been a critical element in conducting effective investigations in northern Rakhine, particularly into SGBC.²⁰⁶

85. As detailed above, the available information indicates that at least some leaders and/or members of the various domestic investigation teams expressed strong biases detrimental to the Rohingya and prejudicial views against the credibility of allegations made by Rohingya victims.²⁰⁷ These teams conducted investigations at the same time when there was widespread and pervasive hate speech on social media, including by Tatmadaw-linked networks calling Rohingya “liars” and casting doubt on the credibility of their testimony.²⁰⁸ Similar views and derogatory, discriminatory language was used by senior government officials in positions of authority.²⁰⁹

86. Myanmar authorities consistently rejected international efforts to investigate SGBC. They denied access to international investigators from OHCHR,²¹⁰ the UN FFM and the

²⁰² Ibid., “The clashes between the Arakan Army (AA) and Myanmar’s Defence Services in Rakhine State, which started in January 2019 have constrained the collection of evidence by the ICOE.”; p. 8, “However, ICOE is unable at this moment to send an ECVT team to Bangladesh, just days before the submission of its report to the President.”

²⁰³ Rick Heizman is an American filmmaker, musician and ethnomusicologist who has spent extensive time in Rakhine State and runs the “Arakan Reality” website (<https://arakan-reality.smugmug.com/>) containing approximately 300 videos related to northern Rakhine.

²⁰⁴ **IIMM0027994295** “Yangon Region minister hosts American anti-Rohingya activist,” *Frontier Myanmar*, 9 November 2018.

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²⁰⁶ **IIMM0027995693** *Prosecutor v. Jean-Pierre Bemba Gombo*, ICC Appeals Chamber, ICC-01/05-01/08 A, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III’s “Judgment pursuant to Article 74 of the Statute”, 8 June 2018, para. 172: personnel from victim group “would have easier contact with people and they could provide guidance, or they could guide the [other] persons within the commission with regard to addresses, the language as compatriots”.

²⁰⁷ **IIMM0027994404** “Muslim civilians ‘killed by Burmese army,’ *BBC*, 7 November 2016.

²⁰⁸ For further information on anti-Rohingya hate speech on social media, see **IIMM0027992865** Anti-Rohingya Hate Speech on Facebook: Content and Network Analysis, Analytical Note (IIMM).

²⁰⁹ **IIMM0000001537** “Rohingya crisis: Seeing through the official story in Myanmar,” *BBC*, 11 September 2017.

²¹⁰ **IIMM0000020764** Statement by High Commissioner for Human Rights, 16 December 2016.

Mechanism. They also failed to cooperate with such international efforts to investigate the crimes.²¹¹ The UN FFM requested access to Myanmar on 4 September 2017,²¹² 17 November 2017,²¹³ 29 January 2018,²¹⁴ and 12 February 2019.²¹⁵ The Mechanism has requested information on domestic proceedings, including investigations into SGBC, relevant documents, permission to interview individuals and approval for its personnel to visit Myanmar on 9 January 2020,²¹⁶ 9 March 2020,²¹⁷ 27 May 2020,²¹⁸ 4 June 2020,²¹⁹ 15 October 2020,²²⁰ 27 January 2022,²²¹ 8 August 2022,²²² 11 November 2022,²²³ and 21 March 2023.²²⁴ Through these repeated requests, Myanmar authorities have been made aware of the allegations and the need to investigate allegations of SGBC committed in the context of the 2016 and 2017 clearance operations.

87. To date, the Mechanism has not received responses to any of these information requests. There is no information indicating that Tatmadaw leadership or Myanmar authorities substantively engaged with international human rights NGOs²²⁵ or UN investigative bodies, such as the UN FFM or the Mechanism, on investigations into SGBC. By not responding to repeated requests, Myanmar authorities denied access to international investigators, failing to take an alternative measure available at their disposal to investigate SGBC committed in northern Rakhine during the 2016 and 2017 clearance operations. [REDACTED]

[REDACTED]²²⁶
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²¹¹ For discussion on relevance of such efforts, see **IIMM0027998190** *Prosecutor v. Jean-Pierre Bemba Gombo*, “Judgment pursuant to Article 74 of the Statute”, ICC-01/05-01/08, 21 March 2016, para. 733.

²¹² **IIMM000008324** Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar,” A/HRC/39/CRP.2, 17 September 2018, p. 431.

²¹³ Ibid. at p. 432.

²¹⁴ Ibid. at p. 433.

²¹⁵ Ibid. at p. 181.

²¹⁶ **IIMM0027994468** Note Verbale 2020-IIMM-000001 from the IIMM to authorities of Myanmar, 9 January 2020.

²¹⁷ **IIMM0027994469** Note Verbale 2020-IIMM-000009 from the IIMM to authorities of Myanmar, 9 March 2020.

²¹⁸ **IIMM0027994470** Note Verbale 2020-IIMM-000026 from the IIMM to authorities of Myanmar, 27 May 2020.

²¹⁹ **IIMM0027994471** Note Verbale 2020-IIMM-000027 from the IIMM to authorities of Myanmar, 4 June 2020.

²²⁰ **IIMM0027994472** Note Verbale 2020-IIMM-000031 from the IIMM to authorities of Myanmar, 15 October 2020.

²²¹ **IIMM0027994473** Note Verbale 2022-IIMM-000015 from the IIMM to authorities of Myanmar, 27 January 2022.

²²² **IIMM0027994474** Note Verbale 2022-IIMM-000077 from the IIMM to authorities of Myanmar, 8 August 2022.

²²³ **IIMM0027994475** Note Verbale 2022-IIMM-000114 from the IIMM to authorities of Myanmar, 11 November 2022.

²²⁴ **IIMM0027994476** Note Verbale 2023-IIMM-000026 from the IIMM to authorities of Myanmar, 21 March 2023.

²²⁵ **IIMM0028034560** Human Rights Watch, “Burma: Allow Access to Investigate Abuses in Rakhine State,” 17 November 2016.

[REDACTED]²²⁶
[REDACTED]
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[REDACTED]

VII. Court martials and other proceedings related to clearance operations

A. Court martials and other proceedings

1) 2016 proceedings

88. The Tatmadaw only punished two minor crimes committed during the 2016 clearance operations, neither of which related to sexual violence. In its final report, the 2016 Tatmadaw investigation team stated that no wrongdoing had been uncovered except in two minor incidents – the theft of a motorbike and another that involved military personnel beating villagers for not helping extinguish a fire.²²⁸

2) Gu Dar Pyin court martial

89. Following the issuance of the ICOE report, Commander-in-Chief Senior General Min Aung Hlaing announced on his website in March 2019 that a court martial had been formed, “comprising a major-general and two colonels”²²⁹ “to further scrutinize and confirm the respective incidents.”²³⁰ No mention was made of the courts martial investigating allegations of sexual violence or rape in the context of the incidents under investigation.

90. In August 2019, a court martial began investigating the events concerning the 2017 clearance operations in Gu Dar Pyin.²³¹ It was headed by Major General Myat Kyaw Oo.²³²

91. International media and human rights organizations had reported extensively on the clearance operation and killings in Gu Dar Pyin, carried out between 26 to 29 August 2017.²³³ According to Tatmadaw spokesperson Major General Zaw Min Tun, soldiers and officers from a regiment deployed to Gu Dar Pyin village were “weak in following the rules of engagement”.²³⁴ In a statement published on its website on 26 November 2019, the Tatmadaw said the soldiers being court martialed were involved in “accidents” in Gu Dar Pyin.²³⁵ On 30 December 2019, the Tatmadaw issued a statement that the court martial had conducted five

²²⁸ **IIMM0000224460** CINCDS Facebook post, “Myanmar’s true situation should be apprehended: there are misjudgments resulting from wrong reports”, 23 May 2017.

²²⁹ **IIMM0027994271** “Myanmar to hold court martial after Rohingya atrocities probe,” *Al Jazeera*, 1 September 2019.

²³⁰ **IIMM0027994326** “Myanmar begins rare court martial after probe into Rohingya atrocities,” *Reuters*, 26 November 2019.

²³¹ **IIMM0027995708** CINCDS, “Court-Martial underway in connection with Court of Inquiry”, 31 August 2019.

²³² **IIMM0027995695** Situation in the People’s Republic of Bangladesh / Republic of the Union of Myanmar, ICC Pre-Trial Chamber III, ICC-01/19, Application pursuant to Rule 103(1) of the Rules of Procedure & Evidence, 21 October 2019, para. 15.

²³³ **IIMM0027994277** “AP confirms 5 unreported Myanmar mass graves,” *Associated Press*, 1 February 2018.; **IIMM0027994274** Amnesty International, “Fresh evidence of ongoing ethnic cleansing as military starves, abducts and robs Rohingya,” 7 February 2018; **IIMM0027994299** “Investigation in Myanmar Reveals Disturbing Massacre, At Least 5 Mass Graves,” *NPR*, 1 February 2018.

²³⁴ **IIMM0027994326** “Myanmar begins rare court martial after probe into Rohingya atrocities,” *Reuters*, 26 November 2019.

²³⁵ **IIMM0027995709** Office of the Commander in Chief of Defense Services, “Court-Martial Trial on Incident of Gutapyin Commences”, 26 November 2019.

hearings at an army base in Buthidaung, invited a total of 264 men and women from Gu Dar Pyin to observe the proceedings, and posted a photograph from the proceedings.²³⁶

92. The court martial ended on 20 April 2020 and found that “the officer in charge, a high-rank officer and another soldier who was involved with the case of Gu Dar Pyin village have been found guilty” by a military court, and that similar investigations into events in Maung Nu and Chut Pyin had been initiated.²³⁷ There is no publicly available information indicating that the court martial investigated any allegations of sexual violence or rape in Gu Dar Pyin, Maung Nu or Chut Pyin.

3) *Inn Din court martial*

93. The Mechanism is aware of only one other court martial proceeding carried out in relation to the 2017 clearance operations. Seven Tatmadaw soldiers were sentenced to 10 years in prison for their role in executing 10 Rohingya men in Inn Din, Maungdaw township, northern Rakhine State.²³⁸ The investigation began after *Reuters* journalists published an article on the execution with photographs of the victims detained and then subsequent photos of their bodies after they were killed.²³⁹ This execution could be qualified as a case of persecution on gender grounds²⁴⁰ as the victims were targeted on the basis of their Rohingya ethnicity, combined with the gender role presuming males to be armed group fighters or sympathizers.

94. After serving seven months, all seven soldiers were released and pardoned by Commander-in-Chief Senior General Min Aung Hlaing.²⁴¹ The journalists who published the *Reuters* article were subsequently charged²⁴² and convicted of disclosing state secrets, sentenced to seven years in prison²⁴³ and released after serving almost 18 months.²⁴⁴

4) *Proceedings into BGP misconduct*

95. In December 2016, footage of BGP officers kicking and beating Rohingya men in Koe Tan Kauk village, Rathedaung township on 5 November 2016 during the clearance operations, was widely disseminated online.²⁴⁵ [REDACTED] in an internal coordination meeting of

²³⁶ IIMM0019926710 “Myanmar’s military ‘justice’ system,” *Frontier Myanmar*, 25 January 2020.

²³⁷ IIMM0027996174 “Confirmation of the decision and sentencing remarks of the Court-Martial that examined the Gu Dar Pyin case”, *Tatmadaw Information Team*, 30 June 2020.

²³⁸ IIMM0027994314 “Seven Myanmar soldiers sentenced to 10 years for Rohingya massacre,” *Reuters*, 10 April 2018.

²³⁹ IIMM0000013570 “How Myanmar forces burned, looted and killed in a remote village,” *Reuters*, 28 February 2018.

²⁴⁰ IIMM0027995698 *Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (‘Ali Kushayb’)*, ICC-02/05-01/20, Decision on the confirmation of charges against Ali Muhammad Ali Abd-Al-Rahman (‘Ali Kushayb’), 9 July 2021, para. 80.

²⁴¹ IIMM0027998202 “Military Chief Pardoned Soldiers Involved in Rohingya Massacre,” *The Irrawaddy*, 29 May 2019.

²⁴² IIMM0000004592 Ministry of Home Affairs, 13 December 2017.

²⁴³ IIMM0027994317 “Special Report: How Myanmar punished two reporters for uncovering an atrocity,” *Reuters*, 3 September 2018.

²⁴⁴ IIMM0027994323 “Two Reuters reporters freed in Myanmar after more than 500 days in jail,” *Reuters*, 7 May 2019.

²⁴⁵ IIMM0027994408 “Myanmar police officers detained over Rohingya beatings,” *BBC*, YouTube video, 3 January 2017.

[REDACTED]

²⁴⁶ In February 2017, it was publicly reported that three of the police officers were sentenced to two months' detention by an internal police tribunal.²⁴⁷ Three senior police including a major were demoted and their service terms reduced for failing to enforce discipline.²⁴⁸

B. Material deficiency of proceedings

96. Courts martial that were established in connection with the 2016 and 2017 clearance operations in northern Rakhine State did not cover any acts of SGBC. The Mechanism is not aware of any evidence that any of the above-described court martial and other proceedings resulted in the punishment of any Tatmadaw soldiers or BGP personnel for committing SGBC during the 2016 and 2017 clearance operations.

97. According to Myanmar's national report to the Universal Periodic Review in 2021, "between 2016 and February 2020, 3 officers and 49 other ranks, totaling 52, were punished for committing [sexual violence against civilian women] offenses", under the Defense Services Act and Rules.²⁴⁹ No further information was provided about whether any of them were punished for sexual violence committed during the 2016 or 2017 clearance operations in northern Rakhine State.

98. The Mechanism has taken note of the dismissal of Major General Maung Maung Soe from his position as Western Regional Commander and the resignation of Lieutenant General Aung Kyaw Zaw as commander of BSO-3, announced on 25 June 2018.²⁵⁰ The Tatmadaw stated that Maung Maung Soe was dismissed for weak performance in gaining advanced information about ARSA attacks and taking necessary actions or preparations prior to the attacks, as well as his inability to secure Rakhine State. Aung Kyaw Zaw was found to be lacking in implementing policies from "above" and was permitted to resign from the Tatmadaw on 22 May 2018 in part

²⁴⁶ [REDACTED]

²⁴⁷ **IIMM0001139105** "Action to be taken against police abuse in video clip," *Global New Light of Myanmar*, 2 January 2017, pp. 1-2; **IIMM0027998189** "Security forces probe Rohingya prison deaths in Maungdaw," *Frontier Myanmar*, 23 February 2017.

²⁴⁸ *Ibid.*; **IIMM0001554547** Video 15 February 2017; **IIMM0027998210** "Myanmar Holds Officers After Video Purports to Show Police Beating Rohingya," *The New York Times*, 1 March 2017.

²⁴⁹ **IIMM0027995652** Universal Periodic Review National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, A/HRC/WG.6/37/MMR/1, 2 November 2020, para. 62.

²⁵⁰ **IIMM0001320556** CINCD5 Facebook post. "Press release on the actions taken on the Tatmadaw's weaknesses in overseeing the terrorist attacks of the ARSA Bengali terrorist group on the 25th of August 2017 in Rakhine State," 25 June 2018. [REDACTED]

due to a health condition.²⁵¹ However, the Tatmadaw did not refer to Maung Maung Soe and Aung Kyaw Zaw’s responsibility for the SGBC and other crimes perpetrated by forces under their command during the 2016 and 2017 clearance operations in northern Rakhine State, and therefore this dismissal cannot be assessed as an indicator of punishment for these crimes.

99. Conversely, several Tatmadaw commanders who spearheaded the clearance operations and whose units were implicated in SGBC, were subsequently promoted. The former head of the 33rd Light Infantry Division, Aung Aung, was promoted to head the Southwestern Regional Command.²⁵² Border Guard Police chief Thura San Lwin was transferred to a top police post in the capital Nay Pyi Taw.²⁵³ Inspector General of the Defense Services Lieutenant General Aye Win, who led the 2016 and 2017 Tatmadaw investigation teams, was promoted to command BSO-3.²⁵⁴

VIII. Conclusion

100. Sexual and gender-based crimes against the Rohingya were an integral part of the 2016 and 2017 clearance operations. There is abundant credible evidence and testimony that Myanmar security forces committed a massive number of sexual and gender-based crimes during the 2016 and 2017 clearance operations.²⁵⁵ The Government of Myanmar and Tatmadaw authorities were on notice and had to have known from victim and eyewitness testimony, accounts of medical and psychosocial providers who treated the victims, media reporting and international condemnation, that their security forces were facing credible accusations of having committed sexual and gender-based crimes. Yet the evidence shows not a single Tatmadaw soldier or BGP officer was charged or prosecuted for any of these crimes. Furthermore, no commander was dismissed, demoted, or sanctioned for the failure to stop or punish those committing these offenses. Not a single victim of rape, or other sexual or other gender-based crime has received any justice for the crimes they suffered.

101. Rather, the official response has been to deny the crimes, justify the actions of the soldiers involved in the operations, ridicule and label the victims or sexual and gender-based crimes as liars. International law obligates States and commanders throughout the chain of command to take all necessary and reasonable measures to prevent and punish genocide, war crimes and crimes against humanity, including those crimes related to sexual violence. Prevention and punishment are closely related – when perpetrators are allowed to escape responsibility for their

²⁵¹ **IIMM0001320556** CINCDS Facebook post. “Press release on the actions taken on the Tatmadaw’s weaknesses in overseeing the terrorist attacks of the ARSA Bengali terrorist group on the 25th of August 2017 in Rakhine State,” 25 June 2018.

²⁵² **IIMM0027994330** “New evidence shows how Myanmar’s military planned the Rohingya purge,” *Reuters*, 4 August 2022; **IIMM0027998205** “Yangon Region Military Commander, Major General Thep, was promoted to Commander of the Special Operations Group,” *Irrawaddy*, 30 June 2020.

²⁵³ **IIMM0027994330** “New evidence shows how Myanmar’s military planned the Rohingya purge,” *Reuters*, 4 August 2022; **IIMM0027995679** “Police Chief Myint Toe was appointed as the new Commander of Border Guard Police No. 1 at Maungdaw border,” *BNI Online*, 5 October 2017.

²⁵⁴ **IIMM0027995683** “Changes in the positions of the commander of the military special operations team,” *Irrawaddy*, 12 July 2019 [Myanmar language].

²⁵⁵ **IIMM0027994308** “U.N. medics see evidence of rape in Myanmar army ‘cleansing’ campaign,” *Reuters*, 24 September 2017; **IIMM0027995651** Report of the Special Rapporteur on the situation of human rights in Myanmar, A/74/342, 30 August 2019, para. 7.

crimes, especially when no credible investigations occur, it encourages further crimes of this nature.

102. The evidence reviewed shows that Myanmar authorities failed to take any of the necessary and reasonable steps necessary to investigate or punish the allegations of sexual and gender-based crimes committed by Tatmadaw soldiers and BGP personnel in the 2016 and 2017 clearance operations. As detailed above, the investigations that were carried out were grossly inadequate and seem to have been initiated in an attempt to deny the crimes, exonerate the perpetrators and denigrate the victims of sexual and gender-based crimes.