

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

Executive Summary for Public Release

1. The United Nations Independent Investigative Mechanism for Myanmar (“IIMM” or “Mechanism”) was established by the UN Human Rights Council resolution 39/2 with the 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. Investigating sexual and gender-based crimes committed against the Rohingya during this period is a priority for the Mechanism. In accordance with its mandate, the Mechanism has prepared this Analytical Note (“Note”) on efforts to investigate sexual and gender-based crimes committed against the Rohingya during the 2016 and 2017 clearance operations in northern Rakhine State. Minor redactions have been made in this public version of the Note where the Mechanism did not have consent to publicly share information it had received from others.

2. Under international law, military and civilian leaders with superior responsibility have an obligation to investigate and punish acts that could amount to international crimes, that is war crimes, crimes against humanity or genocide. In prior cases, the International Court of Justice has held that rape can be an act of genocide when committed with the requisite intent and that all states parties to the Convention for the Prevention and Punishment of Genocide, which includes Myanmar, have an obligation to investigate and punish such serious crimes when they are aware of allegations that they have occurred.

3. For this Analytical Note, the Mechanism reviewed available open-source evidence regarding serious allegations of sexual and gender-based crimes

committed against the Rohingya during the 2016 and 2017 clearance operations. As the review focused on allegations that the Myanmar authorities must have been aware of, the Mechanism examined evidence obtained from open sources rather than confidential interviews. The Note recounts what was publicly reported in media articles and videos, reports by international and local human rights and other civil society organizations, reports by various United Nations bodies, debates in the United Nations Security Council and Human Rights Council, the findings of the International Criminal Court Pre-Trial Chamber and reported statements by Myanmar officials and concludes that there is overwhelming evidence that Myanmar officials were aware of serious allegations of sexual and gender-based crimes committed against the Rohingya by Myanmar security forces during the 2016 and 2017 clearance operations in northern Rakhine State.

4. The Note then examines the actions of the Myanmar authorities in response to these serious allegations. Specifically, the Note examines the efforts made by the authorities to investigate and punish such crimes. The Note examines six investigations or inquiries conducted by the Myanmar authorities. The Note looks at the methodology used in these investigations and certain statements by those responsible for the findings. It notes that the methodology used was often grossly inadequate for such investigations and that the commissioners appointed had sometimes expressed views denigrating the alleged victims and indicating a lack of professional objectivity. Examining the results of these investigations or inquiries, the Mechanism finds that not a single Tatmadaw soldier or Border Guard Police officer was charged or prosecuted, and no commander was dismissed, demoted or sanctioned for the failure to prevent or punish sexual and gender-based crimes committed against the Rohingya during the 2016 and 2017 clearance operations in northern Rakhine State.

5. The Note concludes that the investigations and inquiries carried out by the Government of Myanmar were grossly inadequate. Authorities in Myanmar failed to fulfill their obligation to seriously investigate these allegations and punish the perpetrators.