



Myanmar's Stalled Transition

Crisis Group Asia Briefing N°151

Brussels, 28 August 2018

What's new? Aung San Suu Kyi's government is halfway through its first term, in what was to be a crucial phase in Myanmar's transition away from authoritarian military rule. Thus far, however, her government is a disappointment – seemingly inept at governance and complicit in the forced mass flight of Rohingya Muslims.

Why does it matter? On a range of key issues, from the economy to talks with ethnic armed groups, the government appears stuck, unable to formulate and carry out strategy or unwilling to make difficult decisions. Of most immediate concern, the Rohingya crisis has no resolution in sight.

What should be done? The policy challenge is to achieve tangible progress while maintaining a principled stand on crimes against humanity. External pressure can be important but is unlikely by itself to produce results. Robust diplomatic engagement, including by the UN special envoy, will be required to translate such pressure into meaningful change.

I. Overview

At the midpoint of the Aung San Suu Kyi government's five-year term, Myanmar is at a crossroads. The Suu Kyi administration faces enormous international opprobrium over the Rohingya crisis – the flight of over 700,000 Rohingya Muslims to Bangladesh due to a brutal army counter-insurgency campaign – as well as domestic opposition to the concessions needed to address international concerns. Yet the government's challenge is not only political. Its performance to date on issues from peace talks with Myanmar's numerous insurgencies to the economy shows that it is not adept at formulating strategy or implementing policy. Even were the government to develop the political will to respond constructively to the Rohingya crisis or other problems, progress is likely to be limited. This means that, in addition to the external pressure that continues to build, principled diplomatic engagement is also vital to translate that pressure into at least some meaningful steps forward.

In 2011, Myanmar embarked on a remarkable and largely unanticipated transition away from 50 years of isolationist and authoritarian military rule. The transition culminated in broadly free and fair elections in 2015, a landslide victory for the National League for Democracy (NLD) opposition party, and the peaceful transfer of power to an administration headed de facto by Aung San Suu Kyi – the military regime's long-time nemesis and an international democracy icon.

Rarely has the reputation of a leader fallen so far, so fast. The sky-high expectations of what Aung San Suu Kyi could achieve were never justified, given the enormous structural obstacles and the uncomfortable power-sharing arrangement with the military, imposed by the constitution. Even against more realistic benchmarks, however, the new government has underperformed on the peace process, governance and the economy. The military's brutal maltreatment of the Rohingya – involving crimes against humanity and which a UN report released on 27 August has said merit investigation for genocide – and the Suu Kyi government's acquiescence therein, became a defining new crisis.

Outside actors should play a role to try to resolve it. Three sets of tools are available. First, there are targeted sanctions, which serve as a means of sending an international signal that actions such as the campaign against the Rohingya are unacceptable and have consequences. Given the history of Myanmar sanctions and current attitudes in the country, these are unlikely to alter the thinking of the military or the government, but they would represent a broader message to others who might be considering similar action. Second, there is continued international scrutiny, notably from the UN Security Council, as well as moves toward international accountability – for example, the establishment of an independent mechanism by the UN General Assembly. These would probably get the authorities' attention and thus could have an effect. On their own, however, they will not suffice to produce meaningful change.

High-level engagement, through both bilateral and UN channels, is therefore a critical third component of the policy mix. Beyond conveying concerns, the goal should be to help identify, and offer support for, practical steps the government could take to achieve progress on accountability for crimes against humanity and the substantial improvement of conditions in Rakhine State, so as to be conducive to the sustainable return of Rohingya refugees.

II. The NLD Government's Performance

A. A Faltering Start

Following the NLD's landslide victory in the November 2015 elections, party chairperson Aung San Suu Kyi took over as Myanmar's de facto leader in March 2016.¹ Although the military-drafted constitution prevented her from becoming president, she was able to use the NLD's legislative majority to pass a law installing her in a newly created position of "state counsellor", fulfilling her pre-election pledge that she would be "above the president" and "make all the political decisions". A close confidant,

¹ For Crisis Group reporting on Myanmar since the 2015 elections, see Asia Reports N°296, *The Long Haul Ahead for Myanmar's Rohingya Refugee Crisis*, 16 May 2018; N°292, *Myanmar's Rohingya Crisis Enters a Dangerous New Phase*, 7 December 2017; N°290, *Buddhism and State Power in Myanmar*, 5 September 2017; N°287, *Building Critical Mass for Peace in Myanmar*, 29 June 2017; N°283, *Myanmar: A New Muslim Insurgency in Rakhine State*, 15 December 2016; and N°282, *Myanmar's New Government: Finding Its Feet?*, 29 July 2016; and Asia Briefings N°149, *Myanmar's Peace Process: Getting to a Political Dialogue*, 19 October 2016; and N°147, *The Myanmar Elections: Results and Implications*, 9 December 2015.

Htin Kyaw, served as a ceremonial president, passing the position's considerable executive authority to Suu Kyi.²

The military expressed their displeasure at this arrangement, which they considered unconstitutional, but they did not challenge it in the Constitutional Tribunal – which, given the party's landslide, consisted entirely of NLD appointees – or make any concerted effort to subvert it.³ Commander-in-Chief Min Aung Hlaing did, however, make a point of sending all formal communications to the office of the president rather than that of the state counsellor, and he very visibly accorded the president the full protocol of head of state.⁴

The cabinet selected by Suu Kyi was underwhelming for a leader of unparalleled popularity who had the whole country's talents to draw upon. Both key economic ministers – finance and commerce – were revealed shortly after their appointments to have fake PhDs; they retained their posts in any case.⁵ The rest of the cabinet was a mixture of uninspiring party loyalists, two members of the regime-established Union Solidarity and Development Party (USDP), and retired diplomats from the military regime years who were brought into key ministerial positions.

It was clear that, in selecting candidates, priority had been given to trust over capacity, reflecting at least in part deep-seated fears that the military and old elite would attempt to undermine the NLD-led government, as well as the shallow bench within NLD circles. Some of the non-NLD ministers are close to former General Shwe Mann, the former junta number three, now an ally of Suu Kyi – which was a reassurance of their loyalty. A senior NLD member acknowledged publicly at the time that the line-up was not optimal, but that it would improve over time. It was the first of many suggestions or rumours of a reshuffle that has not materialised to date; so far, only a few individual changes have been made, and a few new deputy ministers appointed.⁶

The reliance on former military-era diplomats in the cabinet, including the inner circle – state counsellor's office minister and cabinet office minister – was particularly unexpected. It appears to stem from the fact that these individuals intimately understand the country's opaque administrative systems, as well as its often more important informal power relations, and have thus been indispensable in asserting the state counsellor's authority over the bureaucracy – inherited in toto, up to permanent secretary level, from the previous government. Yet it has left some party stalwarts privately disgruntled and, in the absence of strong political direction, has meant that the

² See Crisis Group Report, *Myanmar's New Government: Finding Its Feet?*, op. cit.

³ "Military MPs slam bill to create 'state counsellor' role", *Myanmar Times*, 1 April 2016; "NLD to ram through state counsellor law", *Myanmar Times*, 4 April 2016.

⁴ The commander-in-chief sees the president off at the airport when he leaves on foreign trips; and when he introduced a new air force chief, it was to the president, with Suu Kyi having to travel to the president's office for the meeting. Crisis Group interview, Myanmar military analyst, Yangon, February 2018. "General Maung Maung Kyaw appointed as commander-in-chief (air)", *Eleven News*, 3 January 2018.

⁵ "Broken promises, daunting challenges", *Frontier Myanmar*, 27 March 2016; "NLD leadership challenged over cabinet choices", *Myanmar Times*, 28 March 2016.

⁶ "NLD defends 'experimental' cabinet as pressure builds", *Myanmar Times*, 22 April 2016.

government often projects a tone reminiscent of the authoritarian past. Increasingly, government policies are following suit, particularly as regards civil liberties.⁷

From the outset, decision making has been highly centralised in Suu Kyi's hands. In addition to the state counsellor's job, she holds the portfolios of foreign affairs and president's office minister (and initially also two others, energy and education); she also chairs numerous inter-ministerial committees. She has had to carry the load of her subordinates' and fellow citizens' huge expectations with no experience of government or management, a problem exacerbated by consolidating so much authority on her shoulders. The result has been muddy decision making, focused on minutiae of procedure rather than the articulation of any clear vision or political direction.

The state counsellor herself often appears aloof and isolated. During the military dictatorship, she gave inspiring speeches to the country – over her compound gate when she was under house arrest in the 1990s or on her travels during brief periods of freedom. Since taking office she has gone largely silent, discontinuing President Thein Sein's practice of monthly radio addresses to the nation, giving almost no media interviews and rarely travelling within the country. She has always found travel draining. While, at first, she seemed comfortable making frequent official trips and being feted abroad, the world has become a less friendly place since the Rohingya crisis erupted. She now increasingly avoids international travel.⁸ She gave a rare international policy speech in Singapore on 21 August, but it was clearly pitched at a regional audience and will do little to assuage international concerns.⁹

Her most important domestic relationship is with the commander-in-chief, who has significant constitutional powers and autonomy, and heads by far the most powerful institution in the country. Suu Kyi is often portrayed as careful not to upset the military, but she has regularly taken decisions that do exactly that – for example, in establishing the state counsellor position; appointing a civilian national security adviser (who, among other things, represents Myanmar at international security meetings such as the Shangri-La Dialogue); and declining to convene the National Defence and Security Council, the top security body under the constitution, despite repeated military calls to assemble it. She took all these decisions without consulting the commander-in-chief or informing him in advance.¹⁰

B. *Lost in Transition*

The government's relative incapacity and inexperience meant that it was unable to make progress on key issues. From early in her term, the state counsellor declared peace with Myanmar's many ethnic insurgencies to be her top priority, yet she has

⁷ Crisis Group interviews, government officials and diplomats, April 2016-July 2018. On the decline in civil liberties, see "Report of the special rapporteur on the situation of human rights in Myanmar", A/HRC/37/70, UN Human Rights Council, 9 March 2018, sec. II.B.

⁸ She sent the second vice president to represent Myanmar at the UN General Assembly in September 2017, and the president to the Association of Southeast Asian Nations summit in Singapore in April 2018, both meetings she had previously attended as de facto head of state.

⁹ Aung San Suu Kyi, The 43rd Singapore lecture, 21 August 2018, available at https://youtu.be/f_aI1gMLa3s.

¹⁰ Crisis Group interviews, government officials, diplomats and analysts, April 2016-July 2018.

achieved little.¹¹ This outcome is perhaps not surprising, given that she inherited a process that was already stagnating. Yet the manner of the failure highlights the government's broader weaknesses. On taking power, Suu Kyi disbanded the previous government's peace centre, which despite its problems was staffed with many capable and experienced people. She established a new, far smaller structure and appointed her personal physician, Dr Tin Myo Win, as lead peace negotiator – a role he has performed part-time and never seemed to relish. The state counsellor and her senior minister have regularly undercut him in meetings with ethnic armed groups.

The peace process itself has become formalistic, with none of the dozens of unofficial, trust-building interactions that the previous government pursued alongside the set-piece meetings. But the biggest weakness has not been capacity, but rather lack of leadership from the top. Despite continued discussions among the parties, including the third Union Peace Conference in July 2018, a negotiated end to the country's interlocking conflicts remains out of sight.¹² Indeed, the first half of 2018 has seen a major escalation in fighting in northern Myanmar, particularly northern Shan and Kachin states.¹³

The stagnation of the peace process reflects a broader stasis of government, with decisions made in an obscure and apparently ad hoc manner. The NLD administration has been particularly criticised at home for its handling of the economy. When in opposition, the NLD paid scant attention to economic issues, an attitude that carried over to the current government term – the belief apparently being that with sanctions lifted, and Aung San Suu Kyi in power, the economy and foreign investment would take care of themselves. The state counsellor has also often said that peace is a prerequisite for development. As the peace process stalled and the economy sputtered, local businessmen and the urban middle class came to feel considerable grievance that the government was failing to meet the people's aspirations for a better life.

There have been some steps forward, such as a new companies law and reinvigoration of the Myanmar Investment Commission with the appointment of a more dynamic new chair. But while top-line GDP growth remained solid, if significantly below potential, at 6.5 per cent in 2017, business leaders' and public sentiment is decidedly negative – reflecting a lack of confidence in the government's economic policies, and substantial sectoral variation and inequitable distribution that the growth figure masks.¹⁴

At the same time, the NLD has disappointed the hope and expectation of many voters that it would expand civil liberties. Certainly, many citizens sense and are pleased that the country is now governed by politicians who are neither deeply corrupt

¹¹ She initially stated that her top priority was "national reconciliation" – implying healing multiple divisions within Myanmar society – later specifying the peace process.

¹² See Crisis Group Reports, *Building Critical Mass for Peace in Myanmar* and *Myanmar's Peace Process: Getting to a Political Dialogue*, op. cit.

¹³ "UN concerned about heavy fighting in Myanmar's Kachin state", Reuters, 2 February 2018; "Sharp escalation" in fighting across Myanmar's Kachin state, warns rights expert", UN News, 1 May 2018.

¹⁴ Crisis Group interviews, Myanmar and international businesspeople, economists and market research company conducting perceptions surveys, January-July 2018. See also "Growth amidst Uncertainty, Myanmar Economic Monitor", World Bank, May 2018; "Investors dissatisfied with government's lack of direction on economy", *The Irrawaddy*, 29 June 2018.

nor dismissive of public concerns and well-being. But the government has clearly undermined civil liberties and taken an authoritarian turn in both word and deed. A far greater number of journalists and social media users have been prosecuted for criminal defamation in the Suu Kyi administration's half-term than in the whole term of the previous government. A former child soldier has also been imprisoned for giving a media interview on his experiences, and two Reuters journalists are being prosecuted under the Official Secrets Act for investigating killings of Rohingya, after being arrested in what many observers believe to be a police entrapment operation.¹⁵ The court will hand down its verdict on 3 September.

While the civilian government lacks full control of such cases, since the police are under a military-appointed home affairs minister, the attorney general is a civilian appointee and the president has broad powers to drop charges and issue pardons. The president ordered the release of 199 people in pre-trial detention, at Suu Kyi's direction, when the government first took power in April 2016.¹⁶ More recently, the government has seemed comfortable with the large number of new freedom of expression cases before the courts, in many of which it greenlighted charges.¹⁷ In the case of the Reuters journalists, Aung San Suu Kyi herself has taken a strident stance – clashing with a former adviser, U.S. politician Bill Richardson, when he raised the case, and stating in a recent interview that the journalists had broken the law, potentially prejudicing the court.¹⁸ These developments have taken place in spite of the fact that numerous NLD legislators are themselves former political prisoners, many charged with the same offences in the past or for whom the treatment of the Reuters journalists was highly reminiscent of their own experiences.

The government's other key stated priority is constitutional reform. In particular, it wants to remove the restriction on Aung San Suu Kyi becoming president and reduce the role of the armed forces in politics. Given the military's veto on constitutional changes, such amendments would require the top brass to cooperate in relinquishing its prerogatives under the national charter, which is very unlikely to happen in the next several years.

C. *The Rakhine State Crisis*

The government inherited a toxic political situation in Rakhine State, following outbreaks of anti-Muslim violence there in 2012 and 2013. Aung San Suu Kyi sought to buy time, announcing in August 2016 the establishment of an advisory commission headed by former UN Secretary-General Kofi Annan, with a twelve-month mandate to examine the crisis and recommend steps to address the underlying issues, including

¹⁵ See report of the special rapporteur, op. cit.: "Burma: Repeal Section 66(d) of the 2013 Telecommunications Law", joint statement by 61 human rights organisations, 29 June 2017 (available at <https://www.hrw.org/news/2017/06/29/burma-repeal-section-66d-2013-telecommunications-law>); "Myanmar: Former child soldier jailed after media interview: Aung Ko Htwe", Amnesty International, 18 July 2018; "Myanmar to try Reuters reporters on state secrecy charges in move seen as blow to press freedom", Radio Free Asia, 9 July 2018.

¹⁶ "POC's [prisoners of conscience] walk free", *Global New Light of Myanmar*, 9 April 2016.

¹⁷ Under the 2013 Telecommunications Law, the transport and communications minister must approve any criminal defamation charges.

¹⁸ "U.S. adviser rebukes Aung San Suu Kyi: 'I don't want to be part of a whitewash'", *The New York Times*, 24 January 2018; "Exclusive: Interview with Aung San Suu Kyi", NHK, 8 June 2018.

the plight of Rohingya Muslims. The advisory commission was perhaps an expedient option at the time. There was no political consensus on a way forward, and steps on citizenship, basic rights and desegregation that were obviously needed were hugely controversial among the Rakhine State's Buddhist majority and in Myanmar as a whole. Socio-economic relations on the ground in Rakhine, including between ethno-religious groups, appeared to be gradually improving after the 2012-2013 violence, suggesting that the passage of time might give the government greater room for manoeuvre.¹⁹

Instead, while the government was coming to grips with the basic tasks of governing the country, as well as grappling with the realities of cohabitation with the military, the Rakhine State tension boiled over, with the first attacks by the Arakan Rohingya Salvation Army (ARSA) on border police bases in October 2016. It then erupted into full-blown crisis following the second round of ARSA attacks in August 2017, with the military, border guard police and Rakhine vigilantes committing grave human rights abuses against the Rohingya population that are widely considered crimes against humanity.²⁰

It is perhaps not surprising that the floundering government was unable to craft a credible response to the crisis, particularly given Myanmar's staunchly anti-Rohingya public opinion and the military's belligerent stance. But these failings, when set against the brutality of attacks on Rohingya villagers and the enormous scale of the displacement, suggest a lack of political will and have caused irreparable damage to Myanmar's reputation and that of its government and Aung San Suu Kyi personally. In less than twelve months, Myanmar has gone from a global good news story of political transition under a Nobel Peace Prize winner to a cautionary tale of failed hopes. A series of high-profile former international supporters have denounced Suu Kyi, who has lost several of her honours and awards.²¹

Isolated in its Naypyitaw bubble, the government initially failed to comprehend the gravity of the Rakhine abuses and the international reaction thereto. Its responses, both diplomatic and policy, were either seen as complicit, or as too little, too late. And when foreign leaders and diplomats began to express their outrage bluntly, the government's initial reaction was intransigence. It appeared to believe that it just needed to wait out the storm of international criticism. As it has become clear that the storm would not pass, and if anything is intensifying as time goes on, the government has attempted to shift its stance to damage control.²²

¹⁹ See Richard Horsey, "Has Myanmar's Rakhine State reached a turning point?", *Nikkei Asian Review*, 9 February 2017.

²⁰ See Crisis Group Reports, *A New Muslim Insurgency and Rohingya Crisis Enters a Dangerous New Phase*, op. cit. See also "'We will destroy everything': Military responsibility for crimes against humanity in Rakhine State, Myanmar", Amnesty International, June 2018; "'Acts of genocide' suspected against Rohingya in Myanmar: U.N.", Reuters, 7 March.

²¹ "Bob Geldof calls Aung San Suu Kyi 'handmaiden to genocide'", Reuters, 13 November 2017; "Bono, a former Aung San Suu Kyi campaigner, says she should quit", AFP, 29 December 2017; "Oxford strips Aung San Suu Kyi of Freedom of the City", *The Independent*, 27 November 2017.

²² Crisis Group interviews, government officials and diplomats, August 2017-July 2018.

III. A New President and an Attempted Reset

The second anniversary of the NLD taking power, which fell just ahead of Myanmar's annual New Year holiday in April 2018 – traditionally a time of taking stock and making resolutions for the year ahead – gave the government an opportunity to reflect. Domestically, it has not been damaged by its response to the Rohingya crisis; on the contrary, the nation has rallied around Aung San Suu Kyi in the face of international condemnation. But there is a growing sense, particularly among the urban middle class and business elite, that the government has mishandled the economy. Despite solid growth figures, there are strong perceptions of economic malaise in the country and government failure to deliver on people's basic needs – including jobs and electricity and other services. While most refrain from criticising the state counsellor personally, her government and cabinet come in for sharp reproach.²³

Facing increasing censure of her government at home, and an ever more hostile international environment, by early 2018 the state counsellor had begun signalling privately that she intended to cut back on her responsibilities and overseas travel. There was also persistent talk of a major cabinet reshuffle to inject new energy and competence into government.²⁴

The key element of these plans was a change in president, with the resignation of Htin Kyaw announced on 21 March. While the stated reason for his departure was "to take a rest", his wife subsequently revealed that he had only expected to be president for a few months, the NLD having believed that within that time it would be able to amend the constitution, allowing Aung San Suu Kyi to become president.²⁵ Upon entering government, it would appear, NLD leaders were buoyant – to the point of naïveté – about the prospects for constitutional change.

The new president, Win Myint, was sworn in on 30 March. The same day, the NLD announced that he had also been appointed first vice chairman of the party – the first time it had designated a successor to Suu Kyi.²⁶ Win Myint is a lawyer and longstanding NLD member who until being appointed president served as lower house speaker. In that role, he was known as authoritative, determined and shrewd – quite different in character from Htin Kyaw and a very unlikely candidate for ceremonial president. For this reason, many interpreted his selection as a move by Suu Kyi to hand over some of her responsibilities.

Win Myint reinforced this view with his inaugural and Myanmar New Year speeches, in which he set out a clear, broadly populist agenda focused on access to justice, land reform and anti-corruption efforts.²⁷ He immediately set about meeting each of the top-level executive bodies, starting with the anti-corruption commission.

²³ Crisis Group interviews, Myanmar and international businesspeople, economists and market research company conducting perceptions surveys, January-July 2018.

²⁴ Crisis Group interviews, diplomats and analysts, Yangon, January-July 2018.

²⁵ Myanmar president office announcement 1/2018, 21 March 2018; "U Htin Kyaw resignation 'planned in advance', wife says", *Frontier Myanmar*, 23 March 2018.

²⁶ "NLD party revamp elevates U Win Myint to no. 2 spot", *The Irrawaddy*, 30 March 2018.

²⁷ "I promise that you will see with your own eyes the changes that you have yearned for as I walk along this path together with you": President U Win Myint", *Global New Light of Myanmar*, 31 March 2018; "Myanmar New Year greetings of President U Win Myint", *Global New Light of Myanmar*, 18 April.

Government insiders indicated that while there was no formal division of labour between the new president and the state counsellor, it was expected that he would focus on domestic matters, particularly issues of concern to ordinary people, while the state counsellor would continue to lead on the peace process, the Rakhine State crisis and international relations.²⁸

Five months on, however, the impact of the changes is limited. The main development has been the empowerment of the anti-corruption commission. In his 10 April meeting with the commission, the president urged the chair – a reform-minded former general, Aung Kyi, who acted as the old regime's liaison with Aung San Suu Kyi – to have the courage to follow evidence wherever it led and to alert him if the commission faced interference. The next week, the commission filed charges against the director of Myanmar's food and drug administration for allegedly demanding money in connection with a tender award. And in May, the finance minister resigned in the middle of a high-profile investigation, although the commission ultimately said it did not have grounds to pursue charges.²⁹

In other areas, the president has made little concrete progress in implementing his agenda or establishing an institutional base to enable him to do so. Part of the reason is structural: the president's office consists of a small number of officials reporting to Aung San Suu Kyi in her capacity as minister of the president's office; the president himself has no political advisers or other senior staff. Part of the reason is also political: however much she may wish to relinquish some responsibilities, the state counsellor and her office remain the government's centre of gravity, with officials and ministers reluctant to take decisions unless they have been referred to her office.

The long-telegraphed reshuffle has also not materialised. The only major change has been the appointment of a new finance minister, Soe Win. He is respected and competent, but as an octogenarian has reinforced the sense of the cabinet as an all-male gerontocracy (the only woman being Suu Kyi herself). The optics do not sit well with the NLD's election promise of bringing "change" to a country long led by ageing generals, particularly as Myanmar has one of the youngest populations in the region.³⁰

Around the New Year in April, a small but discernible shift occurred in Myanmar's international engagement on the Rohingya crisis. Scrutiny of the situation had reached a new intensity with the unprecedented visit of the UN Security Council to Myanmar and Bangladesh at the end of April. The visit did not go well for Myanmar, with representatives of all fifteen council members personally shocked by the scale and gravity of what they had seen in the Bangladesh camps, contrasted with the grossly inadequate response and defensive attitude in Naypyitaw. On 1 May, when the council concluded its trip, the state counsellor's office attempted damage control, issuing a statement promising "an important turning point" in relations with the

²⁸ Crisis Group interviews, government officials, diplomats, Yangon, Naypyitaw, April-May 2018.

²⁹ See "President U Win Myint meets with anti-corruption commission", *Global New Light of Myanmar*, 12 April 2018; "Following the money", *Frontier Myanmar*, 8 May 2018; "Myanmar's finance minister resigns: President", Reuters, 25 May 2018; "No grounds to act against ex-planning and finance minister, anti-corruption commission says", *The Irrawaddy*, 9 June 2018.

³⁰ The 2014 census found a median age of 27 and about 55 per cent under the age of 30.

UN. Afterward, diplomats and visiting senior UN officials noted more openness and engagement from Myanmar leaders and officials on the subject of Rakhine.³¹

Substantive developments ensued. On 31 May, Myanmar announced that an Independent Commission of Enquiry – the members of which would include an “international personality”, assisted by a staff of national and international legal and technical experts – would be established to investigate alleged human rights violations in northern Rakhine; previous domestic investigations, one headed by the first vice president and others conducted by the military and police, had found essentially no wrongdoing. Also on 31 May, and after long negotiations, the government agreed upon a memorandum of understanding with the UN’s refugee agency and development program on assisting the government to create conditions conducive to the repatriation of refugees from Bangladesh.³²

There has been little progress in implementing these announcements, however. The Commission of Enquiry was constituted on 30 July, with two relatively low-profile international members from the region, and two national members; technical and legal staff will no longer be appointed, but such expertise will be “called on if required”. In an inaugural press briefing, the commission chair stated that “there will be no blaming of anybody, no finger-pointing of anybody, because we don’t achieve anything by that procedure” and that seeking accountability was equivalent to “quarrelling”.³³

To add to the malaise, the secretary of the Rakhine Advisory Board – a body appointed by the government to advise it on carrying out the Annan commission recommendations – announced his resignation out of concern that the body “had achieved little” and risked giving “a false impression that things are being done”.³⁴ Bill Richardson had already resigned from the board in January in a high-profile falling-out with the state counsellor. The chair, former Thai Foreign Minister Surakiart Sathirathai, issued a statement insisting the board was effective and the government had acted on its advice. But the damage was done; the board discreetly wound up its business on 16 August.³⁵

³¹ Crisis Group discussions, Security Council members, UN officials, diplomats, Yangon and Naypyitaw, April-July 2018; press release, Office of the State Counsellor, 1 May 2018.

³² “Government to help Rohingya seek justice for rights abuses”, *The Irrawaddy*, 17 May 2018; “Government of the Republic of the Union of Myanmar will establish an Independent Commission of Enquiry”, Office of the President, announcement 3/2018, 31 May 2018; “Government of Myanmar and United Nations Agencies initial MoU on assistance for the repatriation process of displaced persons from Rakhine State”, Office of the State Counsellor, press release, 31 May 2018. The memorandum of understanding was formally signed on 6 June.

³³ “Government of the Republic of the Union of Myanmar establishes the Independent Commission of Enquiry”, Office of the President, press release 8/2018, 30 July 2018; press briefing by the commission, Naypyitaw, 16 August 2018 (video available at <https://bit.ly/2LhOEDc>). The chair is former Philippines Foreign Minister Rosario Manalo; the other international member is former Japanese diplomat and UN official Kenzo Oshima. The national members are former member of the Constitutional Tribunal Mya Thein and the head of Suu Kyi’s Union Enterprise for Rakhine, Aung Tun Thet. Thus, a total of four members were appointed, not three as initially announced in May.

³⁴ “Citing lack of progress, secretary to Myanmar’s Rohingya panel quits”, Reuters, 21 July 2018.

³⁵ “Myanmar’s Rohingya panel head refutes criticism by outgoing secretary”, Reuters, 22 July 2018; “A year after the assault on the Rohingya, Myanmar’s generals are unapologetic”, *Washington Post*, 21 August 2018.

The text of the memorandum with the UN was not made public, apparently at the government's insistence, but a near-final version leaked in late June. There was considerable international criticism of aspects of the deal, particularly the failure to use the word "Rohingya", include guarantees on citizenship, or consult or inform refugees about the content prior to finalising it.³⁶ Since then, there has been no real progress on implementation, with UN staff still unable to get travel authorisations to northern Rakhine, other than to a few villages chosen by the government, and with visits accompanied by the government.³⁷

This rather negative sequence of events had already set the stage for a difficult UN General Assembly session for Myanmar. The findings of an independent international fact-finding mission established by the UN Human Rights Council, presented at a press conference on 27 August, add to pressure on the Myanmar government and military. The mission's report concluded that the "crimes in Rakhine State, and the manner in which they were perpetrated, are similar in nature, gravity and scope to those that have allowed genocidal intent to be established in other contexts" and recommended that the commander-in-chief and other military leaders be investigated and prosecuted for genocide; it also found that "through their acts and omissions, the civilian authorities have contributed to the commission of atrocity crimes".³⁸ The U.S. State Department is expected to release its own detailed investigation of abuses against the Rohingya shortly. On 28 August, the UN Security Council will meet in open session on Myanmar and be briefed by the secretary-general.

The UN secretary-general appointed a special envoy for Myanmar, Christine Schraner Burgener, in April. She has had initial positive engagement with the state counsellor and the commander-in-chief, as well as other domestic stakeholders; the diplomatic corps in Myanmar is welcoming; and the Security Council has expressed its support.³⁹ While expectations should be moderated, Burgener can play an important role in raising difficult issues with the government, helping to choreograph international responses, and acting as an interface with the UN and the international community.

³⁶ See "Secret U.N.-Myanmar deal on Rohingya offers no guarantees on citizenship", Reuters, 30 June 2018; "Oral update by Ms. Yanghee Lee, special rapporteur on the situation of human rights in Myanmar at the 38th session of the Human Rights Council", UN Human Rights Council, 27 June 2018. The refusal of the government to use the word "Rohingya" or allow it into official documents is seen by that community as an attempt to deny their identity. Hence, it has become controversial for other organisations to avoid the usage.

³⁷ Crisis Group interview, UN official, Yangon, August 2018; "U.N. says it is still denied 'effective access' to Myanmar's Rakhine", Reuters, 21 August 2018.

³⁸ "Report of the Independent Fact-Finding Mission on Myanmar", UN Human Rights Council doc. A/HRC/39/64, 24 August 2018 (released publicly on 27 August).

³⁹ Crisis Group interviews, diplomats, Yangon, April-July 2018; media stakeout, Security Council president and special envoy, UN, New York, 23 July 2018, at youtu.be/V8JBFD0tHE4.

IV. The Road Ahead

A good sense has emerged of the Aung San Suu Kyi administration and its weaknesses. The administration has attempted to respond to public and international concerns on the Rohingya crisis, shifting its approach somewhat and announcing some new initiatives. Yet changes have mostly been unconvincing – limited in scope or peripheral in nature. The appointment of Win Myint as president, which many had hoped could infuse new momentum into government, and perhaps set the stage for a more coherent response to the Rohingya crisis, has not so far had a major impact.

In June, the NLD held a party congress, only its second ever, confirming the top leadership and policy platform ahead of by-elections in November 2018 and general elections in 2020. It appears very unlikely at this stage that the administration will fundamentally change the way it operates or significantly increase its capacity in the remainder of its term. These are the immediate constraints upon an improved response to the situation in Rakhine State, and to greater reform more generally – even while constitutional limitations and poor government-military relations remain important underlying factors. This reality will shape how Myanmar is able to address the many crises it faces.

The coming general elections mean that the window for making unpopular decisions is also shrinking. Two years out, national politics is already starting to shift into election mode, and the government beginning to consider what successes it will be able to present to the electorate in 2020; it is pushing for major infrastructure projects and other initiatives to be completed by this date.⁴⁰ The political opposition is also beginning to object more vocally to government decisions, and the military is similarly unlikely to want to hand political victories to the government going forward. These circumstances will make it much more difficult for the government to achieve crucial objectives, particularly vis-à-vis the Rohingya crisis, which is the most politically charged issue at home.

The November 2018 by-elections will not be particularly hard-fought. Only thirteen seats (out of 1,156) are up for grabs, so the balance of power will not change. Nevertheless, the NLD is concerned that the results will be – or will be interpreted as – a referendum on the government's performance, entailing political risks, particularly as the NLD currently holds eleven of the thirteen seats, several of which are potential swing seats in ethnic minority areas.

The NLD is also likely to retain its legislative majority in the 2020 general elections, even if the government is unable to improve on its current performance. Aung San Suu Kyi remains personally popular in the Burman-majority heartland, despite her government's perceived weaknesses. There is no effective opposition – and unlikely to be one in time for the elections. It will probably be 2025 before Myanmar sees a major political shift, unless the Aung San Suu Kyi era ends before then. Policy adjustments may be possible but hopes for major progress on accountability for crimes against humanity, substantially improved conditions in Rakhine State, and the sustain-

⁴⁰ For example, it is pushing to complete four major liquefied natural gas power projects or the peace process with ethnic armed groups. "Myanmar bets on huge LNG projects to meet power needs", *Frontier Myanmar*, 31 January 2018; "Peace process to complete before 2020 as participants ready for federalism: UPDJC", *Eleven News*, 13 July 2018.

able return of Rohingya refugees should be modest. Significant progress on the peace process, political reform and economic vision in the next few years also seems unlikely.

International policy on Myanmar thus faces steep challenges. China has a pivotal role. It has positioned itself as Myanmar's key diplomatic ally, including at the UN Security Council, and as indispensable to continued progress in the peace process. It is using its considerable leverage to push for agreement, possibly as soon as September 2018, on a "China-Myanmar Economic Corridor" – a multi-billion (possibly tens of billions) dollar Belt and Road Initiative that could include road and high-speed rail infrastructure, connected to a port and special economic zone at the Indian Ocean seaboard town of Kyaukpyu in Myanmar's Rakhine State.

This project is likely to have a huge impact on Myanmar's economy and geostrategy, in ways that are only just beginning to come into view. It would deepen political and economic relations between the two countries, solidifying China's support for Myanmar's position on Rakhine State, and making China potentially more helpful to Myanmar in restraining the armed groups active along the two countries' border. But it would also make Naypyitaw more reliant on Beijing, something it has long sought to avoid. The Myanmar military also worries that in the future China may move to securitise the rail and road corridors and the port.

For the West, the challenge is to find ways to achieve tangible progress while maintaining a principled stand on crimes against humanity and other key concerns. Targeted sanctions can serve as an important signal of principle – to Myanmar and others around the globe – but, given the history of Myanmar sanctions and current attitudes, are very unlikely to change the thinking of the military or the government. Other actions, such as Security Council scrutiny and moves toward international accountability are of greater concern to the authorities, but will not be sufficient in and of themselves, since the problem is not merely one of political will, but also government capacity and the inherent intractability of the issues.

Engagement through high-level bilateral channels and the UN therefore remains a critical part of the policy mix, not only as a channel for conveying concerns, but also as a means of identifying and supporting concrete steps that the government can take to achieve meaningful – albeit probably limited – progress in implementing the Annan commission recommendations, pursuing accountability and creating conditions conducive to Rohingya refugee return. Other grave violations of human rights in the ethnic armed conflicts, progress on the peace process and threats to civil liberties should not be overlooked.

The new UN special envoy could play an important role in this regard. Burgener has access to the key stakeholders, including the state counsellor and commander-in-chief, and broad diplomatic support, including from the Security Council. She has made clear that she sees her role as a bridge-builder, but that she will discuss all the difficult issues with the Myanmar authorities behind closed doors, rather than via public diplomacy. It is vital that there be strategic coordination between Burgener and other parts of the UN system, in particular the Security Council and the General Assembly, to ensure that they are mutually reinforcing rather than contradictory.

In particular, the special envoy provides a mechanism by which scrutiny and pressure from these bodies can be translated into meaningful action on the ground, even if that is likely to be limited – without this, pressure alone will likely achieve little other than pushing Myanmar back into isolation and reliance on its regional allies.

Burgener will also need a focused approach to her mandate, which is extremely broad and covers the multitude of issues set out in the 2017 General Assembly resolution.⁴¹ While she should prioritise the situation in Rakhine State and the Rohingya crisis, it is important that she also give attention to the peace process and the broader democratic transition.

On the question of accountability and preservation of evidence, there are no perfect options. While the Security Council has the authority to refer the situation to the International Criminal Court, the politics of the council mean that such a move is presently inconceivable. The court could soon rule that it has jurisdiction over the specific crime of deportation of Rohingya from Myanmar to Bangladesh, without the need for a referral, but such a ruling would not be a route to accountability for other international crimes – whether in Rakhine State or elsewhere.

For this reason, the special rapporteur on the situation of human rights in Myanmar has proposed the establishment of an independent accountability mechanism, possibly by the General Assembly; although it could take considerable time to become operational, such a body would appear to be the best option currently on the table.⁴² In the meantime, every effort should be made to ensure that Myanmar's own Commission of Enquiry conducts as credible and transparent an investigation as possible – in the short term, it is the only means by which perpetrators could be held to account.

V. Conclusion

Halfway through the Aung San Suu Kyi-led administration's five-year term, the Myanmar government is facing enormous challenges in the peace process, governance, the economy and, by far the most serious, a defining new crisis in Rakhine. The civilian government is widely seen as complicit, or at least acquiescent, in the forced mass flight of the Rohingya. This has had a major impact on Myanmar's international reputation and on that of State Counsellor Aung San Suu Kyi personally, and has brought international condemnation and diplomatic pressure.

In considering what progress may be possible, it is important to be aware that the Rakhine crisis is occurring in a wider context of lack of vision and ineffectiveness of government, something that is unlikely to change in the near future. Public sentiment in Myanmar also remains firmly behind the government. Robust diplomatic engagement, including by the UN special envoy, will be required to translate international scrutiny and pressure into meaningful steps to improve the situation on the ground. On the specific question of accountability for international crimes, an independent mechanism under UN auspices seems to be the most feasible approach, given the improbability of any Security Council referral to the International Criminal Court.

Brussels, 28 August 2018

⁴¹ "Situation of human rights in Myanmar", General Assembly doc. A/C.3/72/L.48, 31 October 2017.

⁴² This body could be similar to the International, Impartial and Independent Mechanism on Syria or the Commission on Human Rights in South Sudan.

Appendix A: Map of Myanmar



International Crisis Group/KO/Dec 2015. Based on UN map no. 4168 Rev. 3 (June 2012).



International Crisis Group

Headquarters

Avenue Louise 149, 1050 Brussels, Belgium

Tel: +32 2 502 90 38. Fax: +32 2 502 50 38

brussels@crisisgroup.org

New York Office

newyork@crisisgroup.org

Washington Office

washington@crisisgroup.org

London Office

london@crisisgroup.org

Regional Offices and Field Representation

Crisis Group also operates out of over 25 locations in Africa, Asia, Europe, the Middle East and Latin America.

See www.crisisgroup.org for details

PREVENTING WAR. SHAPING PEACE.