

Global Justice Center's Submission

to

The UK International Development Committee

Call for Evidence: Promoting dialogue and preventing atrocities: the UK government approach

January 19, 2022

The Global Justice Center (GJC) is an international human rights organization that combines feminist legal analysis with strategic advocacy to achieve gender equality and dismantle systems of oppression.

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The following responds specifically to the topic: How the UK Government's approach to atrocity prevention interacts with other government policies and areas of work, such as the FCDO's approach to conflict prevention, the Women, Peace and Security agenda and the Preventing Sexual Violence in Conflict Initiative

Gender inequality is itself a root cause of mass violence and also increases its harm on disadvantaged groups, including women and gender minorities.¹ As such, prevention that incorporates a gender lens has routinely been found to be more effective at adequately responding to situations of mass

¹ M. Caprioli, *Primed for Violence: The Role of Gender Inequality in Predicting Internal Conflict*, 49 Int'l. Studies Q. 161 (2005) Mayra Buvinic, Monica Das Gupta, Ursula Casabonne, Philip Verwimp, *Violent Conflict and Gender Inequality: An Overview*, World Bank Policy Research Working Paper (2013).

atrocities and creating lasting peace.² Prevention models must actively dismantle structural inequality through equitable representation in their programming, targeted efforts to prevent and suppress sexual and gender-based violence (“SGBV”), and include gender sensitivity in all stages of their responses. Despite the clear connection between successful atrocity prevention and gender integration, there are significant gaps in how States conceptualize and implement atrocity prevention. The failure to reckon with gendered experiences in prevention is evidenced by limited inclusion of gender indicia, or inclusion of overly simplified gender-related indicia, in early warning systems and risk assessments.³

This submission outlines the need for UK leadership on gendering atrocity prevention and core principles to guide that leadership.. First, it provides an overview of how gender informs the commission, planning, and harm of mass atrocity crimes, thus necessitating a gendered response. Second, it demonstrates how the inadequate accountability mechanisms, particularly gender gaps, feed the shortcomings of prevention frameworks. Third, the submission maps key international legal standards which must guide the UK’s prevention efforts and identify concrete measures for the integration of gender in atrocity prevention. Fourth, it assesses the opportunities and challenges in the UK’s current policies on atrocity prevention and their implementation. Finally, it provides recommendations on how the UK can improve its policies and practice with regard to atrocity prevention.

I. Mass atrocities are planned and committed in gendered ways; effective prevention must also be gendered

A gender analysis of mass atrocity crimes can inform prevention models by surfacing root causes, the breadth of illicit acts, and nuanced conceptualization of survivors and their unique needs. Importantly, gender analysis is not synonymous with crimes against women. Both men and women are targeted for specific types of harm and with particular intent as a consequence of their gender.⁴ It can also shed light on how LGBTQ people are specifically targeted for their identities as such, and how rigid gender expectations can inform attacks on those who are perceived to transgress gender norms. Gender analysis is also not synonymous with sexual violence. Sexual violence is just one form of gender-based violence, but it can include disparate means used to kill, severe deprivation of rights, or gendered divisions of forced labor, as long as the treatment is a result of the victim’s gender.⁵

Gender permeates the planning and commission of mass atrocity crimes. Perpetrators exploit gender to maximize destructive harm by targeting people on the basis of their gender and gendered roles they are perceived to inhabit.⁶ These perceptions often reflect patriarchal and misogynistic attitudes. For

² S.C. Pres. Statement 2016/9, U.N. Doc. S/PRST/2016/9 (June 15, 2016).

³ See, e.g., US Holocaust Memorial Museum, *Preventing Genocide: A Blueprint for US Policy Makers*, 25 (2008), <https://www.ushmm.org/m/pdfs/20081124-genocide-prevention-report.pdf>; United Nations, *Framework of Analysis for Atrocity Crimes* (2014), available at: https://www.un.org/en/genocideprevention/documents/about-us/Doc.3_Framework%20of%20Analysis%20for%20Atrocity%20Crimes_EN.pdf.

⁴ U.N. Secretary-General, *Prioritizing prevention and strengthening response: women and the responsibility to protect: Rep. of the Secretary-General*, U.N. Doc A/74/964-S/2020/501 (July 23, 2020) [hereinafter SG Report on women and R2P].

⁵ U.N. Office of the High Commissioner for Human Rights, *Sexual and gender-based violence in the context of transitional justice* (Oct. 2014), https://www.ohchr.org/documents/issues/women/wrgs/onepagers/sexual_and_gender-based_violence.pdf.

⁶ For more information, please see, Sareta Ashraph, *Beyond Killing: Gender, Genocide, and Obligations under International Law*, Global Justice Center (Dec. 2018), <https://globaljusticecenter.net/files/Gender-and-Genocide-Whitepaper-FINAL.pdf>.

instance, cisgender men and adolescent boys are regarded as leaders, protectors, and religious or cultural authorities—roles that are perceived as a greater threat to perpetrators. As a result, they are more likely to be killed in early waves of violence to mitigate that threat. Women and girls are seen as mothers, wives, daughters, bearers of future life, keepers of community and family honor, and sources of labor within the home. As such, they are more likely to experience sexual and reproductive violence, and killings further removed from the outbreak of violence. Violence may also be used to enforce gender roles and punish those who fail to adhere to prescribed expectations, such as through gender-specific codes of behavior.⁷

States and international bodies can use lessons learned from gender analyses of mass atrocities to inform effective prevention strategies that take into account the underpinnings of the situation. Where gender deeply informs the means and motives of perpetrators of atrocity crimes, prevention cannot be effective without also considering gender. Recognizing the multitude of ways in which violence may manifest can ensure timely identification and intervention in devolving situations. Importantly, the ideologies that inform the commission of mass atrocities do not emerge in the context of violence, but rather grow from the existing bigotries and sexism of pre-violence societies. These may constitute gender discrimination and inequality, both of which are risk factors for atrocities and may intensify its negative effects.⁸ Prevention must tackle gendered root causes. Lastly, the gender analysis of mass atrocities indicates a broad range of violence with disparate impacts on its victims.⁹ This reality must inform survivor-centered responses to ensure they respond to their unique needs.¹⁰ However, atrocity prevention efforts have failed to reckon with the full complexity of mass atrocities.

II. Inadequate accountability efforts have detrimental effects on prevention

Accountability is essential to atrocity prevention. When properly administered, accountability has a deterrent effect on future violence. Likewise impunity often yields recurrence of atrocities.¹¹ Where accountability mechanisms routinely fail to punish perpetrators for sexual and gender-based crimes, it empowers them to continue. Meanwhile legal outcomes of accountability processes shape political understandings of what constitutes an atrocity crime and, thus, when States' duty to prevent arises.

Despite the gendered commission of atrocities, efforts to ensure justice and accountability have largely failed to deliver results that take these factors into account. As a result, seemingly gender neutral prosecutorial and judicial decisions, such as those focusing on particular types of violence or temporal ranges, yield disparate justice outcomes. Accountability mechanisms have disproportionately recognized the experiences of men and boys in atrocity crimes.¹² A small number of international cases have surfaced gender in their analyses and held perpetrators to account for commission of SGBV, particularly in the form of rape and sexual violence committed against women and girls.¹³ An even smaller number of cases contemplate non-sexual acts of gender-based violence. For instance, the International Criminal Court

⁷ See, e.g., Lisa Davis, *Reimagining Justice for Gender-Based Crimes at the Margins: New Legal Strategies for Prosecuting ISIS Crimes Against Women and LGBTIQ Persons*, 24(3) *Wm. & Mary J. Women & L.* 513 (2018).

⁸ S.C. Pres. Statement 2016/9, *supra* note 2.

⁹ S.C. Res. 1325, U.N. Doc. S/RES/1325 (Oct.31, 2000).

¹⁰ Phyu Phyu Oo and Sara E Davies, *Access to Whose Justice? Survivor-Centered Justice for Sexual and Gender-Based Violence in Northern Shan State*, 1(3) *Global Studies Q.* (Sept. 2021).

¹¹ Rep. of the Secretary-General on the implementation of the Five Point Action Plan and the activities of the Special Adviser on the Prevention of Genocide, ¶ 17, U.N. Doc. E/CN.4/2006/84 (Mar. 9, 2006).

¹² Sareta Ashraph, *supra* note 8.

¹³ See, e.g., *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment, Sept. 2, 1998.

(“ICC”) is currently considering its first confirmed charge of gender-based persecution¹⁴ and in 2021 issued its first judgment on the crimes of forced pregnancy and forced marriage.¹⁵ While these acts are inherently intertwined with sexual violence, they also recognize that denial of reproductive autonomy constitutes a violation separate from the rape itself; that forcing marital status or demanding domestic labor is a violation beyond the sexual violence that forced marriage also entails.

Recent efforts have sought to close the gaps in accountability. For example, former ICC Prosecutor Fatou Bensouda established a strategic plan for improving the Office of the Prosecutor’s (“OTP”) capacity to investigate, charge, and prosecute SGBV; closing the impunity gap; and promoting gender-sensitive reparations.¹⁶ This intentional shift in policy preceded a number of firsts for the ICC with regard to accountability for SGBV. Bensouda’s successor, Prosecutor Karim Khan, has appointed a number of special advisers who bring gender expertise to the OTP, including special advisers on explicitly gendered themes such as gender persecution and sexual violence in conflict, as well as gender experts who manage other thematic topics.¹⁷ However, more must be done to overcome accountability mechanisms’ failures in the face of gendered harms. Justice mechanisms have historically been hindered by inadequate gender competence at investigative and prosecutorial phases, along with the stigma and evidentiary challenges that hinder sexual violence cases.¹⁸ The resulting decisions carry narrow definitions of atrocity crimes. These judgments and prosecutorial decisions then reaffirm each other’s exclusion of gendered experiences.

The limited engagement with gender in accountability mechanisms and the resulting narrow conceptions of mass atrocity crimes are mirrored in prevention frameworks, particularly early warning systems. The gender-blind prioritization of crimes carried out against men and boys is reflected in systems like the US Holocaust Memorial Museum’s 2008 Report, which do not include any gender-specific indicia or references to gendered violence.¹⁹ The reduction of gender-based violence to sexual violence committed against women is reflected in the UN Framework of Analysis for Atrocity Crimes.²⁰ Both of its references to gender-based harm equate it to sexual violence and reproductive coercion of women.²¹ It is problematically gendered insofar as it infantilizes women by grouping them with children in both passages, and it fails to conceive of men as victims of sexual violence or reproductive agents. In practice, this may result in a failure to recognize early warning signs that do not fit within the predominant conceptualization of atrocity crimes, either because of the types of violence or the victims against whom violence is committed.

¹⁴ Georgiana Epure, *Writing the Jurisprudence on Gender-based Persecution: Al Hassan on Trial at the ICC*, International Justice Monitor (July 16, 2020), <https://www.ijmonitor.org/2020/07/writing-the-jurisprudence-on-gender-based-persecution-al-hassan-on-trial-at-the-icc/>.

¹⁵ Women’s Initiative for Gender Justice, *Trailblazing ICC Judgment on SGBC – Ongwen verdict advances international accountability for forced marriage and forced pregnancy* (Feb. 4, 2021), <https://4genderjustice.org/trailblazing-icc-judgment-on-sgbc-ongwen-verdict/>.

¹⁶ Office of the Prosecutor, *Policy Paper on Sexual and Gender-Based Crimes* (June 2014), <https://www.icc-cpi.int/iccdocs/otp/otp-policy-paper-on-sexual-and-gender-based-crimes--june-2014.pdf>.

¹⁷ Press Release, International Criminal Court, ICC Prosecutor Mr Karim A.A. Khan QC appoints Seventeen Special Advisers (Sept. 17, 2021), <https://www.icc-cpi.int/Pages/item.aspx?name=pr1611>.

¹⁸ Sareta Ashraph, *supra* note 8.

¹⁹ US Holocaust Memorial Museum, *supra* note 3.

²⁰ United Nations, Framework of Analysis for Atrocity Crimes, *supra* note 3.

²¹ *Id.*

The existing framework for States to exercise their duties to prevent and punish atrocity crimes has significant gaps with regard to gender but the UK can lead efforts to close them.

III. International legal standards require greater integration of gender in atrocity prevention

International law has codified States' duty, including in their capacity as members of international bodies, to prevent atrocities. Several of the guiding international standards, including the Women, Peace and Security ("WPS") agenda, the Responsibility to Protect ("R2P"), and the duty to prevent genocide, incorporate gender dynamics in prevention obligations. Atrocities and conflict have often been equated with male experiences and actors. In recent decades, the international legal system has progressively realized the centrality of gender in effective atrocity prevention. As international legal experts and political bodies have re-interpreted their guiding legal standards with a gendered lens, they have established a framework for effective fulfillment of the duty to prevent atrocities.

Women, Peace and Security Agenda

The passage of Security Council Resolution 1325 establishing the WPS agenda was a watershed moment that recognized the unique and disproportionate impact of mass violence on women, as well as the crucial role they play in prevention, resolution, and transitional efforts. It made plain that SGBV is not an inevitable side effect of conflict and unrest, but an intentional and coordinated weapon.²² Resolutions 1325 and 1820 affirmed that sexual violence can be constitutive acts of genocide, war crimes, and crimes against humanity as illustrated above.²³ Moreover, Resolution 1325 made clear that responding to the experiences of women in crises is integral to the Security Council fulfilling its mandate to maintain international peace and security, including through conflict prevention.

Subsequent WPS resolutions elaborated specific action points to address the gender gaps in the international peace and security framework, including: increased and meaningful participation of women at all levels of conflict prevention and responses; sanctions for sexual violence²⁴; instituting gender-responsive training, analysis, and programs²⁵; and efforts to combat the root causes of sexual violence in conflict, including pre-violence inequality and discrimination. The importance of the agenda to integrate gender in atrocity response and prevention cannot be overstated; however, it cannot affect meaningful change without States operationalizing the agenda, integrating it into policies, and ensuring full implementation.²⁶

Responsibility to Protect

The Responsibility to Protect ("R2P") reinforces the duty of all States, both individually and collectively, to take an active role in preventing mass atrocity crimes wherever they occur.²⁷ The first pillar calls on States to protect their own populations from mass atrocities by fostering inclusive, rights-based societies and holding violators accountable.²⁸ The second pillar is a duty of assistance from the

²² S.C. Res. 1325, *supra* note 9.

²³ S.C. Res. 1325, *supra* note 9; S.C. Res. 1820, U.N. Doc. S/RES/1820 (June 19, 2008).

²⁴ S.C. Res. 1960, U.N. Doc. S/RES/1960 (Dec. 16, 2010).

²⁵ S.C. Res. 2242, U.N. Doc. S/RES/2242 (Oct. 13, 2015).

²⁶ S.C. Res. 2106, U.N. Doc. S/RES/2106 (June 24, 2013).

²⁷ 2005 World Summit Outcome, G.A. Res. 60/1, para. 138, U.N. Doc. A/RES/60/1 (Sept. 16, 2005)

international community to States in realizing their obligations.²⁹ When a State is manifestly failing in its duty, the third pillar compels appropriate collective action in a timely and decisive manner.³⁰ While the R2P framework was not explicitly gendered, the importance of gender equality and non-discrimination is implicit in the first pillar's conception of resilient societies. The UN Secretary-General's ("UNSG") 2009 report on implementing R2P identified respect for human rights, *diversity* and *inclusion*, and meaningful accountability mechanisms as predictors for stability.³¹

The UNSG's 2020 Report on R2P elaborated on the need to integrate gender, including the WPS agenda, into R2P due to the gendered nature of atrocity crimes.³² The report identified tangible improvements that could be made to atrocity prevention. For example, all stages and sectors of prevention—from early warning systems to peace processes, and from security and peacekeeping sectors to accountability mechanisms—benefit from the inclusion of women, including local women and women's civil society.³³ While gender equality is a goal unto itself, women's representation is also correlated with more effective prevention, response, and lasting peace.³⁴ The impact of activist women's voices has resulted in more equitable justice outcomes for SGBV³⁵, however it cannot be their sole responsibility to introduce gender in these processes. Women's participation in prevention efforts cannot be achieved without affirmative steps to remove barriers and promote their inclusion. The Convention on the Elimination of All Forms of Discrimination against Women recommends temporary special measures to facilitate the acceleration of substantive gender equality³⁶; these measures have been particularly effective with addressing participation and representation. Peace processes could benefit from their application as well.

In addition to representation, at the early warning stage, the report recommended gender-sensitive indicia and sex-disaggregated data.³⁷ In the aftermath of conflict, it calls on States to tackle the impunity gap for sexual and gender-based crimes in accountability, particularly through ratification and implementation of international treaties, codifying them into domestic law, and facilitating women's access to justice.³⁸

Duty to Prevent Genocide

The duty to prevent and suppress mass atrocities is a core function of both the UN system and each State's obligations under R2P as regards all atrocity crimes—war crimes, crimes against humanity, ethnic cleansing, and genocide. While no legal hierarchy exists among them, genocide offers the clearest analysis of what the duty to prevent entails, thanks to the single, unified convention for its prohibition, punishment, and prevention. War crimes have been defined and prohibited across the four Geneva

²⁸ U.N. Secretary-General, Implementing the responsibility to protect: Rep. of the Secretary-General, 11, U.N. Doc. A/63/677 (Jan. 12, 2009) [hereinafter SG Report: Implementing R2P].

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* ¶15-17.

³² SG Report on women and R2P, *supra* note 4

³³ *Id.* ¶ 21.

³⁴ S.C. Pres. Statement 2016/9, *supra* note 2.

³⁵ SG Report on women and R2P, *supra* note 4.

³⁶ Convention on the Elimination of All Forms of Discrimination against Women, art. 4, Dec. 18, 1979, 1249 U.N.T.S. 13.

³⁷ SG Report on women and R2P, *supra* note 4, ¶ 8.

³⁸ *Id.* ¶ 31-32.

Conventions and Hague Conventions adopted in 1899 and 1907; crimes against humanity have no formal standalone treaty and thus no defined State obligations on prevention. The Convention on the Prevention and Punishment of the Crime of Genocide (“Genocide Convention”) also explicitly provides for recourse to the International Court of Justice (“ICJ”) when there is a dispute between States on the interpretation, application, or fulfillment of the treaty.³⁹ The ICJ has ruled on the duty to prevent under the Genocide Convention in the *Bosnia and Herzegovina v. Serbia and Montenegro* decision⁴⁰ and in the context of provisional measures in the ongoing case between The Gambia and Myanmar.⁴¹ Accordingly, the duty to prevent genocide can provide guidance on best practices and legal standards on what atrocity prevention more generally entails.

The Genocide Convention requires that obligation holders “employ all means reasonably available” to prevent genocide as soon as they learn of, or should normally have learned of, the existence of a serious risk that genocide will be committed.⁴² States parties are the primary duty holders under any Convention, but when acting as Members of international organs, such as the UN Security Council or regional human rights mechanisms, States are not absolved of their duty to take all reasonable measures available, including powers afforded by that role.⁴³ A gender-blind approach to genocide restricts capacity to fulfill the duty to prevent in two primary ways.

First, it fails to recognize a substantial risk when the acts and victims do not fit within the existing paradigm of how genocide is understood. As discussed above, the experiences of men and boys have been disproportionately the focus of accountability mechanisms—in the context of genocide, this manifests as a primary focus on mass killings. As a result of the narrow understanding of genocide, there is less chance of genocidal or pre-genocidal acts primarily targeting women and girls being logged as warning signs, evidence of serious risk, or even as acts of genocide. The same is true where men and boys are subjected to non-lethal violence which demand that the international community conceive of men as victims in new ways. In short, one cannot prevent what one does not recognize.

Second, it ignores ongoing acts of genocide that continue after the “fast killings” courts have most readily punished. Whereas men and boys are often killed early on in genocides, women, girls, young boys, and the elderly are more likely to suffer genocidal acts over a longer period of time. For instance, they may be subjected to conditions intended to bring about physical destruction of the group, kept in sexual slavery or forced labor, or suffer the long-term effects of non-lethal physical and sexual violence. While the ICJ has made clear that the duty to prevent includes the suppression of ongoing genocide, there is reticence to act due to a perceived political risks of identifying it as such. As a result, people—primarily women, girls, and young boys—are subjected to prolonged suffering.

The duty to prevent genocide is arguably the most effective and enforceable standards for atrocity prevention in large part because of its codification and recourse to the ICJ. Replicating this with other

³⁹ Convention on the Prevention and Punishment of the Crime of Genocide art. 9, Dec. 9, 1948, 78 U.N.T.S. 277.

⁴⁰ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosn. & Herz. v. Serb. and Montenegro*), Judgment, 2007 I.C.J. 43, ¶ 428-438 (Feb. 26, 2007).

⁴¹ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*The Gambia v. Myanmar*), Provisional Measures, 2020 I.C.J. 3 (Jan. 23, 2020).

⁴² Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosn. & Herz. v. Serb. & Montenegro*), Judgment, *supra* note 40 ¶ 430-431.

⁴³ Giorgio Gaja, *The Role of the United Nations in Preventing and Suppressing Genocide*, The UN Genocide Convention: A Commentary [402-4040] ed. Gaeta, Oxford Commentaries on International Law, 2009.

mass atrocity crimes can help to close gaps on State prevention. One opportunity to progressively codify the duty to prevent is the current Draft Articles on Prevention and Punishment of Crimes Against Humanity, which would establish a standalone treaty on crimes against humanity with relevant language on State obligations and enforcement mechanisms.⁴⁴ Other crucial parameters learned from the duty to prevent genocide that should be reflected in State action are: accounting for a broad temporal range—beginning not when there is an active atrocity situation, but when there is a substantial risk and continuing so long as people continue to suffer violence or be in imminent risk; carrying State obligations when operating collectively and individually; and taking *all* measures reasonably available rather than relying on other efforts or incremental measures. Each of these is best deployed with a gender perspective.

IV. The UK's efforts to prevent atrocities through a gender lens

The UK has committed to atrocity prevention and a gender-sensitive response through its international agreements and several domestic initiatives. It is party to relevant treaties on each of the mass atrocity crimes, agreeing to be bound by the definitions and duties contained therein. It has established focal points within the government for R2P. It has also established a five year National Action Plan on WPS.⁴⁵ In line with international legal standards, it established goals related to the full decision-making participation of women in conflict prevention, peace processes, and strategies for countering violent extremism; specific efforts to prevent and suppress gender-based violence; centering women's experiences and SGBV in accountability processes; and bringing gender-sensitive perspectives to peacekeeping and humanitarian operations. Despite its efforts, rates of participation did not grow significantly over the course of the first four years. The leadership wrought by the Preventing Sexual Violence in Conflict Initiative ("PSVI") has made important headway in survivor-centered and gender-sensitive documentation, training for peacekeeping and security personnel, and justice efforts.

One notable insufficiency in both the National Action Plan on WPS and PSVI is reference to gender-informed early warning systems, which the Government has acknowledged.⁴⁶ Some tools in its arsenal seek to fill this space, but with limited capacity to meaningfully do so. The Joint Analysis of Conflict and Stability tool, which underpins all UK National Security Council Strategies and can be used to plan strategies in pre-conflict situations, acknowledges the crucial role of gender in conflicts and the importance of addressing root causes, meeting unique needs based on gender, and fostering greater gender equality through its interventions.⁴⁷ While this tool can be useful to assess risks and identify early warning signs for atrocities, it has not been systematized beyond National Security Council programming. The Countries at Risk of Instability: Risk Factors of and Dynamics of Instability assessment, conducted internally annually for policy-makers to identify countries of concern⁴⁸, lacks the dynamism to respond to

⁴⁴ Draft articles on Prevention and Punishment of Crimes Against Humanity, 2(2) Yearbook of the International Law Commission, 2019, https://legal.un.org/ilc/texts/instruments/english/draft_articles/7_7_2019.pdf.

⁴⁵ UK national action plan on women, peace and security 2018 to 2022 (Jan. 16, 2018), <https://www.gov.uk/government/publications/uk-national-action-plan-on-women-peace-and-security-2018-to-2022>

⁴⁶ UK Parliament, *Never Again: The UK's Responsibility to Act on Atrocities in Xinjiang and Beyond*, para. 64 (July 8, 2021), <https://publications.parliament.uk/pa/cm5802/cmselect/cmfa/198/19809.htm>

⁴⁷ Stabilisation Unit, *Joint Analysis of Conflict and Stability: Guidance Note* (June 2017), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765448/JACS_Guidance_Note.pdf

⁴⁸ FCDO, *Policy paper UK approach to preventing mass atrocities* (July 16, 2019), <https://www.gov.uk/government/publications/uk-approach-to-preventing-mass-atrocities/uk-approach-to-preventing-mass-atrocities>

emerging crises and fails to include any gender indicia—or, indeed, any indicia on any marginalized groups.⁴⁹

Case Study: Myanmar

While the UK has taken strides towards atrocity prevention and integrating gender therein, the insufficiencies of these initiatives and failure to effectively implement them is clear in the UK’s response to atrocities in Myanmar. Myanmar’s military and security forces have carried out two campaigns of mass violence in recent years., first in October 2016 and again in August 2017, where they engaged in so-called “clearance operations” against the Rohingya, a distinct Muslim ethnic minority in Rakhine State. The operations, in particular those in August 2017, were characterized by brutal violence and serious human rights violations on a mass scale. Survivors report indiscriminate killings, rape and sexual violence, arbitrary detention, torture, beatings, and forced displacement. In particular, the UN’s Independent International Fact-Finding Mission for Myanmar (“FFM”) deemed the use of rape and other forms of sexual violence as a deliberate strategy to intimidate, terrorize, and punish civilian populations as a hallmark of Myanmar military operations.⁵⁰ As a result, an estimated 745,000 people – mostly ethnic Rohingya – were forced to flee to Bangladesh. The “clearance operations” followed decades of institutionalized discrimination and systematic persecution of the Rohingya, including laws that stripped the Rohingya of their citizenship and restricted their religious freedoms, as well as reproductive and marital rights.

On February 1, 2021 Myanmar’s military ousted the civilian government in a coup and unleashed a wave of violence against peaceful protesters that marched in opposition. The junta has retaliated with excessive force, killings, enforced disappearances, arbitrary arrest and detention, and torture and sexual violence in custody.⁵¹ Women and LGBTQ activists and civil society have been at the forefront of the resistance and met with the direct and immediate threat to their physical safety. The risk to women is both one of direct bodily harm and a rollback on their hard-won progress for human rights and equality. The coup places an unaccountable military with a history of gender-based violence, particularly against ethnic women, in control of every aspect of government.⁵² The patriarchal military-drafted 2008 Constitution both ensured the military’s impunity and established its seniority over the civilian government which paved the way for the coup.⁵³ Unchecked, the junta could reinvigorate Myanmar’s long history of patriarchal oppression that women’s civil society had only just begun to dismantle.

In its individual capacity, the UK has active sanctions against 24 individuals and nine entities affiliated with the Myanmar military. 11 of the 24 individuals’ sanctions note their use of sexual violence.⁵⁴

⁴⁹ UK Cabinet Office, *Countries at Risk of Instability: Risk Factors of and Dynamics of Instability* (2005), <https://gsdrc.org/document-library/countries-at-risk-of-instability-risk-factors-of-and-dynamics-of-instability/>

⁵⁰ Human Rights Council, Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts, U.N. Doc. A/HRC/42/CRP.4, (Aug. 22, 2019).

⁵¹ Human Rights Watch, Myanmar: Coup Leads to Crimes Against Humanity (July 31, 2021), <https://www.hrw.org/news/2021/07/31/myanmar-coup-leads-crimes-against-humanity>

⁵² Michelle Onello and Akila Radhakrishnan, *Myanmar’s Coup Is Devastating for Women*, Foreign Policy (Mar. 23, 2021), <https://foreignpolicy.com/2021/03/23/myanmar-coup-women-human-rights-violence-military/>.

⁵³ For more information, please see, Global Justice Center, *Factsheet: Structural Barriers To Accountability For Human Rights Abuses In Burma* (Oct. 10, 2018), <https://globaljusticecenter.net/publications/advocacy-resources/998-fact-sheet-structural-barriers-to-accountability-for-human-rights-abuses-in-burma>.

⁵⁴ UK Office of Financial Sanctions Implementation, Consolidated List of Financial Sanctions Targets in the UK (Jan. 19, 2022), <https://ofsistorage.blob.core.windows.net/publishlive/ConList.html>.

However, there appears to be a divide between the sanctions applied in relation to the Rohingya genocide and to the coup. While sexual violence was frequently mentioned in the former, the latter is largely gender-blind. Indeed, the most recent establishment of sanctions in December 2021 made no references to gender.⁵⁵

The UK is uniquely positioned to influence the international response to SGBV related to the Rohingya genocide and the ongoing violence since the February 1st coup as the penholder for both WPS and Myanmar in the Security Council.

The Security Council has only once tabled a resolution on Myanmar (in 2007 in the wake of the Saffron Revolution; the resolution was vetoed by Russia and China).⁵⁶ In recent years, the Security Council has only managed to issue two Presidential Statements on Myanmar: one in the wake of the Rohingya genocide in 2017⁵⁷ and one in March 2021 regarding the coup.⁵⁸ Both statements acknowledge and condemn SGBV and call for respect for women's human rights. What they fail to do is seek accountability, such as the "name and shame" regime put forth by Security Council Resolution 1960 for responding to sexual violence or referral to the ICC as activists have routinely called for. The most recent Arria-formula meeting on Myanmar, organized by the UK, centered the Association of Southeast Asian Nations's ("ASEAN") five point consensus, despite significant gaps⁵⁹ and the subsequent disavowal by the military, rather than exercise the Security Council's own significant authority to take action to protect the people of Myanmar.

There are several opportunities for the UK to better lead on gender-sensitive prevention for Myanmar in its capacity within the Security Council. Over 200 stakeholders, including local voices from Myanmar and its diaspora, have called for a global arms embargo to quell the junta's brutal violence against the people.⁶⁰ As recognized by the Arms Trade Treaty, there is a direct link between those using arms and SGBV, which is why it calls on arms-exporting nations to take into consideration whether the weapons and material sold will be used to commit or facilitate serious acts of gender-based violence or violence against women and children.⁶¹ Such a ban must prohibit the direct and indirect supply, sale, or transfer of all weapons, munitions, and other military-related equipment as well as the provision of training, intelligence, and other military assistance and be accompanied by robust monitoring and enforcement mechanisms. Ethnic groups have long demanded the situation's referral to the ICC as has the pro-democracy movement since the coup.⁶² As discussed above, accountability is deeply tied to prevention, including as a deterrent. Since Myanmar has not signed the Rome Statute, any international

⁵⁵ *Id.*

⁵⁶ UN, *China and Russia veto US/UK-backed Security Council draft resolution on Myanmar* (Jan. 12, 2007), <https://news.un.org/en/story/2007/01/205732-china-and-russia-veto-usuk-backed-security-council-draft-resolution-myanmar>

⁵⁷ S.C. Pres. Statement 2017/22, U.N. Doc. S/PRST/2017/22 (Nov. 6, 2017).

⁵⁸ S.C. Pres. Statement 2021/5, U.N. Doc. S/PRST/2021/5 (Mar. 10, 2021).

⁵⁹ It failed to call for the release of political prisoners, urged all parties to "exercise utmost restraint," but lacked any red lines, enforcement mechanism, or timeframes for achieving progress.

⁶⁰ Joint Call for a Global Arms Embargo on Myanmar

An Open Letter to the UN Security Council and Individual UN Member States (Feb. 24, 2021), https://www.hrw.org/sites/default/files/media_2021/02/202102Myanmar_arms_embargo.pdf

⁶¹ Arms Trade Treaty art. 7(4), Apr. 2, 2013.

⁶² Grant Shubin and [Akila Radhakrishnan](#), *Beyond the Coup in Myanmar: A Crisis Born from Impunity*, Just Security (May 18, 2021), <https://www.justsecurity.org/76182/beyond-the-coup-in-myanmar-a-crisis-born-from-impunity/>

prosecutions of crimes that occurred within its territory, whether in the ICC or through the creation of an ad-hoc tribunal, require Security Council action. The UK should use its capacity as penholder to bring a resolution to the table that includes an arms embargo, referral to the ICC, and other concrete measures to suppress the ongoing violence in Myanmar.

The need for concrete action within the Security Council is transferable across country contexts. From reports of SGBV and denial of basic necessities in Tigray, Ethiopia⁶³, to forced sterilization of Uyghur women in Xinjiang, China⁶⁴, these gendered crimes, at minimum, constitute a substantial risk of mass atrocities. The UK must apply the standards set forth in international legal documents, strengthen its domestic policies to adequately identify early warning signs, and take meaningful action to meet the needs of people on the ground.

V. Recommendations

Current State responses to atrocities leave crucial gaps in the capacity to meaningfully prevent and suppress mass atrocity crimes. These gaps are often born out of a failure to reckon with the full range of violence, including gendered experiences of harm. The UK has demonstrated a commitment to leading initiatives to close these gaps. It can do so by integrating gender perspectives into its prevention policies and through concrete action to implement them.

- In its domestic policies:
 - Develop early warning systems and risk assessments that are gender-competent and can be deployed in a quick, responsive manner.
 - Encourage the utilization of temporary special measures within country contexts to accelerate progress towards equal participation in prevention, response, and peace processes as well as within domestic frameworks.
 - Provide funding for gender-sensitive prevention and response efforts.
 - Conduct gender-competence training for staff within the Foreign, Commonwealth & Development Office and other UK bodies with atrocity prevention functions.
 - Ensure gender mainstreaming at every stage from prevention and response to accountability and transitional processes.
- Within the Security Council:
 - Ensure accountability for SGBV and other atrocity crimes through consistent application of sanctions regimes tied to acts of SGBV and support for ICC referrals.
 - Take concrete steps for prevention through measures such as global arms embargoes and collective action as defined by R2P.
 - On Myanmar:
 - Push for Council action, including a resolution supporting the global arms embargo, cross-border humanitarian support and ICC referral.
 - Ensure the WPS and gender are mainstreamed into all Security Council efforts on Myanmar.
- To support broader international justice:
 - Support efforts to elaborate a treaty on the basis of the Draft Articles on Prevention and Punishment of Crimes against Humanity.

⁶³ World Health Organization, *Statement on Gender-Based Violence in Tigray region of Ethiopia* (Mar. 22, 2021), <https://www.who.int/news/item/22-03-2021-statement-on-gender-based-violence-in-tigray-region-of-ethiopia>

⁶⁴ *China forcing birth control on Uighurs to suppress population, report says*, BBC News (June 29, 2020), <https://www.bbc.com/news/world-asia-china-53220713>.

- Ensure that the process includes a full gender audit of the treaty and participation of gender experts at all stages.