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# Advance Edited Version

Distr.: General  
3 September 2020

Original: English

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## Human Rights Council

### Forty-fifth session

14 September–2 October 2020

Agenda item 2

### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

## Situation of human rights of Rohingya Muslims and other minorities in Myanmar

### Report of the Office of the United Nations High Commissioner for Human Rights\*

#### *Summary*

The present report is submitted pursuant to Human Rights Council resolution 42/3, in which the Office of the United Nations High Commissioner for Human Rights (OHCHR) is requested to submit to the Council at its forty-fifth session a report on the implementation of the recommendations of the independent international fact-finding mission on Myanmar, including those on accountability, and on progress in the situation of human rights in Myanmar, including of Rohingya Muslims and other minorities.

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\* The present report was submitted after the deadline so as to include the most recent information.

## I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 42/3, in which the United Nations High Commissioner for Human Rights was requested to follow up on the implementation by the Government of Myanmar of the recommendations made by the independent international fact-finding mission, including those on accountability, and to continue to track progress in relation to human rights in Myanmar, including of Rohingya Muslims and other minorities.

2. The report was prepared on the basis of primary and secondary information collected from various sources – including primary witness testimonies, the Government, the United Nations, civil society organizations, representatives of ethnic and religious minority communities, diplomats, media professionals, academics and other experts. Without access to the country, OHCHR adhered to a consistent methodology of gathering information via remote interviews conducted with over 80 victims and witnesses of human rights violations and abuses. Primary sources were subjected to a rigorous verification and corroboration process using a variety of independent or other sources, including, but not restricted to, satellite imagery and reports and statements by the Government. Factual determinations on cases, incidents and patterns were made where there were reasonable grounds to believe that incidents had occurred as described. OHCHR sought input from the Government on the issues raised in the present report and a draft was shared with the Government for comment. No response has yet been received.

3. The mandate of the fact-finding mission<sup>1</sup> expired in September 2019. The fact-finding mission issued two mandated reports<sup>2</sup> and four thematic papers.<sup>3</sup> For the present report, OHCHR analysed 109 recommendations made by the fact-finding mission to the Government and the United Nations in Myanmar, grouped thematically, including on conflict and the protection of civilians; accountability; sexual and gender-based violence; fundamental freedoms; economic, social and cultural rights; institutional and legal reforms; and actions by the United Nations system.

## II. Situation of human rights

### A. Conflict and the protection of civilians

4. Myanmar continued to witness intensified armed clashes between the Tatmadaw and ethnic armed organizations, particularly in the States of Rakhine, Chin, Shan, Kachin and Kayin. Rakhine was excluded from a unilateral ceasefire that was declared by the Tatmadaw in December 2018 and that has been continuously extended, which applied to all other States in the country. In March 2020, the Government designated the Arakan Army as a terrorist organization, diminishing prospects for ceasefire. The Tatmadaw did not heed the call of the Secretary-General of the United Nations for a global ceasefire and instead, on 26 June 2020, launched another clearance operation, in Rathedaung township, forcibly displacing thousands of civilians.

#### **Rakhine and Chin States**

5. In its reports to the Human Rights Council, the fact-finding mission called for a halt to all current security operations that were unlawful, unnecessary and disproportionate. These calls have been reiterated by the High Commissioner and the Special Rapporteur on the situation of human rights in Myanmar. However, since 2019, fighting between the Tatmadaw and the Arakan Army in Rakhine and Chin States has intensified in scale and

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<sup>1</sup> Human Rights Council resolution 34/22.

<sup>2</sup> A/HRC/39/64 and A/HRC/42/50.

<sup>3</sup> A/HRC/39/CRP.2; and A/HRC/42/CRP.3, A/HRC/42/CRP.4 and A/HRC/42/CRP.5 which are available from [www.ohchr.org/EN/HRBodies/HRC/RegularSessions/session42/Pages/ListReports.aspx](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/session42/Pages/ListReports.aspx).

ferocity, resulting in deaths and injuries, and destruction of civilian property and other civilian objects, including schools and places of worship, and has forced tens of thousands of people into internal displacement.

6. Tatmadaw tactics have shifted, with periodic reliance on airpower against the Arakan Army, but in some instances it appears that civilians may have been directly targeted. There was a significant increase in incidents of airstrikes by fighter jets, and helicopter and heavy artillery attacks, and in ground battles in more densely populated civilian areas. For the most part, however, it appears that the Arakan Army was not active or present in the areas where these attacks took place and no armed clashes were reported to have been ongoing at that time. On 7 April 2020, fighter jets conducted an airstrike in Chin State, killing seven civilians and wounding six women and one child. Eight houses and a rice mill were destroyed and the villagers were forced to flee. They remain displaced as of July 2020.

7. While violence affected all communities in Rakhine and Chin, ethnic Rakhine and Rohingya civilians have borne the brunt of the impact of the conflict. During the first five months of 2020, at least 137 civilians were reportedly killed and 386 wounded, including women, children and elderly persons. These numbers include 25 Rohingya deaths and injuries to 44 others. The number of civilian casualties in the first quarter of 2020 may have already surpassed the total number of civilians killed and injured in 2019. In one attack on 29 February 2020, a Tatmadaw convoy opened fire on a village in Mrauk-U township, killing six Rohingya and wounding another six. According to eyewitnesses, the Tatmadaw fired indiscriminately on the village for over an hour after a vehicle in their convoy had been damaged by a mine explosion.

8. Schools, religious sites and civilian homes have been targeted in attacks and damaged by heavy artillery or by Tatmadaw patrols.<sup>4</sup> On 13 February 2020, at least 17 schoolchildren, aged between 5 and 12, were wounded when a mortar shell hit a primary school in Khamwe Chaung village, Buthidaung township. Over 60 students were in the school at the time. On 13 March, three artillery shells hit a monastery in Tin Ma village, Kyauktaw township, causing serious damage to the building. On 29 March, in Pha Bro village, Minbya township, soldiers set houses and a school on fire and destroyed the local monastery with a rocket-propelled grenade.

9. Tatmadaw units have undertaken widespread arbitrary arrests and detention of civilians. Use of torture and other cruel, inhumane or degrading treatment or punishment against detainees has also been alleged. In some cases, the Tatmadaw have rounded up the entire male populations of villages, often blindfolding them, before transferring them to unknown locations. On 19 April 2020 in Kyauk Seik, 39 men were arrested and subjected to ill-treatment. At time of finalization of the present report, five remain in custody, charged with terrorism offences. The identities of these five individuals were confirmed by family members from a video that was circulated online showing soldiers abusing the men on a boat. In another incident, on 26 February 2020, two of the six men arrested by the Tatmadaw near Tin Ma village, Kyauktaw township, died in custody after being beaten, stabbed, and burned with boiling water. One of the men was hung by his feet from a tree and beaten by soldiers. Their bodies have not been returned to their families. Several arrests and disappearances occurred at military checkpoints. A number of the persons concerned were subsequently convicted of terrorism offences and have remained in detention, whereas others remain missing. In some instances, family members found bodies of victims bearing severe injuries, days after their initial arrest. For example, on 16 April 2020 in Kyauktaw, the bodies of three men – detained at a military checkpoint – were found in a river days later, with gunshot wounds and signs of severe abuse.

10. Evidence indicates that Tatmadaw units have unlawfully killed civilians in circumstances where no armed clashes were taking place. On 22 April 2020, Tatmadaw soldiers fired a rocket-propelled grenade, severely injuring a man as he tended buffalo in

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<sup>4</sup> Of the 12 attacks on schools recorded in 2019, eight were attributed to the Tatmadaw; see A/74/845-S/2020/525, para. 127.

Minbya township. He died on his way to hospital. On 30 May 2020, a 73-year-old woman was shot dead by the Tatmadaw while collecting firewood in Paletwa township.

11. On several occasions, security forces stopped vehicles that were transporting wounded persons to hospitals, some of whom died while waiting at checkpoints. This includes, on 13 April 2020, an injured 15-year-old boy who died after he had been stopped, and was still waiting, at a military checkpoint. He had been travelling to seek urgent medical treatment after being injured in a shelling incident in Kyauk Seik village that killed two of his brothers. On 11 May, the General Administration Department in Maungdaw township ordered restrictions on the transportation of injured persons to hospitals. This order requires an individual or organization to obtain letters from a range of local officials and the military before a wounded person can be transported for treatment.

12. Between 19 March and 29 April 2020, three attacks targeting humanitarian actors occurred in Chin and Rakhine States.<sup>5</sup> In each incident, vehicles or vessels involved displayed official logos or flags. On 20 April, a World Health Organization vehicle came under attack in Minbya township while transporting COVID-19 samples from Rakhine to Yangon. Both the driver and the passenger, a Ministry of Health and Sports official, sustained gunshot injuries, as a result of which the driver subsequently died. On 29 April, the President of Myanmar ordered the establishment of a committee to investigate the incident. As yet, the committee has not announced its findings.

13. Since the beginning of 2020, Tatmadaw units have burned several villages and civilian homes in areas affected by fighting, in line with the military's well-documented tactic of destroying civilian property and in violation of the principle of distinction. Tatmadaw soldiers used flammable liquids and torches to burn villages and houses. In several cases, soldiers set ablaze villages that had been abandoned by residents following clashes or the firing of heavy weaponry. In one incident on 26 May, the Tatmadaw set fire to over 60 houses in Mee Let Wa village, Paletwa township, after residents abandoned the village due to clashes. There were no clashes in the area at the time the village was burned.

14. Allegations of human rights abuses committed by the Arakan Army have been received, including the laying of landmines in civilian areas and the looting of civilian property and livestock, as well as the demolition of 53 Rohingya homes in Sin Khone Taing, Rathedaung township. Dozens of Rohingya fled the village after two local Rohingya officials were abducted and allegedly killed by the Arakan Army in May 2019. Those who fled remain internally displaced.

15. According to official statistics,<sup>6</sup> as at 7 July 2020, 81,637 people were displaced by the conflict, with local humanitarian actors putting the figure as high as 190,708. Internally displaced persons are presently sheltering in makeshift temporary displacement sites, schools, churches and monasteries. A majority lack access to adequate food and clean water, and are facing security threats from fighting, including landmines, as well as restrictions on freedom of movement and lack of access to livelihoods and basic services. Living in unhygienic and overcrowded camps, they are also at risk of disease, including of coronavirus disease (COVID-19).

16. Humanitarian access to people in need, particularly internally displaced persons, has declined greatly, exacerbating the humanitarian crisis. An estimated 750,000 people are currently in need of humanitarian assistance in Rakhine alone. For many, the loss of sources of income and food has made humanitarian support the sole means of survival. Humanitarian organizations have been refused access to affected areas since the introduction of new travel and access regulations at the end of 2019. Access to rural areas has been severely reduced since March 2020 due to township-level restrictions imposed by the authorities in Rakhine and Chin. In June 2020, an additional layer of security clearance

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<sup>5</sup> On 19 March 2020, a Relief International boat was shot at in the Taw Kan area of Rakhine, causing damage to it. On 29 April 2020, a World Food Programme five-truck convoy came under attack in Chin State, while transporting food aid to Paletwa. One contractor was wounded.

<sup>6</sup> See <https://reliefweb.int/map/myanmar/myanmar-myanmar-armed-forces-arakan-army-conflict-generated-displacement-rakhine-and-0>.

was added to the transportation of aid from Yangon to Sittwe, with the possibility of humanitarian deliveries being blocked at military checkpoints on suspicion that the assistance could be diverted to the Arakan Army, even when all the necessary permissions have been obtained from the authorities. Few international organizations can access areas outside the main towns with non-food assistance. Bureaucratic procedures around authorization have complicated humanitarian activities in both Rakhine and Chin, resulting in interruptions and delays in the provision of critical services. Access restrictions have also undermined the provision of protection services in conflict-affected areas.

17. Ongoing blockades and armed clashes have exacerbated problems with food access in Rakhine and Chin. Authorities have imposed roadblocks, effectively closing inter-township roads, and cut off traditional waterways – disrupting supply chains. The blockade has resulted in food scarcity, the emptying of food storage facilities, and local markets not having stock, as well as sharp increases in the prices of essential goods, leaving residents with dwindling daily rations. In Paletwa township, where the Tatmadaw have blocked road and water transportation routes since early 2020, the cost of a bag of low-quality rice has increased from K30,000 (\$21) to K120,000 (\$84). Some residents have been forced to resort to drastic measures, such as relying on a fruit-only diet, eating trunks of banana trees, or consuming animal feed. Residents of Ann township in Rakhine are also facing food shortages as transportation and supply chains have been impacted by the blockade imposed by the Tatmadaw since January 2020.

18. Despite recommendations by the fact-finding mission, the High Commissioner and Special Rapporteur, authorities have failed to halt violence and military operations in Rakhine and Chin. The destruction of villages and civilian homes has caused suffering for civilians. Directing attacks against civilians and civilian objects constitutes a violation of international humanitarian law. Furthermore, the parties to the conflict are required to respect the principles of distinguishing civilians from fighters and civilian objects from military objectives, of refraining from indiscriminate attacks, of proportionality in attack, and of precautions in attack. These findings warrant further investigations into conduct which may constitute war crimes and crimes against humanity by the Tatmadaw in Chin and Rakhine States.

### **Kachin and Shan States**

19. Patterns of violation and abuse have also been reported from Kachin and Shan States. Although ceasefires were declared by parties to the conflicts, clashes between the Tatmadaw and ethnic armed organizations, including parties to the Nationwide Ceasefire Agreement, were received and investigated throughout the reporting period. Civilians living in affected areas have been victims of human rights violations and abuses committed by security forces and ethnic armed organizations. These events underline the fragility of security in these areas, due to a stalled peace process, and raise concerns about the intensification of hostilities in the north and north-east of the country.

20. Civilian casualties in Kachin and Shan reportedly resulted from attacks by the Tatmadaw on civilian-populated areas, including villages, and the indiscriminate use of heavy artillery and small firearms. There have also been reports of a range of other violations by the Tatmadaw, including arbitrary arrests; incommunicado detention; torture and ill-treatment of civilians; forced recruitment and forced labour; and the use of protected objects, such as schools, for military purposes.

21. Ethnic armed organizations have reportedly abducted, beaten and killed civilians, forcibly recruited villagers to serve as guides and porters, demanded taxation from individuals living in areas under their control, and endangered civilians by occupying villages or encamping nearby. Landmines, reportedly laid by the Tatmadaw and ethnic armed organizations, and unexploded ordnance, represent a major threat to civilians living in these areas, especially to agricultural workers and others whose work brings them in contact with mine-contaminated areas. Hundreds of casualties have occurred as a result of mines and unexploded ordnance. Conflicts have continued to cause displacement, and 105,000 people remain internally displaced in 170 sites throughout Kachin and Shan since being displaced in 2011. Thousands of others were forced to temporarily flee their homes due to clashes but have since been able to return. In mid-2020, the Tatmadaw reportedly

destroyed COVID-19 screening points operated by the Kachin Independence Organization and the Restoration Council of Shan.

### **Kayin State**

22. In January 2020, the resumption of construction work on a road connecting Kyaukkyi in Bago Region with Hpapun in Kayin, and the consequent increase in the Tatmadaw's presence in the area, resulted in clashes with the Karen National Union, an ethnic armed organization and signatory to the Nationwide Ceasefire Agreement. Local organizations maintained that the Tatmadaw had systematically fired artillery shells onto civilian areas to force the population to flee. Preliminary figures indicate that over 2,000 civilians fled to a nearby forest, where they faced difficulties accessing food and services. Reportedly, Tatmadaw soldiers killed three civilians in the area around the road construction in 2020, allegedly burning the body of one of the victims. Armed activities resulting in displacement continued after the Tatmadaw's declared ceasefire in connection with the COVID-19 crisis, with hundreds reportedly fleeing their villages. On 6 May, the Tatmadaw reportedly destroyed at least two COVID-19 screening checkpoints operated by the Karen National Union.

## **B. Accountability**

23. Myanmar made limited progress on the fact-finding mission's recommendations to conduct prompt, effective, thorough, independent and impartial investigations and to hold perpetrators accountable for crimes committed across the country. In April 2018, the Tatmadaw announced that a court martial, whose entire proceedings remain confidential, sentenced four officers and three soldiers to 10 years' imprisonment with hard labour for their participation in the killing of 10 Rohingya men in Inn Din village. In November 2018, however, the Commander-in-Chief pardoned and released them after they had served less than a year of their sentences. Both process and pardon highlight the lack of transparency and independence in the military justice system in Myanmar and the Commander-in-Chief's influence over cases. Similarly, on 30 June 2020, the Tatmadaw announced that a court martial had convicted two officers and a soldier for "weakness in following instructions" during the Gu Dar Pyin incident in Buthidaung in 2017. Consistent with previous military proceedings, and despite the Tatmadaw's assurances of transparency, information on the identities and ranks of perpetrators, the crimes for which they were prosecuted, the trial proceedings and evidence, and their respective sentences, remains undisclosed. Secrecy and lack of independence characterize all Tatmadaw-run processes, making court-martial proceedings inadequate to render justice for crimes committed by military personnel against civilians. In the case of Kachin and Shan States, no investigations or prosecutions have taken place, with the military enjoying total impunity for crimes documented by the fact-finding mission in those areas.

24. Consistent with previous actions aimed at providing a notion of accountability,<sup>7</sup> on 20 January 2020 the government-established Independent Commission of Enquiry (hereinafter referred to as the national commission) submitted its report to the President. Except for a 14-page executive summary containing recommendations and some annexes, the report remains unpublished. A full assessment of the factual and legal analysis underpinning the findings and recommendations, as well as of the national commission's methods of work – including the type and selection of sources, access to and protection of witnesses, and particularly the failure to interview any Rohingya victims and witnesses in Bangladesh, is not possible on the basis of the information made available. Previous significant concerns about the structure, mandate, timing, independence and impartiality of this mechanism persist. As the national commission's mandate was focused narrowly on specific events that took place in Rakhine during a short period of 12 days, there was no investigation of broader patterns of violation, or of crimes committed in other parts of the country. The authorities of Myanmar remain in denial that crimes in those areas have

<sup>7</sup> A/HRC/39/64, paras. 95–99; A/HRC/39/CRP.2, paras. 1601–1609; A/HRC/40/37, paras. 56–59; and CEDAW/C/MMR/CO/EP/1, para. 9.

occurred, and that cyclical violence and continuous serious human rights violations against minorities across the country are fundamentally linked to discriminatory policies and practices.

25. The recommendations of the national commission fail to consider and fully address the institutional weaknesses of the national justice system. To address the grave violations that have been perpetrated over decades, and to strengthen democracy and the rule of law, Myanmar must ensure accountability, including through transitional justice initiatives, in full compliance with international standards and through impartial and credible mechanisms. A broad process of constitutional, legal, institutional and administrative reform is needed, which should involve all relevant stakeholders and be aimed at ending impunity and preventing recurrence of violations.

26. In December 2019, Myanmar appeared before the International Court of Justice in the case concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide (*The Gambia v. Myanmar*). During the public hearings on the request for the indication of provisional measures, submitted by the Gambia, which sought to preserve, pending the Court's final decision in the case, the rights of the Rohingya group in Myanmar, of its members and of the Gambia under the above-mentioned Convention, the representative of Myanmar noted that disregard for international humanitarian law could not be ruled out, and restated the willingness of Myanmar to prosecute those responsible. But so far, the steps taken through its national commission and military justice processes appear to have been insufficient and to have replicated past patterns of delaying effective accountability processes and maintaining impunity. During the hearings before the Court, the representatives of Myanmar did not fully address the issue of sexual and gender-based violence, notwithstanding the fact-finding mission's finding of "endemic rapes, mass gang rapes, and sexual violence against Rohingya women and girls, and sometimes men and boys".<sup>8</sup> The available findings of the national commission either deny or reject responsibility, calling into question both the willingness of authorities to ensure genuine accountability and the independence of the national commission.

27. In January 2020, the International Court of Justice indicated provisional measures requiring Myanmar to take all measures within its power to prevent the commission of all acts that constitute genocide under the Convention on the Prevention and Punishment of the Crime of Genocide in relation to the members of the Rohingya group in its territory, to preserve evidence pertaining to the allegations, and to report periodically on measures taken in compliance with the provisional measures. On 22 May 2020, Myanmar submitted its first report, which has not, to date, been made public. On 8 April 2020, the Office of the President of Myanmar issued two directives ordering public officials, including military, not to commit acts outlined in Articles II and III of the Convention on the Prevention and Punishment of the Crime of Genocide and prohibiting the destruction of evidence related to events referred to in the final report of the national commission respectively. No information is available on follow-up actions by the authorities to disseminate and raise awareness of the content of these directives among officials and government agencies of all levels.

28. The issuance of the presidential directives to preserve evidence came almost three years after the incidents in Rakhine had taken place. The fact-finding mission concluded that since August 2017 Myanmar had actively sought to prevent the return of the Rohingya through "appropriation of vacated land and terrain clearance" and by "erasing every trace of the Rohingya communities".<sup>9</sup> Also, satellite imagery unequivocally confirms that physical structures built since October 2017 for the return of the Rohingya, including Taung Pyo Let Yar Reception Centre, Nga Khu Ya Reception Centre and Hla Poe Khaung Transit Centre, were constructed where Rohingya villages had previously stood, thereby potentially destroying any evidence that may have previously existed at those sites. There is evidence that similar reconstruction has occurred since 2017 in multiple villages in Maungdaw township, as well as in Paung Zar village in Rathedaung township.

<sup>8</sup> A/HRC/39/CRP.2, para. 1276.

<sup>9</sup> *Ibid.*, para. 1182.

29. Throughout the month of May 2020 there were reports that the Tatmadaw had burned large swathes of Buthidaung township where between five and more than a dozen Rohingya villages once stood. Thousands of Rohingya fled these areas in 2017 during and after the so-called “clearance operations”, and destruction of empty buildings has been going on in these areas since they were vacated. In May, the Tatmadaw returned to the area and burned the remaining remnants of Yin Ma Kyaung, Done Paing, Thin Ga Net, Soe Taung and Kone Taung villages. According to eyewitnesses, the burning of these areas was unrelated to the conflict with the Arakan Army, since no clashes were occurring in the area. In a letter to the High Commissioner dated 17 July 2020, the Permanent Representative of the Republic of the Union of Myanmar to the United Nations Office and other international organizations in Geneva stated that the attacks alleged to have taken place in May 2020 in Buthidaung township “had never taken place”.

### C. Sexual and gender-based violence

30. Impunity regarding sexual and gender-based violence continues. No safe, effective, accessible and gender-sensitive reporting mechanisms for these crimes are in place and the Government continues to flatly deny their occurrence in both conflict and non-conflict settings. The national commission also excluded evidence of sexual and gender-based violence that had been documented by the fact-finding mission. Victims and their families continue to face significant barriers in reporting violence and accessing services. Challenges reported by victims’ advocates include language barriers for ethnic minority communities, stigma, and fear of being subjected to criminal defamation laws if cases involve members of the military. These shortcomings make it difficult to assess the extent of sexual violence in Myanmar, with the few cases reported likely representing only a fraction of those occurring across the country. These challenges are particularly acute in rural and non-government-controlled areas, where cases are usually addressed through compensation payments made by third-party intermediaries, if at all.

31. Since February 2019, the Government has introduced “one-stop crisis centres” and “one-stop women’s support centres” offering health services to survivors, shelter for mothers and children, and legal support for victims of sexual violence. While these are positive steps, the number of centres is low and access to them by the most vulnerable populations is limited. Unrestricted access to free, confidential, multi-sectoral sexual and gender-based violence response services is still absent in Myanmar. While the ministries of social welfare, of relief and resettlement and of health and sports have developed protocols and guidelines to promote survivor-centred responses, services must be scaled up considerably with access for populations in hard-to-reach areas and for those affected by conflict. Humanitarian access must also be granted to all relevant stakeholders specializing in delivering survivor-centred response services.

32. After signing a joint communiqué with the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, in 2018, the Government established a national committee in March 2019 to develop an action plan for its implementation. Regrettably, and contrary to international practice, the Government has not yet committed to an action plan jointly endorsed with the United Nations, citing concerns over monitoring and access. While the draft action plan is yet to be approved, it lacks essential protections for victims and survivors of sexual and gender-based violence. Other outstanding concerns arising from the draft include the absence of reforms needed for related legislation, the lack of inclusiveness, and the failure to provide for a survivor-based approach, including a complaint mechanism that would ensure the confidentiality of complaints and the protection of complainants from retribution.

33. In January 2020, the draft law for the prevention of violence against women was eventually submitted to Parliament, following a drawn-out drafting process that had begun in 2013. Despite concerns raised by civil society and the United Nations on the content of the draft, it continues to fall short of international standards as set out in the Convention on the Elimination of All Forms of Discrimination against Women, as has been highlighted by

the Committee on the Elimination of Discrimination against Women.<sup>10</sup> Concerns therefore remain as to whether this law, if passed in its current form, will provide adequate legal protection for women.

#### **D. Fundamental rights and freedoms**

34. Recommendations made by the fact-finding mission, the Special Rapporteur and the Committee on the Elimination of Discrimination against Women and accepted by Myanmar in the universal periodic review process in relation to protection and respect for fundamental rights and freedoms for all in Myanmar have largely not been implemented. Human rights defenders, journalists, and individuals expressing dissenting views continue to be harassed and prosecuted for exercising their rights, further eroding the space available for the exercise of democratic rights and freedoms. Activists continue to be imprisoned for peaceful protests under the Law relating to Peaceful Assembly and Peaceful Procession, of 2011. In February 2019, seven students were jailed for three months in Mandalay for failing to give notice of a demonstration calling for increased campus security. In February 2020, five students were convicted in Yangon for a protest against the Internet shutdown in western Myanmar.

35. The reporting period saw increased restrictions on freedom of expression, with the criminalization of independent journalism and reporting, particularly on issues related to the Tatmadaw's military operations. Editors of the Voice of Myanmar, Naranjara and Khit Thit news outlets were charged with terrorism offences in early 2020 after the Arakan Army was declared a terrorist organization and following their publication of interviews with an Arakan Army spokesperson. Nay Lin, of the Voice of Myanmar, was arrested on 30 March 2020 and detained until 10 April 2020, while the editors of Naranjara and Khit Thit remain in hiding along with some of their colleagues. The Tatmadaw initiated complaints against the media for their coverage of the conflict in Rakhine – including against Aung Marm Oo, the editor at Development Media Group, in May 2019, and against the Irrawaddy newspaper in April 2019, and Reuters in March 2020. Although the Tatmadaw withdrew some of these complaints, local journalists regard the cases as threats against their ability to perform their professional duties.

36. Tatmadaw and government officials continue to file defamation cases, with up to 150 cases reported in 2018 and 2019. After traditional satirical performances in Yangon and Ayeyarwady Regions in April 2019, seven members of the Peacock Generation Thangyat troupe were charged under section 505 (a) of the Penal Code and section 66 (d) of the Telecommunications Law for defaming the military in six township courts. Six of them were convicted by multiple courts and have sentences ranging from one to five years' imprisonment, with charges in two Ayeyarwady courts still pending. This case illustrates violations of the protection against double jeopardy and fundamental problems in relation to due process and fair trial rights.

37. In April, the Government ordered telecommunications companies to block access to 20 ethnic media websites, using "fake news" as justification. Since June 2019, a mobile Internet shutdown has been enforced in conflict-affected areas of Chin and Rakhine. National security grounds have been invoked to justify the ban, but the blanket measures deny people living across the region access to life-saving information, including throughout the period of the COVID-19 crisis. Mobile Internet services were restored in May 2020 only in Maungdaw.

38. The fact-finding mission made detailed recommendations to the Government regarding hate speech. On 20 April 2020, the Office of the President issued a directive to all ministries, the State Government and regional governments to take all possible measures to denounce and prevent all forms of hate speech, and to encourage participation in and support of anti-hate speech activities. This first positive step needs to be followed by fair, non-discriminatory and equal implementation, as well as by a comprehensive legal and

<sup>10</sup> CEDAW/C/MMR/CO/EP/1, paras. 17–18.

policy framework to address discrimination on any grounds, including ethnicity, religion, gender and sexual orientation. OHCHR and other United Nations entities have offered to assist the Government in developing such a legislative and policy framework in lieu of a draft “anti-hate speech” law that may further limit space for free expression. Vague provisions in the draft of that law are open to misapplication and could, if it were adopted in its current form, significantly infringe upon the right to freedom of expression.

39. A significant amount of content posted online contains language that is derogatory and offensive to minorities, and demonizes those who are alleged to support ethnic armed organizations. Recently, activists involved in the online “Don’t call me kalar” anti-discrimination campaign have faced threats and harassment for their advocacy.<sup>11</sup> Despite Facebook having taken steps to improve its operations in Myanmar since 2018, including removing military officials’ personal accounts and organizational pages, military propaganda pages that contain racist language that incite hatred remain online.

40. Contrary to the fact-finding mission’s recommendation that returns of internally displaced persons to their homes or places of origin be facilitated, thousands remain in camps. In November 2019, the Government finalized its national strategy on resettlement of internally displaced persons and the closure of camps for internally displaced persons. This strategy references key international standards and has the potential to contribute to durable solutions for internally displaced persons. Current attempts to close Kyauk Ta Lone camp in Rakhine State, however, have raised serious concerns. Meaningful consultations with the camp’s Kaman and Rohingya residents have not taken place and yet they desire to return to their places of origin. Additionally, the relocation site currently under construction is near the existing camp, and is prone to flooding, and job opportunities, health care and education are inaccessible. This proposal threatens permanent segregation and ghettoization of the displaced persons concerned.

## **E. Economic and social rights**

41. The obligations of Myanmar under the International Covenant on Economic, Social and Cultural Rights include duties to respect, protect and fulfil the rights to food, water, sanitation, housing, health, education, work, social security, and participation in cultural life. As in many other countries, land rights and security of tenure in Myanmar underpin access to food, shelter, livelihoods and development, for a significant proportion of the population. For ethnic minority communities, the relationship with land is also spiritual, cultural and social. Significantly, given the many armed conflicts between the Tatmadaw and ethnic armed organizations, land issues frequently take on political dimensions.

42. In its recommendations, the fact-finding mission urged heightened human rights due diligence for all investments in conflict-affected areas, and especially in Kachin, Rakhine and Shan States. It also emphasized that development projects should be conducted in a fair, equitable, non-discriminatory, sustainable and non-politicized manner. Events over the past two years indicate that this has not been the case.

43. In September 2018, amendments made to the Vacant, Fallow and Virgin Lands Management Act of 2012 introduced new bureaucratic requirements to obtain permits for the use of lands declared as “vacant”, “fallow” or “virgin” under the law, most of which are located in Myanmar’s ethnic States, thereby facilitating large-scale agriculture, mining and other activities. Although the amendments recognize customary land use for the first time, customary tenure remains legally undefined and is not subject to specific protection within Myanmar’s complex legal framework governing land use. The result of the amendments is the dispossession of millions of smallholder farmers and criminalization of their ongoing land use, unless they applied for and were granted the newly required permits within six months of the amendments coming into force.

44. In August 2019, Parliament passed a Land Acquisition, Resettlement and Rehabilitation Law, which will replace the Land Acquisition Act of 1894. Although the

<sup>11</sup> The name of the campaign refers to a derogatory term for Muslims in Myanmar.

new law includes positive policy objectives, a definitive list of “public purpose” categories for land expropriations, and requirements for surveys to identify some potentially affected populations, for environmental and social impact assessments, and for resettlement and rehabilitation plans, it still falls far short of the obligations of Myanmar under the International Covenant on Economic, Social and Cultural Rights. Certain public purpose categories are overly broad, risking prioritization of commercial interests over individual rights and social costs. Additionally, the law is silent on numerous categories of persons who would be affected by it – such as those displaced by conflict who have restitution rights, and those who use land communally – which runs counter to the Covenant’s non-discrimination obligation.

45. In February 2020, Parliament passed amendments to the Farmland Law of 2012, which essentially had established a legal land market through formalization of rural land tenure via a land use certificate and registration system. Despite some positive elements, the amendments, overall, appear to exacerbate the deficiencies of the 2012 law. In particular, the law now criminalizes non-performance of a bureaucratic requirement to apply for and obtain land use certificates. Furthermore, the original stipulation that unused expropriated land must be returned has now been removed, thereby heightening risks of excessive land seizures. The amendments have also broadened the definition of “farmland” to include more customary land use, which has the effect of commodifying land as an economic resource owned by the State, rather than recognizing cultural understandings of land by ethnic communities.

46. In parallel, in August 2018 the Government launched the Myanmar Sustainable Development Plan, and in early 2019 launched the Myanmar Project Bank, which together provide a policy framework and publicly accessible repository of investment projects. Roughly over the same period, the Government also committed to the China-Myanmar Economic Corridor – a framework for large-scale infrastructure, trade and transportation projects forming part of China’s Belt and Road Initiative.

47. Details under the China-Myanmar Economic Corridor scheme remain scarce, challenging promises of transparency and stakeholder consultation. For Myanmar to fulfil its procedural obligations under the Covenant, all relevant information needs to be made available to those affected, such that genuine consultations may be undertaken prior to any interference with rights protected by the Covenant. According to public reports, main projects under the Economic Corridor include a high-speed railway – with a parallel expressway – running from Ruili in Yunnan Province, China, via Muse in northern Shan State, and terminating in Kyaukphyu, Rakhine State, and forking southwards at Mandalay to Yangon; three new economic cooperation zones at the Economic Corridor’s eastern end; and a fourth new economic cooperation zone in the west – Kyaukphyu Special Economic Zone – that includes a deep sea port. At both ends of the Economic Corridor, armed conflict between the Tatmadaw and ethnic armed organizations has escalated dramatically over the past two years. Without appropriate consultation with the affected communities, assurances of economic, social and other benefits for members of those communities, and specific protections for specific cultural, religious and other practices, such regional economic development may fall far short of its vision of contributing materially to peacebuilding.

48. Undoubtedly, sustainable development is critical if Myanmar is to continue lifting its population out of poverty and to ensure that rights articulated under the Covenant are progressively and continuously realized. The Government’s response to the socioeconomic impacts of the COVID-19 pandemic goes some way to fulfilling its Covenant obligations. However, the laws described above exert tremendous pressure on rural land in Myanmar. Together, they permit the rapacious expropriation of land and other natural resources in favour of a vision of large-scale land-related development at the expense of individual farmers and communities and their rights to maintain their land, livelihoods and cultural life. Legalization of the land market without strong public safeguards – including an independent judiciary, a free media, and a comprehensive social security system – may exacerbate conflicts and engender new disputes.

## F. Institutional and legal reforms

49. Contrary to the recommendations of the fact-finding mission, laws, orders, policies and practices at all levels of Government limiting freedoms of movement, expression, association and assembly, or which are discriminatory in their application or impact, have not been reviewed, amended or repealed. The four Race and Religion Protection Laws remain in place and continue to pose serious risks to the rights of minorities, women and children. Laws that are discriminatory in wording or effect continue to be adopted by Parliament, including the Vacant, Fallow and Virgin Lands Management Act as amended in 2018, which disproportionately impacts on ethnic minorities. In 2019, Myanmar enacted a new Child Rights Law that protects many of the rights enshrined in the Convention on the Rights of the Child and criminalizes the six grave violations against children in armed conflict. While it provides for universal birth registration, it does not guarantee all children the right to a nationality.

50. The Government continues its citizenship verification process based on the Citizenship Law of 1982, reporting that it issued 1,144 National Verification Cards between September and December 2019. Recommendations by the fact-finding mission to end this process and restore the citizenship rights of the Rohingya have been ignored. OHCHR continues to receive reports that Rohingya are forced, directly or indirectly, to accept National Verification Cards, including some who were released from prison in early 2020. Approximately 800 people arrested or imprisoned in other parts of the country, including unaccompanied minors as young as 14 years of age who had been imprisoned for two years, were released in April 2020 and returned to Rakhine State where they were held in COVID-19 quarantine. Individuals from this group stated that many had been required to accept the National Verification Cards in order to be released from quarantine. Recognition of citizenship rights remains disconnected from the verification process, which has not resulted in improvements in the situation of the Rohingya, including with respect to freedom of movement. There is no indication that the Government will change its policy of deprivation of citizenship or reverse its decisions made before the 2015 election to deny Rohingya the right to vote and stand for election, casting doubt on the fairness of the 2020 elections. An exclusionary vision of citizenship and Myanmar being based on the concept of “national races” continues to underpin these and other discriminatory measures.

51. There was an attempt by the Government to revise the Constitution in 2019 and 2020. However, in view of the de facto veto held by military representatives in Parliament, the proposals mostly failed. Proposed amendments would have assisted the country’s democratization, including by reducing the role of the military in government. In 2019, the General Administration Department came under civilian control, a positive move to demilitarization that occurred outside of the process of amending the Constitution.

52. Domestic law in Myanmar continues not to encompass crimes under international law and there has been no progress in amending the law to grant domestic courts jurisdiction over international crimes. Prosecutors and the judiciary continue to lack independence and fair trial rights are frequently violated. The Fair Trial Guidebook issued by the Union Attorney-General’s Office and the Code of Judicial Ethics promulgated by the Supreme Court require adherence to standards in the conduct of proceedings; these have had little impact in reality.

53. There are concerns about the Myanmar National Human Rights Commission and its compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) following the appointment in January 2020 of 11 new commissioners. While four commissioners are women, all commissioners are former civil servants, some have a military background, and all lack human rights experience. There are no representatives from civil society or from minorities. During the COVID-19 pandemic, the Commission remained silent and its only public statements were to praise the Government and the Tatmadaw for their actions, including for the declared unilateral ceasefire that excludes Rakhine State. This raises further concerns about its independence and ability to act to promote and protect human rights.

## G. Actions by the United Nations in Myanmar

54. Based on the fact-finding mission's recommendations, the United Nations country team, with the support of OHCHR, has taken numerous steps to implement the Human Rights Up Front action plan, and the subsequent call to action for human rights by the Secretary-General of the United Nations,<sup>12</sup> in all its in-country engagements. While several processes were successfully completed, the COVID-19 outbreak resulted in delays to others. A working group composed of representatives of the country team's human rights theme group and of the humanitarian country team, which also included representatives of non-governmental organizations and donors, was established to assess the relevance of the fact-finding mission's recommendations to their human rights and humanitarian work in Myanmar and to monitor the implementation of the recommendations. The independent "Rosenthal report", commissioned by the Secretary-General,<sup>13</sup> recommended, inter alia, the establishment of mechanisms to ensure continuous dialogue between donors and non-governmental organizations on human rights, and, through existing mechanisms such as the humanitarian country team's protection strategy, for the United Nations in Myanmar to monitor and report on the Government's implementation of the fact-finding mission's recommendations.

55. Central to the work of the United Nations country team was the development, supported by the Office of the Resident Coordinator, of a common human rights strategy to provide a tailored policy framework to promote respect for human rights in line with the Secretary-General's call to action for human rights and the Human Rights Up Front action plan. The strategy was developed through broad consultations with relevant stakeholders within and outside the United Nations, which also drew upon the Rosenthal report's findings. The strategy encompasses four key objectives: (a) leaving no one behind; (b) protection and promotion of human rights; (c) the standing of the United Nations as a credible, principled and effective actor; and (d) cultural change in the United Nations.

56. In 2019, OHCHR led the establishment of an early warning reporting system that has been providing the country team with monthly updates outlining human rights developments, risk assessments, and considerations for possible early actions. Relying on contributions from all United Nations entities, the system introduced a consensus-based process to data collection and analysis as part of efforts to implement the Human Rights Up Front initiative and the Secretary-General's prevention agenda. It has supported the work of the country team in terms of coordination of advocacy and in identification of synergies among existing programmes to promote Myanmar authorities' compliance with human rights standards.

57. OHCHR is supporting a process to carry out a human rights due diligence analysis of United Nations engagement with the Myanmar authorities and the private sector, in line with the Human Rights Due Diligence Policy. To this end, in August 2019, the Resident Coordinator formally notified the Government of the obligation of the United Nations to implement this process. Moreover, the United Nations country team duly noted all findings and conclusions of the fact-finding mission's report on the economic interests of the Myanmar military,<sup>14</sup> and it took concrete actions to ensure that its programmes and procurement activities undergo a thorough due diligence process. Other United Nations agencies, funds and programmes in the country have implemented their own due diligence processes to vet aspects of their own programming and project implementation.

58. In April 2019, the United Nations established a multi-stakeholder working group on the monitoring, analysis and reporting arrangements on conflict-related sexual violence. Its purpose is to systematically gather data on conflict-related sexual violence and inform trend

<sup>12</sup> See [www.un.org/sg/sites/www.un.org.sg/files/atoms/files/The\\_Highest\\_Aspiration\\_A\\_Call\\_To\\_Action\\_For\\_Human\\_Right\\_English.pdf](http://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/The_Highest_Aspiration_A_Call_To_Action_For_Human_Right_English.pdf).

<sup>13</sup> See [www.un.org/sg/sites/www.un.org.sg/files/atoms/files/Myanmar%20Report%20-%20May%202019.pdf](http://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/Myanmar%20Report%20-%20May%202019.pdf).

<sup>14</sup> A/HRC/42/CRP.3, available from [www.ohchr.org/EN/HRBodies/HRC/RegularSessions/session42/Pages/ListReports.aspx](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/session42/Pages/ListReports.aspx).

analysis, and to identify opportunities for United Nations engagement to increase the compliance of Myanmar with its international obligations. Efforts are ongoing to strengthen survivor-centred response services by working closely with partners in areas to which the United Nations has no physical access.

### III. Conclusions

59. Despite some progress, which includes finalizing the strategy for closing camps for internally displaced persons and enacting the Child Rights Law, the human rights situation in Myanmar remains of serious concern, with serious human rights violations and abuses continuing to be perpetrated with impunity in various parts of the country against individuals and sectors of the population. There has been no tangible progress towards accountability for serious human rights violations. To ensure progress in ending impunity, and associated cycles of discrimination, violence and abuse, both the Government and the Tatmadaw have to go beyond closed and arcane processes whereby the military leadership claims to hold itself accountable through its own chain of command. Statements made at the International Court of Justice in December 2019 that Myanmar would investigate and prosecute those allegedly responsible for grave violations through Myanmar's military justice system reflect this approach. It embodies a view of a military which is above the law, both national and international, and which is accountable to no one but itself. Ensuring true accountability requires independent, transparent, civilian-run mechanisms that guarantee impartiality and, consequently, build credibility and public trust. Accountability must also be supported by transitional justice processes, which include ensuring the right to truth, reparations, and guarantees of non-recurrence, all of which are currently lacking.

60. Similarly, while the authorities emphasize "the rule of law", this must go beyond a "law and order" approach that justifies oppressive policies and discriminatory attitudes which remain deeply entrenched, to one that promotes inclusiveness and respect for rights and democratic principles. Journalists, activists and civil society must be allowed to operate freely and unhindered, and be permitted to express themselves without fear of retribution for exercising such rights. A thriving country built on democracy and the rule of law needs independent voices and institutions, including those with a specific human rights mandate, and full respect for all communities without discrimination on any grounds. Until these changes occur, genuine progress towards peace, democracy and sustainable development in Myanmar cannot be achieved.

### IV. Recommendations

61. **OHCHR reiterates the recommendations contained in previous reports by the High Commissioner and human rights mechanisms, including the Special Rapporteur on the situation of human rights in Myanmar and the fact-finding mission. In addition, OHCHR makes the following recommendations.**

- (a) **To the Government of Myanmar:**
  - (i) **Immediately extend the ceasefire throughout the whole country and end violations of international humanitarian law and international human rights law, including all restrictions on humanitarian access;**
  - (ii) **Conduct prompt, independent, impartial and thorough investigations into all allegations of violations of international humanitarian law, including into conduct that may constitute war crimes and crimes against humanity in Rakhine and Chin States, and all allegations of human rights violations, and ensure that perpetrators are brought to justice through transparent and credible processes;**
  - (iii) **Acknowledge that sexual crimes have occurred in Rakhine State and other parts of the country, take concrete measures to identify perpetrators and hold them accountable, and ensure health-care and psychosocial services for survivors;**

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- (iv) **Strengthen institution-building and structural reforms to uphold the rule of law, human rights and democratic principles, through a participatory and inclusive approach – including efforts to ensure the independence of the judiciary, and reforming the security sector to enhance civilian control;**
  - (v) **Facilitate access by OHCHR to the country, pending the establishment of an OHCHR office, and engage with OHCHR on technical cooperation;**
  - (vi) **Amend the Citizenship Law of 1982, removing links between ethnicity and citizenship, and restore the citizenship of the Rohingya;**
  - (vii) **Ensure sustainable solutions for displaced persons and implement the national strategy for the closure of camps for internally displaced persons, in compliance with international standards;**
  - (viii) **Ensure that the Myanmar National Human Rights Commission fully complies with the Paris Principles, that commissioners are appointed through a transparent process, and that the Commission includes representatives from civil society and ethnic minority groups;**
  - (ix) **Issue a moratorium on land expropriation carried out under the Farmland Law of 2012, the Vacant, Fallow and Virgin Lands Management Act of 2012, and the Land Acquisition Act of 1894/Land Acquisition, Resettlement and Rehabilitation Law of 2019, until a land governance framework, compliant with the Land Use Policy adopted in 2016, is established;**
  - (x) **Create an enabling environment for the independent media and civil society, including by publicly acknowledging their value in a democratic society and by ceasing to criminalize their exercise of rights and freedoms;**
  - (xi) **Cooperate and engage meaningfully with the newly appointed Special Rapporteur on the situation of human rights in Myanmar and relevant international justice and accountability mechanisms.**
- (b) **To ethnic armed groups in Myanmar:**
    - Take all measures to end hostilities and violations of international humanitarian law and abuses of international human rights law.**
  - (c) **To the United Nations in Myanmar:**
    - (i) **Continue to pursue the implementation of the recommendations issued by the fact-finding mission and continue advocacy for accountability for perpetrators of serious crimes under international law, in a comprehensive and multifaceted manner centred on realization of victims' rights and prevention of recidivism;**
    - (ii) **Ensure that all in-country programmes incorporate a human rights-based approach and undergo due diligence processes.**
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