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

Ecuador,* Pakistan** : draft resolution

47/... Situation of human rights of Rohingya Muslims and other minorities in Myanmar

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations,

Reaffirming the Universal Declaration of Human Rights and recalling the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Right of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of All Forms of Racial Discrimination, and other relevant international human rights law,

Recalling relevant resolutions of the General Assembly and the Human Rights Council, the most recent being Assembly resolutions 75/238 of 31 December 2020 and 75/287 of 18 June 2021 and Council resolutions 29/21 of 3 July 2015, 34/22 of 24 March 2017, 37/32 of 23 March 2018, 39/2 of 27 September 2018, 40/29 of 22 March 2019, 42/3 of 26 September 2019, 43/26 of 22 June 2020, 46/21 of 24 March 2021 and S-27/1 of 5 December 2017, and Council decision 36/115 of 29 September 2017,

Welcoming the reports of the United Nations High Commissioner for Human Rights on the root causes of the human rights violations and abuses faced by the Rohingya and other minorities in Myanmar to the Human Rights Council at its forty-third session,¹ and on the implementation of the recommendations of the independent 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, submitted to the Council at its forty-fifth session,² and reiterating the urgency of full implementation of the recommendations contained in both the reports,

Noting the work and the reports of the Special Rapporteur on the situation of human rights in Myanmar, while deeply regretting the continued non-cooperation of Myanmar with

* State not a member of the Human Rights Council.

** On behalf of the States Members of the United Nations that are members of the Organization of Islamic Cooperation

¹ A/HRC/43/18.

² A/HRC/45/5.



the mandate, and the denial of access to Myanmar since December 2017, and urging Myanmar to extend full cooperation to the Special Rapporteur,

Welcoming the work of the Special Envoy of the Secretary-General on Myanmar, and encouraging her further engagement and dialogue with Myanmar and all other relevant stakeholders, including civil society, and affected populations, such as Rohingya Muslims in Myanmar,

Welcoming also the ongoing work of the Independent Mechanism for Myanmar and its annual reports,

Recalling the significant work done by the independent international fact-finding mission on Myanmar and all its reports, including its final report³ and its papers on the economic interests of the Myanmar military⁴ and on sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts,⁵ and furthermore deeply regretting the lack of cooperation of Myanmar with the fact-finding mission,

Condemning strongly the gross human rights violations and abuses perpetrated by the security and armed forces of Myanmar against Rohingya Muslims and other minorities, as evidenced by the findings of the independent international fact-finding mission on Myanmar which, according to the fact-finding mission, undoubtedly amount to the gravest crimes under international law, and regretting the continued insincerity of Myanmar in creating conducive conditions for the voluntary, safe, dignified and sustainable return of forcibly displaced Rohingya Muslims from Bangladesh to Myanmar, as highlighted by the fact-finding mission,

Reiterating its deep concern at the escalating violence as well as violations and abuses of human rights against the Rohingya Muslims and the continuing forced displacement of civilians, including of Rohingya Muslims and other ethnic minorities, thus making conditions unsuitable for the voluntary, safe, dignified and sustainable return of all refugees and forcibly displaced persons to Myanmar, including Rohingya Muslims,

Expressing its concern that recent developments resulting from the declaration of the state of emergency by the Myanmar military pose serious challenges to the voluntary, safe, dignified and sustainable return of forcibly displaced Rohingya Muslims and all internally displaced persons, including those displaced since 1 February 2021, and in this regard stressing the need to address the root causes of the crisis in Rakhine State and reaffirming the necessity of an immediate cessation of the use of military force that would lead to further displacement of Rohingya Muslims and other minorities, both internally and across borders,

Expressing its concern also at the restrictions on civil society, journalists and media workers that may exacerbate further the plight of Rohingya Muslims and other ethnic minorities in Myanmar,

Expressing its unequivocal support for the people of Myanmar and their democratic aspirations and for the democratic transition in Myanmar as well as for the need to strengthen democratic institutions and processes, to refrain from violence and to fully respect human rights, fundamental freedoms and the rule of law,

Reiterating the urgent need to ensure that all those responsible for crimes relating to violations and abuses of international law throughout Myanmar, including international human rights law, international humanitarian law and international criminal law, are held to account through credible and independent national, regional or international justice mechanisms, while recalling the authority of the Security Council in this regard,

Recognizing the complementary and mutually reinforcing work of the various United Nations mandate holders and mechanisms, including international justice and accountability mechanisms working on Myanmar to improve the humanitarian situation and the situation of human rights in the country, and noting with concern the lack of sufficient humanitarian

³ A/HRC/42/50.

⁴ A/HRC/42/CRP.3, available at www.ohchr.org/EN/HRBodies/HRC/RegularSessions/session42/Pages/ListReports.aspx.

⁵ A/HRC/42/CRP.4, available at www.ohchr.org/EN/HRBodies/HRC/RegularSessions/session42/Pages/ListReports.aspx.

access, in particular to areas with internally displaced persons, and to the affected areas from which many people continue to be forcibly displaced and in which many others are living in precarious conditions, such as Rohingya Muslims, thereby exacerbating the humanitarian crisis,

Noting the ongoing processes to ensure justice and accountability in respect of alleged crimes committed against Rohingya Muslims and other ethnic minorities in Myanmar,

Noting also that the International Criminal Court has authorized its Prosecutor to investigate alleged crimes within the Court's jurisdiction relating to the investigation *Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar*,

Welcoming the order of the International Court of Justice of 23 January 2020 that indicated provisional measures in the case lodged by the Gambia against Myanmar on the application of the Convention on the Prevention and Punishment of the Crime of Genocide, which concluded that, *prima facie*, the Court had jurisdiction to deal with the case, which found that the Rohingya in Myanmar appeared to constitute a "protected group" within the meaning of article 2 of the Convention, and that there was a real and imminent risk of irreparable prejudice to the rights of the Rohingya in Myanmar, and taking note of the reports submitted by Myanmar in response to the Court's order in this regard,

Re-emphasizing the right of all refugees and the importance of all displaced persons being able to return home, and that such returns should be in safety and dignity and in a voluntary and sustainable manner, and calling upon the international community to take collective responsibility in handling forcibly displaced persons in the region,

Noting that the Independent Commission of Enquiry established by Myanmar on 30 July 2018, notwithstanding the limits of its terms of reference and *modus operandi*, recognized in the executive summary of its final report, which has not yet been made public in its entirety, that war crimes, serious human rights violations and violations of domestic law had been committed and that there were reasonable grounds to believe that members of Myanmar security forces were involved,

Affirming the importance of the Advisory Commission on Rakhine State and the relevance of its recommendations at the time they were made, and underlining the urgency of making greater efforts to implement the recommendations of the Advisory Commission that remain relevant and of action to address the root causes of the crisis, including ending the persecution of and granting citizenship to Rohingya Muslims, freedom of movement, the elimination of systematic segregation and all forms of discrimination, and inclusive and equal access to health services and education, and birth registration, in full consultation with members of all ethnic minorities and persons in vulnerable situations, including Rohingya Muslims,

Emphasizing the importance of timely, equitable and unhindered access to safe, affordable, effective and quality medicines, vaccines, diagnostics and therapeutics, and other health-care products and technologies necessary to ensure an adequate and effective response to the coronavirus disease (COVID-19) pandemic, including for Rohingya Muslims and other ethnic minorities in Myanmar,

Underscoring the need for the implementation of and subsequent follow-up on the status of implementation of the memorandum of understanding signed by Myanmar, the United Nations Development Programme and the Office of the United Nations High Commissioner for Refugees on assistance in the repatriation process of all displaced persons from Rakhine State, including Rohingya Muslims, and calling upon Myanmar to grant United Nations agencies unfettered access to northern Rakhine so that they can engage meaningfully with the process,

Commending the ongoing remarkable humanitarian efforts that the Government of Bangladesh has extended to those fleeing human rights violations and abuses in Myanmar, in cooperation with United Nations agencies and the international community,

Expressing grave concern at the lack of genuine efforts by Myanmar to address the situation in the Rakhine State, including commencing the repatriation process in a voluntary,

safe, dignified and sustainable manner, in accordance with its bilateral agreements with Bangladesh,

Underscoring the urgency of the implementation of the national strategy for the sustainable closure of camps for internally displaced persons in Myanmar, in full consultation with United Nations agencies, humanitarian and development actors and displaced persons to ensure their voluntary, safe, dignified and sustainable return and resettlement in accordance with international standards and guarantee non-discriminatory access to citizenship, the reassertion of those persons' control over their original land and safety and security, freedom of movement, unimpeded access to livelihoods and essential services, including health services, education and shelter, and compensation for all losses,

Recalling that States have the primary responsibility to respect and protect human rights, and have the responsibility to comply with their relevant obligations to prosecute those responsible for crimes involving violations of international law, including international humanitarian law and international human rights law, and for abuses of human rights law, and to provide an effective remedy to any person whose rights have been violated, such as restitution, compensation, rehabilitation, satisfaction and guarantees of non-recurrence, with a view to ending impunity and ensuring accountability and justice,

Recognizing the important role of regional organizations, in particular, of the Association of Southeast Asian Nations, in facilitating the creation of an environment in Myanmar that is conducive to the voluntary, safe, dignified and sustainable return of forcibly displaced persons, including Rohingya Muslims to Myanmar, and reiterating the need to work in close coordination and in full consultation with Rohingya Muslims, as well as with all relevant United Nations agencies and international partners and to address the root causes of the crisis and displacement so that affected communities can rebuild their lives after their return to Myanmar,

Welcoming the statement made by the Chairman of the Association of Southeast Asian Nations on the Leaders' Meeting held on 24 April 2021 in Jakarta in which the Chairman, inter alia, encouraged the Secretary-General of the Association to continue to identify possible areas that could effectively facilitate the repatriation process for displaced persons from Rakhine State, while underscoring the importance of efforts to address the root causes of the situation in Rakhine State,

Acknowledging the efforts of the Organization of Islamic Cooperation, alongside relevant international efforts, aiming to bring peace and stability to Rakhine State, including through the work of its Secretary-General's special envoy for Myanmar,

1. *Expresses its grave concern* at continuing reports of serious human rights violations and abuses in Myanmar, in particular against Rohingya Muslims and other minorities, including of arbitrary arrests, deaths in detention, torture and other cruel, inhuman or degrading treatment or punishment, the deliberate killing and maiming of children, forced labour, the use of school buildings for military purposes, indiscriminate shelling in civilian areas, the destruction of buildings, homes and civilian properties, socioeconomic exploitation, forced displacement, hate speech and incitement to hatred, and sexual and gender-based violence against women and children, as well as restrictions on exercising the rights to freedom of religion or belief, of expression and of peaceful assembly, in particular in Rakhine, Chin, Kachin, Shan, Kayah and Kayin States and Sagaing and Mandalay regions, even during the ongoing COVID-19 pandemic;

2. *Also expresses its concern* about those who have been arbitrarily detained, charged or arrested during and in the aftermath of 1 February 2021;

3. *Calls for* engagement in a constructive and peaceful dialogue and reconciliation, in accordance with the will and interests of the people of Myanmar, including Rohingya Muslims and other ethnic minorities;

4. *Strongly condemns* all violations and abuses of human rights in Myanmar, and calls upon Myanmar to end immediately all violence and violations of international law in Myanmar, to ensure full protection of the human rights and fundamental freedoms of all persons in Myanmar, including Rohingya Muslims and other minorities, in an equal, non-discriminatory and dignified manner in order to prevent further instability and insecurity and

alleviate suffering, to address the root causes of the crisis, including by repealing or reforming all discriminatory legislation, to forge a viable, lasting and durable solution to the crisis by ensuring repatriation, to take all necessary measures to provide justice to victims, and to ensure full accountability and end impunity for all violations of human rights by undertaking a full, transparent and independent investigation into reports of all violations of international human rights law and international humanitarian law;

5. *Reiterates* the importance of conducting international, independent, fair and transparent investigations into gross human rights violations and abuses in Myanmar, including those involving sexual and gender-based violence and abuses against women and children and alleged war crimes, and of holding accountable all those responsible for brutal acts and crimes against all persons, including Rohingya Muslims, in order to deliver justice to victims using all appropriate legal instruments and domestic, regional and international judicial mechanisms, including the International Court of Justice and the International Criminal Court, as applicable;

6. *Welcomes* the order of the International Court of Justice of 23 January 2020 that indicated provisional measures, and urges Myanmar, in accordance with the Court's order in relation to members of the Rohingya in its territory, to take all measures within its power to prevent the commission of all acts within the scope of article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide, to ensure that its military and any irregular armed units that may be directed or supported by it and any organizations and persons that may be subject to its control, direction or influence do not commit, inter alia, any such acts, to prevent the destruction and ensure the preservation of evidence and to report to the Court as ordered on all measures taken to give effect to the order;

7. *Expresses deep concern* that, despite the provisional measures ordered by the International Court of Justice on 23 January 2020, Rohingya Muslims in Myanmar, including women and children, continue to suffer from targeted killings, indiscriminate violence and serious injuries, including by indiscriminate fire, shelling, landmines or unexploded ordnance;

8. *Calls for* the immediate cessation of fighting and hostilities, of the targeting of civilians and of all violations and abuses of international human rights law and international humanitarian law, and the implementation of an inclusive and comprehensive national political dialogue and nationwide reconciliation process while ensuring the full, effective and meaningful participation of all ethnic groups, including Rohingya Muslims and other minorities, women and young people, and persons with disabilities, as well as civil society and religious leaders, with the objective of achieving lasting peace, and also calls for a peaceful resolution through dialogue towards national unity;

9. *Reiterates* its urgent call upon Myanmar to take the measures necessary to promote the inclusion, human rights and dignity of all people living in Myanmar, to address the spread of discrimination and prejudice, and to take credible steps to end legal and factual discrimination against ethnic and religious minorities, including Rohingya Muslims;

10. *Calls upon* Myanmar to combat incitement to hatred and hate speech against Rohingya Muslims and other minorities by publicly condemning such acts and enacting necessary anti-hate speech laws, in accordance with international human rights law, and by promoting interfaith dialogue in cooperation with the international community, and encourages political, religious and community leaders in the country to work towards national unity through dialogue;

11. *Also calls upon* Myanmar to lift the shutdown of Internet and telecommunication services fully in all areas in Myanmar, including Rakhine State, and to repeal article 77 of the Telecommunications Act in order to avoid any further cutting of Internet and telecommunications access and the stifling of the rights to freedom of opinion and expression, including freedom to seek, receive and impart information, in accordance with international human rights law;

12. *Further calls upon* Myanmar to protect the rights of all children, including Rohingya children, to acquire citizenship in order to eliminate statelessness, in accordance with the obligations of Myanmar under the Convention on the Rights of the Child, to ensure

the protection of all children in armed conflict, and to end the illegal recruitment and use of children in forced labour;

13. *Urges* Myanmar to cooperate fully with and to grant full, unrestricted and unmonitored access to all United Nations mandate holders and human rights mechanisms, including the Special Rapporteur on the situation of human rights in Myanmar, the Special Envoy of the Secretary-General on Myanmar, the Independent Mechanism for Myanmar established by the Human Rights Council in its resolution 39/2, referred to by the Secretary-General as the Independent Investigative Mechanism for Myanmar in his terms of reference for the Mechanism, relevant United Nations agencies and international and regional human rights bodies to independently monitor the situation of human rights, and to ensure that individuals can cooperate without hindrance with these mechanisms without fear of reprisal, intimidation or attack, and expresses deep concern that international access to affected areas, including Northern Rakhine State remains severely restricted for the international community, including for United Nations agencies, humanitarian actors and international media;

14. *Welcomes* the work of the Independent Mechanism for Myanmar, established by the Human Rights Council in its resolution 39/2, to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011, in particular in Rakhine, Kachin and Shan States, making use of the information handed over by the independent international fact-finding mission, and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have, or may in the future have, jurisdiction over these crimes, in accordance with international law, and its reports submitted to the Human Rights Council;

15. *Calls for* close cooperation between the Independent Mechanism for Myanmar and any ongoing or future investigations pertaining to serious international crimes and violations of international law in Myanmar by national, regional or international courts or tribunals;

16. *Calls upon* the United Nations to ensure that the Independent Mechanism for Myanmar is afforded the flexibility that it needs in terms of staffing, location and operational freedom so that it can deliver as effectively as possible on its mandate, and urges Myanmar, States, in particular those in the region, judicial authorities and private entities to fully cooperate with the Mechanism, including by granting it access and by providing it with every assistance in the execution of its mandate;

17. *Reiterates* the importance of the implementation of the recommendations contained in the reports of the independent international fact-finding mission, and urges Myanmar and the international community to give due consideration in this regard;

18. *Also reiterates* the importance of the full implementation of all recommendations of the Advisory Commission on Rakhine State to address the root causes of the crisis, including those on the right to nationality and equal access to citizenship, freedom of movement, the elimination of systematic segregation and all forms of discrimination, and inclusive and equal access to health services and education, and birth registration, in full consultation with all ethnic and religious minorities and persons in vulnerable situations, including Rohingya Muslims, and with civil society;

19. *Calls upon* Myanmar to make serious efforts to eliminate statelessness and the systematic and institutionalized discrimination against members of ethnic and religious minorities, in particular relating to Rohingya Muslims, by, inter alia, repealing and replacing the 1982 Citizenship Law, which has led to the deprivation of human rights; by ensuring everyone's right to a nationality and equal access of all people in Myanmar, in particular Rohingya Muslims, to full citizenship through a transparent, voluntary and accessible procedure and to all civil and political rights by allowing for self-identification; by amending or repealing all discriminatory legislation and policies, including discriminatory provisions of the set of "protection of race and religion laws" enacted in 2015 covering religious conversion, interfaith marriage, monogamy and population control; and by lifting all local

orders restricting the rights to freedom of movement and access to civil registration, health and education services and livelihoods;

20. *Also calls upon* Myanmar to rapidly implement the five-point consensus reached at the Leaders' Meeting of the Association of Southeast Asian Nations held on 24 April 2021 to facilitate a peaceful solution through inclusive dialogue and the immediate cessation of violence in the interests of the people of Myanmar and their livelihoods, including of Rohingya Muslims and other ethnic minorities, and to that end calls upon all stakeholders in Myanmar to cooperate with the Association and the special envoy of the Chair of the Association, and expresses its support for these efforts;

21. *Encourages* the Special Envoy of the Secretary-General to continue her engagement towards dialogue with Myanmar and all other relevant stakeholders, including civil society, and affected populations, such as Rohingya Muslims and other minorities in Myanmar, aiming at the early resolution of the crisis in Myanmar;

22. *Encourages* Myanmar to review and repeal the amendments made in 2018 to the Vacant, Fallow and Virgin Lands Management Law, and to establish an inclusive land governance framework and to resolve issues of land tenure, in full consultation with affected populations, including ethnic and religious minority communities, in particular Rohingya Muslims;

23. *Urges* Myanmar to take all measures necessary to reverse and abandon policies, directives and practices that marginalize Rohingya Muslims and other minorities, to prevent the destruction of places of worship, cemeteries, infrastructure and commercial or residential buildings belonging to all people, to ensure that all displaced persons, including Rohingya Muslims and persons belonging to other minorities, in Rakhine State and throughout Myanmar, including the 128,000 Rohingya and Kaman Muslims who have been confined in camps in central Rakhine since 2012, can return to their homes and properties with freedom of movement and unimpeded access to livelihoods and essential services, to review relevant laws, and to address the root causes of their vulnerable situations and forced displacement;

24. *Calls upon* Myanmar to dismantle the camps for internally displaced persons in Rakhine State with a clear timeline, ensuring that the return or relocation of internally displaced persons is carried out in accordance with international standards and best practices, including those set forth in the Guiding Principles on Internal Displacement⁶, in cooperation with the United Nations and the international community;

25. *Also calls upon* Myanmar, in line with the bilateral instruments on repatriation signed by Bangladesh and Myanmar, to take concrete steps towards the creation of a conducive environment for the voluntary safe, dignified and sustainable return of the forcibly displaced Rohingya Muslims and other minorities of Myanmar temporarily sheltering in Bangladesh, and to disseminate authentic information, in partnership with the United Nations and other relevant actors, on the conditions in Rakhine State in order to reasonably address the core concerns of Rohingya Muslims;

26. *Further calls upon* Myanmar to build trust among Rohingya Muslims in camps in Bangladesh for their return to Myanmar through confidence-building measures, including direct communication between Rohingya representatives and Myanmar authorities and by arranging "go and see" visits to Rakhine State by Rohingya representatives, and thereby encourage them to return to their places of origin in Myanmar;

27. *Urges* Myanmar to immediately commence the voluntary, safe, dignified and sustainable return and reintegration of all forcibly displaced Rohingya Muslims and other minorities from Bangladesh to Myanmar, including by extending full cooperation to the Government of Bangladesh and the United Nations, in particular the Office of the United Nations High Commissioner for Refugees, and, as applicable, the Coordinating Centre for Humanitarian Assistance on Disaster Management of the Association of Southeast Asian Nations, with the assurance of providing returnees with freedom of movement and

⁶ E/CN.4/1998/53/Add.2, annex.

unimpeded access to livelihoods and social services, including health services, education and shelter, and compensating them for all losses;

28. *Calls upon* the United Nations and encourages other international agencies to provide all support necessary for the Government of Bangladesh and Myanmar to expedite the voluntary, safe, dignified and sustainable return of forcibly displaced Rohingya Muslims and other minorities from Myanmar, including internally displaced persons;

29. *Expresses grave concern* at the continuing restrictions on humanitarian access, in particular in Rakhine, Chin, Kachin, Shan, Kayah and Kayin States, and calls upon Myanmar to ensure full respect for international humanitarian law and to allow the full, safe and unhindered access of humanitarian personnel to all areas in Myanmar, and to provide humanitarian assistance, including age- and gender-responsive assistance, as well as the delivery of supplies and equipment, in order to allow such personnel to perform efficiently their tasks of assisting the affected civilian populations, including internally displaced persons, and encourages it to grant access to the diplomatic corps, independent observers and representatives of the national and international independent media, without fear of reprisals;

30. *Expresses concern* at the continued irregular maritime movement of Rohingya Muslims, who risk their lives in perilous conditions at the hands of exploitative smugglers and human traffickers, which highlights their desperate situation and the urgent need to address the root causes of their plight, and calls upon the international community to effectively address such irregular maritime movements of Rohingya Muslims, in cooperation with the relevant United Nations agencies, and to ensure international burden- and responsibility-sharing, especially by the States parties to the 1951 Convention relating to the Status of Refugees;

31. *Encourages* the international community, in the true spirit of interdependence and equal burden- and responsibility-sharing, to continue to assist Bangladesh in the provision of humanitarian assistance to forcibly displaced Rohingya Muslims and other minorities until their return to Myanmar, and to assist Myanmar in the provision of humanitarian assistance to all affected persons of all communities displaced internally in Myanmar, including in Rakhine State, taking into account the vulnerable situation of women, children, older persons and persons with disabilities;

32. *Encourages* all business enterprises, including transnational corporations and domestic enterprises operating in Myanmar, to implement the Guiding Principles on Business and Human Rights;

33. *Requests* the United Nations High Commissioner for Human Rights to monitor and follow up on the implementation of the recommendations made by the independent international fact-finding mission, including those on accountability, and to continue to track progress in the situation of human rights in Myanmar, including of Rohingya Muslims and other minorities, with the support of specialist experts and in complementarity to the work of the Independent Mechanism for Myanmar and the reports of the Special Rapporteur, and to present an oral update to the Human Rights Council at its fiftieth session and a written report at its fifty-second session, each to be followed by an interactive dialogue, and a written report to the General Assembly at its seventy-seventh session;

34. *Decides* to hold a panel discussion on the root causes of human rights violations and abuses against Rohingya Muslims and other minorities in Myanmar at its fiftieth regular session, and requests the High Commissioner to submit a report on the panel discussion to the Human Rights Council at its fifty-second session.