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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

Situation of human rights of Rohingya Muslim minority and other minorities in Myanmar

Report of the United Nations High Commissioner for Human Rights

Summary

The present report is submitted pursuant to resolution 39/2 of the Human Rights Council, which requests the Office of the United Nations High Commissioner for Human Rights (OHCHR) to submit to its forty-third session a report on the “root causes of the human rights violations and abuses the Rohingya Muslim minority and other minorities in Myanmar are facing”. The report identifies factors that underlie the historical and current patterns of human rights violations and abuses against ethnic and religious minorities in Myanmar, and concludes with recommendations on measures to be taken by the Government, the international community and other stakeholders to improve the situation.

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I. Introduction

1. In its resolution 39/2, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to submit to its forty-third session a report on the “root causes of the human rights violations and abuses the Rohingya Muslim minority and other minorities in Myanmar are facing, including discrimination, racial intolerance and xenophobia and Islamophobic practices, in violations of international human rights law and contrary to international declarations, including but not limited to the Durban Declaration and Programme of Action, and to recommend concrete measures to be taken by the Government of Myanmar and the international community to address the current situation”.

2. The report was prepared based on primary and secondary information which OHCHR collected from various sources, including the United Nations, civil society organizations, representatives of ethnic and religious minority communities, diplomats, academics and other experts. Given the limited access to locations outside of Yangon, including areas predominantly populated by ethnic and religious minorities, OHCHR sought other means of verification to determine the reliability of information received, including interviews with ethnic and religious minority representatives in countries outside of Myanmar. All information was subject to rigorous verification on the grounds of relevance, veracity and accuracy. In response to the questionnaire sent by OHCHR, the Government of Myanmar provided information through a Note Verbale dated 3 February 2020, and comments on the draft report were also received through a Note Verbale dated 24 February 2020. Efforts have been made to reflect the received information where relevant.

3. The report should be read in conjunction with the 2016 report of the High Commissioner to the Human Rights Council on the situation human rights of Rohingya Muslims and other minorities in Myanmar (A/HRC/32/18) and the 2019 report of the High Commissioner on the situation of human rights of Rohingya in Rakhine State (A/HRC/40/37). Considering the extensive documentation of the human rights situation in Myanmar contained in these reports, and in the reports of the successive Special Rapporteurs on the situation of human rights in Myanmar and of the Independent International Fact-Finding Mission on Myanmar (“Fact-Finding Mission”), this report seeks to avoid repeating previous findings.

II. Root causes of the human rights violations and abuses against the Rohingya and other minorities in Myanmar

4. Violations and abuses against minorities in Myanmar affect the entire spectrum of civil, cultural, economic, political and social rights, and are engrained in the history and fabric of society at large. In addition to the institutionalized persecution of the Rohingya in Rakhine State, long-standing armed conflicts have continued to lead to serious violations and abuses of human rights of ethnic minorities in other states, including extrajudicial killings, arbitrary arrest and detention, torture, forced labour and sexual and gender-based violence, and extensive forced displacement¹. This situation has gravely hampered the ability of minorities to enjoy other rights, including freedom of movement, health, education, and impose significant limitations to livelihood opportunities, thereby perpetuating a cycle of marginalization and poverty. Additionally, development and infrastructure projects planned or undertaken without genuine consultation and compensation have dispossessed affected communities of land, resources and livelihoods, exacerbating inequalities. The Fact-Finding Mission concluded that the serious violations it had documented amounted to war crimes and crimes against humanity and, concerning the persecution of the Rohingya in Rakhine State, that there is a case to answer with respect to genocide.

5. The root causes of the human rights violations against Rohingya and other minorities in Myanmar are complex, multi-dimensional and longstanding. Unpacking and untangling this multi-faceted human rights challenge therefore requires a broader historical analysis,

¹ See A/HRC/32/18 and A/HRC/40/37

including the political, legal, economic and social dimensions, as a prerequisite for recommending possible solutions. In doing so, this report relies on the minority rights framework², which is based on the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities³ and other relevant international human rights law, including article 30 of the Convention on the Rights of the Child, as well as other key international instruments, such as the Durban Declaration and Programme of Action⁴ and the Rabat Plan of Action on prohibition of national, racial or religious hatred.

6. Addressing the root causes of discrimination and human rights violations against ethnic and religious minorities and ensuring accountability is fundamental to achieving peace in Myanmar, consolidating democratic transition and rebuilding society based on the principles of equality and non-discrimination. These principles are also a necessary foundation for sustainable development, as reflected in the 2030 Sustainable Development Agenda which is cornered around the principle of “leaving no one behind”, including Goal 16 to “promote peaceful and inclusive societies, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”.

7. The Government of Myanmar has reflected this nexus between peace and development in the Myanmar Sustainable Development Plan (2018-2030), recognizing “that the generation and perpetuation of conflict is driven by mistrust between groups, the lack of transparent and accountable public institutions to express and address grievances, the exclusion and marginalization of people from decision making processes as well as pervasive sense of injustice generated by inequitable distribution of resources.”⁵ The recognition of these issues also lie at the core of the ongoing peace process and aspirations for a democratic, federal Union under the auspices of the Union Peace Conference – 21st Century Panglong, and the prospects for meaningful progress.

a. Historical legacies

8. The origins of mistrust and divisions among Myanmar’s ethnic groups can be traced back to centuries of competition and conflict between rival ethnic kingdoms, which ultimately saw the ascendancy of the majority Burmans (*Bamar*) who considered the territories and inhabitants of other ethnic communities as subjects. British colonial rule sharpened these ethnic fault lines solidifying ethnic identities which were previously more fluid, relational and context-dependent,⁶ for the purpose of colonial administration. Burman nationalism evolved in opposition to colonial rule, but also to other ethnic groups which, through association with the British, were perceived to enjoy economic advantage and as a threat to the Burman people and their way of life⁷. The Second World War created further divisions, with different groups fighting alongside the British or Japan.

9. A potential turning point on the path to independence came with the historic 1947 Panglong Agreement, which aimed at establishing a federal union firmly grounded in respect for minority rights and “full autonomy in internal administration”. The failure of successive

² The use of the minority rights framework does not exclude the possibility that some of the minority groups in Myanmar may also self-identify as indigenous. For both minority rights and indigenous rights, the United Nations upholds the principle of self-identification, which means that the decision to belong to a minority or an indigenous group is an individual choice and that no disadvantage should arise from the exercise of such choice. The existence of minorities in a State is also to be determined by fact (“on objective and subjective criteria”) and not merely by a decision of the State. The factors to be considered in determining which groups are in need of protection as minorities is the question of access to power (the position of non-dominance) and vulnerability to exclusion, though numerical size and demographics may be a consideration. The use of the term “minority” in this report, as opposed to those such as “ethnic nationalities” or “national races”, is done in recognition of the status of minorities and the rights accorded thereon in international law.

³ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Minorities.aspx>

⁴ https://www.ohchr.org/Documents/Publications/Durban_text_en.pdf

⁵ Myanmar Sustainable Development Plan (2018-2030), Ministry of Planning and Finance, p. 8.

⁶ Walton, M.J. “Ethnicity and Burman Privilege in Contemporary Myanmar”, 2012.

⁷ Ibid., 2012, op.cit.

governments to materialize the vision of Panglong has remained a key source of ethnic grievance, and remains the main challenge to the current peace process.

b. Military rule and “Burmanization”

10. Following the military coup in 1962, ethno-nationalist ideology became a mainstay of military rule. Although never formally declared a state policy, this has been widely perceived as a process of “Burmanization” of the State and society, which implied purging all forms of foreign influence and galvanizing national unity through promotion of the Burman language and culture and the Buddhist religion, while suppressing ethnic identities and aspirations, including for federalism, portraying them as threats to national stability and unity⁸.

11. Under the socialist policies of General Ne Win, steps were taken to curb foreign influence in the national economy such as the 1963 Enterprise Nationalization Law, and over time there was an exodus of approximately 500,000 to 800,000 ethnic Chinese and Indians⁹. The education system and State institutions, including the State-owned media, were used to promote a unitary national identity based on Burman culture and history, with Burmese as a “unifying” language¹⁰ and Buddhism as the dominant religion. This trend was also manifest in the renaming of cities, streets, geographical landmarks from indigenous to Burmese¹¹; curriculum and textbooks that taught history only through a Burman lens¹²; construction of museums to institutionalize “Myanmar national culture”¹³; outlawing or terminating instruction in many ethnic languages¹⁴ beyond fourth grade in education, placing non-native speakers of Burmese at an educational disadvantage¹⁵; and exclusion of ethnic minorities from senior levels in the military and the Government¹⁶. Restrictions on non-Buddhist religious groups were strictly enforced, including on educational activities, meetings, and importation and local publication of the Bible, Qur’an and other Christian and Islamic texts. Permissions were frequently denied for building or reconstructing Crosses and churches, which were often targeted and destroyed by the military in conflict areas. Some restrictions on religious activities and publications by non-Buddhists and on use of ethnic languages have been relaxed since 2011, but many legacies of these policies unfortunately remain..

c. Armed conflicts, displacement and poverty

12. While the successive military governments suppressed and restricted democratic rights and freedoms for all people in the country, the ethnic/religious minorities bore the brunt of some of the worst human rights violations, especially in the context of “counter-insurgency” whereby the military targeted civilians through its “four cuts” strategy¹⁷. The protracted conflicts with ethnic armed groups has allowed the military – in the absence of any external threat – to legitimize its own central and outsized role in politics for over half a century. They also provided a context for the commission of grave human rights violations against ethnic and religious minorities by the military and, to a lesser extent, ethnic armed organizations. Such violations have included extrajudicial killings, arbitrary arrest and detention, torture and forced labour. The use of sexual and gender-based violence by the

⁸ Centre for Peace and Conflict Studies 2010, quoted in Walton, 2012.

⁹ Holmes, R. “Burmese Domestic Policy: Politics of Burmanization”, 1967.

¹⁰ South, A. & Lall, M., “Language, Education and the Peace Process in Myanmar”, 2016.

¹¹ South, A., “Karen Nationalist Communities: the ‘Problem’ of diversity”, 2007.

¹² South, A. & Lall, M., 2016, op.cit.

¹³ Gravers, M. (ed.), “Exploring ethnic diversity in Burma”, 2007.

¹⁴ Walton, 2012.

¹⁵ Ibid.

¹⁶ Smith, M., Minority Rights Group, “Burma (Myanmar): The Time for Change”, 2002.

¹⁷ “Four Cuts” counter-insurgency policy was initiated in 1960s and still reportedly implemented, through “clearance operations” in which civilians are killed, entire villages are destroyed and resulting in mass displacement. See para. 76, A/HRC/39/64.

military, extensively documented by women's organizations over decades, and most recently by the Fact-Finding Mission, was part of this counter-insurgency strategy.

13. The conflicts in Myanmar have also been driven by economic interests as the military and some ethnic armed groups and militias have been competing for control of land and natural resources¹⁸. This has created hugely lucrative illegal economies and business concessions in logging, gems, minerals, wildlife trafficking, and drug -trafficking. Majority of the profits have gone to private interests of the military and political elite, as well as to paramilitary groups and foreign corporations¹⁹, while further depriving ethnic populations of economic opportunities and weakening social cohesion within the communities.

14. Severe horizontal inequalities exist between the ethnic border areas and the majority Burman-inhabited central region with regard to poverty levels, access to economic opportunities and public services. Ethnic States representing the geographical areas of seven main ethnic groups have historically received the smallest amounts of budget allocations on education in the country, and literacy rates in those areas are all below national average, the most prominent in Shan State at 75 per cent compared to the Union average of 90 per cent.²⁰ The current Government has been progressively increasing social spending, for instance with the introduction of cash transfer schemes in some of the poorest ethnic areas, such as Chin and Rakhine States, and prioritizing electrification and road connectivity in remote rural areas. Efforts to expand health care coverage and facilitate birth registration in Rakhine State, including through mobile teams, are underway. However, the "peace dividend" expected with the extension of the Nationwide Ceasefire Agreement²¹ has not materialized in many areas, as people live in-between Government and ethnic armed group control and the so-called interim arrangements for power sharing foreseen in the Agreement remain largely unfulfilled.

15. Over several decades, the conflicts have also generated waves of displacement of ethnic minority communities, both within Myanmar and to neighbouring countries (often in irregular and vulnerable situations), which has "hollowed out" ethnic minority areas. This has been compounded by prevalent land-grabbing, the harmful impact of extractive industries and infrastructure projects, as well as recurrent natural disasters. For instance, the 2012 "Vacant, Fallow and Virgin Land Law", under which the State can reallocate land it labels as "vacant, fallow and virgin" (but which is often actively cultivated by farmers) to third parties,²² created widespread fear among traditional communities in ethnic minority regions that it would lead to usurpation of customary land use rights and lead to forced evictions. Approximately 241,000 people in Myanmar remain internally displaced²³, living in camps in Kachin, Shan, Rakhine, Chin, and Kayin States, with limited access to services. Humanitarian actors have been struggling to access the displaced population due to restrictions placed by the authorities. In addition to 914,998²⁴ Rohingya in Bangladesh as at 30 November 2019, there were 93,333²⁵ refugees from Myanmar in Thailand and an unknown number in China. While repatriation efforts by the Governments of Myanmar and Thailand have been underway, cross-border organizations assisting refugees from Myanmar in Thailand have seen a dramatic reduction in funding in the past years for life-saving and other forms of assistance. Rates of depression and suicide have reportedly increased in camps in Thailand, as well as domestic violence, drug and alcohol dependency.²⁶

¹⁸ See A/HRC/42/CRP.3

¹⁹ A/HRC/40/68, para. 7.

²⁰ 2014 census, <https://unstats.un.org/unsd/demographic-social/census/documents/Myanmar/MMR-2015-05.pdf>

²¹ Signed in 2015 between the Government and 10 out of the 15 invited ethnic armed organisations

²² Transnational Institute, "Access Denied - Land Rights and Ethnic Conflict in Burma", 2013, p. 3.

²³ <https://www.unocha.org/myanmar/about-ocha-myanmar> (last accessed: 23/01/2020)

²⁴ <https://data2.unhcr.org/en/documents/download/73363>

²⁵ https://www-unhcr.org.th/sites/default/u11/Refugee%20Population%20Overview_December%202019_0.pdf

²⁶ Progressive Voice (2019), "There is no one who does not miss home: a report on protracted displacement due to armed conflict in Burma/Myanmar", p. 130.

d. Institutionalization of discrimination against ethnic and religious minorities

16. Myanmar's military governments constructed a legal regime which institutionalized discrimination against minorities. Among the laws that are still in force, the most notable one relates to citizenship²⁷. The 1982 Citizenship Law established a hierarchy of three citizenship classes, granting full citizenship to those belonging to "national races", a category primarily based on ethnicity and conferring lesser forms of 'associate' and 'naturalized' citizenship to others.²⁸ 'Associate' and 'naturalized' citizens possess fewer rights than 'full' citizens, and their citizenship can be revoked on the basis of vague and broad grounds, for instance if they are found to show 'disaffection or disloyalty to the State'.²⁹ The detrimental impact of the citizenship regime and its discriminatory implementation on Rohingya in particular has been widely documented, however, there has been a gradual degradation in citizenship rights for other Muslims over the last generation. This has led to a significant exodus to countries in the region, where they have been suffering situations of extreme vulnerability due to lack of documentation and discrimination by local authorities and host communities which deprive them of the possibilities for employment, education and healthcare, leaving many destitute³⁰.

17. Other laws with discriminatory effect on ethnic/religious minorities include those restricting freedom of religion, especially for non-Buddhists. Article 354 places limitations that can be used to justify arbitrary restrictions on freedom of religion or belief of religious minorities on grounds such as "public order and morality", "law and order" and "union security".³¹ In addition, the Penal Code includes several colonial-era offences against religion ('blasphemy laws').³² The four "Race and Religion" laws adopted in 2015 appear to specifically target non-Buddhists, in particular Muslims, and contain elements that are discriminatory against women.³³ These laws impose restrictions on marriage, religious conversion, extra-marital relations and population control measures. Although these laws have generally not been enforced, no steps have been taken towards their repeal.

e. Authoritarianism, impunity and democratic deficits

18. A further root cause of the ongoing violations against minorities are the structural democratic deficits and the weakness in the rule of law and institutions, including the judiciary, generated by decades of authoritarian rule.

19. The entrenched impunity of the military has been well documented³⁴ and is safeguarded by the Constitution,³⁵ the 1959 Defence Services Act, the 2016 Presidential Security Act, and the 1995 Myanmar Police Force Maintenance of Discipline Law. Prosecutions of military elements for violations against ethnic minorities have been rare and perpetrators were often given reduced sentences or spared from serving full sentences while victims were left without adequate remedy. The successive national commissions of inquiry established over allegations of human rights violations have been characterized by serious shortcomings in terms of independence and impartiality.³⁶ In the absence of meaningful prospects for accountability at the domestic level, efforts have intensified at the international

²⁷ See para. 19, A/HRC/32/18; paras. 21-28, A/HRC/40/37.

²⁸ <http://static1.squarespace.com/static/5bbb229a29f2cc31b47fa99c/t/5da8434db69a1b13995644df/1571308367034/Myanmar-Freedom+of+religion+brief-Advocacy-Analysis+brief-2019-ENG.pdf>;

A/HRC/40/68.

²⁹ 1982 Citizenship Law, sections 35(d) and 58(d).

³⁰ Burma Human Rights Network, "Existence Denied", 2018.

³¹ Christian Solidarity Worldwide, *op.cit.*, pp. 28-29.

³² Articles 295, 295(a) and 298; Myanmar Penal Code (1861)

³³ A/HRC/32/18, para. 20.

³⁴ A/69/398, para. 65.

³⁵ Article 343(b) of the Constitution makes decisions of the Commander-in-Chief concerning military justice matters "final and conclusive", with no right to appeal

³⁶ ICJ, <https://www.icj.org/myanmar-reverse-laws-and-practices-that-perpetuate-military-impunity-new-icj-report/>

level, before the International Court of Justice and at the International Criminal Court, and with the establishment of the Independent International Mechanism on Myanmar.

20. The weakness and lack of independence of the judiciary also remains detrimental to the rule of law. Overt influence of the military over civilian court proceedings, widespread corruption, violations of basic fair trial rights, and reluctance of prosecution to accept petitions from victims of gross human rights violations to initiate criminal proceedings³⁷ affect both minorities and the majority population. Legal representation and access to judicial remedies, both for criminal and civilian cases, are further compromised by the difficult economic situation of most victims. The barriers routinely faced by minorities, particularly women, in the justice system and the general mistrust in the State means that the majority of people not utilize formal justice mechanism³⁸. Lawyers, victims or their families are often subjected to intimidation, reprisals and disciplinary actions³⁹. Discrimination against ethnic and religious minority lawyers is another obstacle to members of minorities who seek justice⁴⁰.

21. Institutions with the potential for promoting and protecting minority rights remain weak. In 2016, a dedicated Ministry of Ethnic Affairs was established following the enactment of the Ethnic Rights Protection Law. According to the Government's submission, the Ministry is engaged in a number of initiatives aimed to improve the situation of ethnic minorities including in the fields of language, education, culture and health, and is currently drafting a strategy for ethnic rights in Myanmar.⁴¹ While the Ministry is mandated to "effectively protect the rights of ethnic groups in accordance with the law"⁴², and the law provides a mechanism through which violations of rights can be reported to State or Regional Ministerial Departments of Ethnic Affairs, its capacity appears limited and the availability of this remedy seems little known and seldom used. The Myanmar National Human Rights Commission lacks the necessary independence from the executive and has no members from minority communities.⁴³ Although the General Administration Department has been transferred to a civilian ministry, the military-appointed and led Ministry of Border Affairs plays a key role in the administration of ethnic minority areas, including on matters of security and education.

22. One of the key objectives of the current peace process is to achieve greater devolution and federalism. The State and regional parliaments, which should provide greater representation for ethnic minorities, have a quota of 25 per cent for military members, like the Union Parliament, and generally lack significant powers⁴⁴. In some States, the Chief Ministers have been appointed by the central Government instead of being from the winning ethnic party in the given State. In 2015, the Rohingya, who were eligible to vote in all post-independence elections, were stripped of their voting rights. No Muslims were selected to stand as candidates in the 2015 general election, and none have been appointed to leadership roles within the current administration⁴⁵. With little transparency, voting was also cancelled in some areas which were deemed by the Union Election Commission to be insecure or conflict-affected, thereby disenfranchizing ethnic minority voters⁴⁶.

f. Gender inequality

23. The situation of women and girls from minority groups is further marked by deeply entrenched gender inequality and patriarchal attitudes, in traditional culture and religious

³⁷ Ibid.

³⁸ P. 148, Progressive Voice, op.cit.

³⁹ <http://www.burmalibrary.org/docs16/ICJ-MYANMAR-Right-to-Counsel-en-red.pdf>

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Permanent Mission of the Union of Myanmar to the United Nations Office and other International Organizations, Note Verbale, 24 January 2020

⁴³ A/71/361, para. 14; <https://www.ibanet.org/Document/Default.aspx?DocumentUid=DE0EE11D-9878-4685-A20F-9A0AAF6C3F3E>.

⁴⁴ Article 161(d)

⁴⁵ BHRN, 2018, para. 27, op.cit.

⁴⁶ International Crisis Group "Peace and Electoral Democracy in Myanmar", 2019, p. 12.

practices, as well as in domestic legislation, policy and practice⁴⁷. The notion of male superiority is ingrained in Burmese society that deems men to have innate qualities unattainable by women (the concept of *Hpon*), as well as among many of the minority groups, perpetuating patriarchal attitudes and discriminatory gender stereotypes that continue to shape familial relationships, the gendered division of labour and underrepresentation of women in political decision-making. This situation has created a culture of social acceptance of gender-based violence against women and girls⁴⁸. Moreover, the gendered impact of the conflict also further negatively affected enjoyment of a whole spectrum of human rights by women and girls including basic economic and social rights, and conflict and development-induced displacement have been a significant cause of feminization of poverty, migration and trafficking of ethnic minority women.⁴⁹

24. Sexual and gender-based violence has been used as a tool in the context of ethnic conflicts, primarily as a means of destroying the social fabric of non-Burman communities. The systematic use by the military of sexual and gender-based violence (including gang rape, sexual slavery and sexual torture) and the impunity for such acts, has been extensively documented by women's organizations over decades as "part of a deliberate strategy to intimidate, terrorize or punish a civilian population, and [...] a tactic of war"⁵⁰. Testimony recorded, including most recently by the Fact-Finding Mission, highlights how brutal sexual violence against women and girls, as well as men, boys and transgender persons, aimed at destroying those targeted (physically and spiritually) as well as their communities. For many years, Rohingya women were denied reproductive and sexual rights, restricted to a strict two-child policy and subject to sanctions under the Penal Code⁵¹.

g. Contemporary drivers of discrimination

25. While the factors described in previous sections can be identified as root causes of the widespread and serious violations of the rights of minorities in Myanmar, these alone do not explain the recent intensification of violence in Rakhine State and the persecution of Muslims, in particular of the Rohingya. A number of contemporary factors must be considered.

26. Although there were episodes of anti-Muslim violence in the past, the ongoing wave of Islamophobia in Myanmar has been fuelled by a burgeoning Buddhist ultra-nationalism that has drawn significant support from the majority population since 2012. The role of the "969 movement" and MaBaTha (the Organization for the Protection of Race and Religion) in fuelling anti-Muslim bias and rumours and creating fear and hatred among the Buddhist population has been particularly prominent.

27. These movements have been spearheaded by ultra-nationalist monks who have disseminated negative stereotypes and prejudices against Islam and Muslims as posing an existential threat to Burman race and Buddhist religion in Myanmar. They have used international narratives on the global "war on terror" and alleged examples of "Islamization" in other countries to reinforce fearmongering. The Rohingya have been targeted, in racist terms, as "Bengali" immigrants living illegally in Myanmar, and in Islamophobic terms, as a source of violent Islamic extremism. While traditional mediums such as sermons and pamphlets have been influential, Facebook and other social media have had a significant multiplier effect in spreading hate.

⁴⁷ See CEDAW/C/MMR/CO/4-5.

⁴⁸ In 2014, the Gender Equality Network, a coalition of over hundred civil society organizations, found that almost half of the women surveyed had experienced either non-partner rape, sexual assault, or sexual harassment.

⁴⁹ Kachin Women's Association "Instability in Burma fuelling trafficking of Kachin women to China".

⁵⁰ A/HRC/39/64, para. 39.

⁵¹ Human Rights Watch, "Submission to the Committee on the Elimination of Discrimination against Women regarding Myanmar's exceptional report on the situation of women and girls from northern Rakhine State", May 2018, p. 7.

28. Furthermore, the ability of Buddhist ultra-nationalists to exert influence on state institutions as well as society at large has culminated in the adoption of the four “race and religion laws” following aggressive advocacy to legally restrict religious freedom to defend Buddhism. Their anti-Muslim campaign has directly led to mob violence, boycotting and attacking of Muslim businesses, obstructing Muslim religious practice, demolishing Muslim schools and homes, declaring “no-go zones” for Muslims, and discrimination by local governments and in the justice system⁵².

29. These developments have taken place in the context of a sudden expansion in public space that has allowed for free expression. The historical absence of independent media has undermined media literacy among the general public, including their ability to critically decipher misinformation. Since 2014, digital connectivity began to reach the population, with a rapid increase in the availability of mobile phones. By mid-2018, it was estimated that there were around 20 million users of Facebook in Myanmar⁵³ out of a population of 54 million.⁵⁴ Business for Social Responsibility (BSR) conducted a human rights impact assessment for Facebook in Myanmar⁵⁵ and observed “significant shortcomings in the areas of digital literacy, privacy awareness, and critical thinking”, with most internet users lacking basic understanding of how to navigate and make judgement on online content, including differentiation of real news from misinformation. It also found that rural people, people with lower incomes and people with lower levels of education were more vulnerable to hate speech and misinformation.

30. After decades of military rule under which all forms of dissent and pluralism were heavily suppressed, with far-reaching public surveillance and restrictions on media, education, civil society and academia, the culture of democratic public discourse is only starting to take root. Public debates and collective actions are now generally possible; media outlets have proliferated; parliament sessions are broadcast. However, civic space remains precarious, as the military and the Government have increasingly shown intolerance to public criticism, resorting to judicial harassment to curb the democratic role of civil society and the press. Over 200 cases of so-called “defamation” have been filed by the military or its supporters⁵⁶ against their critics including journalists and ethnic human rights activists who have tried to raise awareness of human rights abuses by the military. Excessive restrictions continue to be placed on peaceful assembly, further curbing the civic space.

31. The Government is working on draft legislation concerning hate speech and the Ministry of Information has conducted workshops and awareness-raising programmes aimed at its prevention⁵⁷. While the Government has taken some steps to challenge Buddhist ultra-nationalists together with the state-backed Buddhist Sangha Council, including the declaration of MaBaTha as an unlawful organization and the banning of U Wirathu, an ultra-nationalist monk from preaching for one year, it has failed to actively promote the plurality of views in society to counteract prejudice and misleading narratives against Muslims and to protect those who have stood against this trend. This is particularly evident in a context where those who vilify Muslims, including the Rohingya, are well-coordinated, protected and resourced, whereas those expressing pluralistic visions, including some Buddhist monks and activists who are working for religious reconciliation, are marginalised and working with great risks⁵⁸. Comparative research has shown the negative impact of indoctrination under authoritarianism on the political culture of post-authoritarian societies. Decades of oppression and purposeful stigmatization of certain groups and communities have severely damaged the social fabric, including the sense of identity, belonging and trust. This has been further exacerbated by an education system that was systematically weakened under military

⁵² Christian Solidarity Worldwide, “Burma’s identity crisis: how ethno-religious nationalism has led to religious intolerance, crimes against humanity and genocide”, 2019; Burma Human Rights Network “Persecution of Muslims in Burma”, 2016; reports of Karen Human Rights Group.

⁵³ BSR, 2018. “Human Rights Impact Assessment: Facebook in Myanmar”.

⁵⁴ Department of Population, Ministry of Labour, Immigration and Population (<https://www.dop.gov.mm/en>)

⁵⁵ Ibid.

⁵⁶ <https://www.irrawaddy.com/news/burma/total-number-defamation-cases-telecommunications-law-hits-200.html>

⁵⁷ Permanent Mission of Myanmar, op.cit.

⁵⁸ CSW, 2019, p. 13.

rule, with people conditioned to accept information with limited critical thinking. These factors have contributed to widespread disengagement, apathy and the lack of sympathy towards the Rohingya's plight within the majority population and among other minorities.

32. It is important to recognize that below the surface, there is also an accumulation of uncertainties and anxieties about the rapid political, economic and social changes that the country has been experiencing since 2011 and the prospects for the future. The dramatic changes that came almost overnight after half a century of military rule has destabilized the fabric and norms of society, and has triggered fears of losing group identity. The majority population also carries social and economic grievances in a context of highly visible inequality and widespread cronyism and corruption. The 2015 elections generated an expectation of a dramatic change in people's lives, but frustrations with the slow pace of reform and economic opportunity have provided fertile ground for scapegoating and religious and identity-based extremism.

33. There is widespread suspicion about the role of outside actors in Myanmar, including the United Nations and other countries, as well as investors pursuing development and infrastructure projects. This is particularly evident in Rakhine State, where the ethnic Rakhine (Arakan) people, a non-Burman ethnic group, have also suffered marginalization and deprivation.⁵⁹ In the past years, the perception of bias on the part of the international community in favour of the Rohingya against the Rakhines appears to have exacerbated the anti-Rohingya sentiments. The recommendations made by the Advisory Commission on Rakhine State provide a comprehensive roadmap to address the security, humanitarian and development needs of all communities in Rakhine State.

III. Conclusions and recommendations

34. Myanmar stands at a critical point in its democratic transition. The 2020 general elections, the renewed initiative for constitutional reform and the ongoing peace process present important opportunities to address the root causes of human rights violations against minorities and to shape a common vision for the future. Fundamentally, this requires an immediate cessation of ongoing violations, an end to systemic impunity, and a comprehensive State reforms on democratic federal lines that removes the control of the military and ensures its accountability to elected civilian authorities. The shift also requires recognizing and addressing the legacies of the decades of violence, discrimination and exclusion as the main obstacle to peaceful coexistence and to the fulfilment of the promise of the 2030 Sustainable Development Agenda for a peaceful and inclusive society that leaves no one behind.

35. Myanmar has a historic opportunity to develop a strong minority rights and non-discrimination regime that recognizes, protects and fulfils the rights of all. Putting in place legal and institutional guarantees for equality for all requires dismantling the current system of discriminatory laws, policies and practice, and adopting positive measures to effectively promote and protect equality for all and minority rights. Key international standards, including those set out in the Durban Declaration and Programme of Action⁶⁰ and the Rabat Plan of Action on prohibition of national, racial or religious hatred,⁶¹ provide guidance for the elaboration of national strategies, policies, programmes and legal frameworks that promote tolerance, encourage positive inter-religious and inter-communal communication, and serve to counter advocacy of hatred that incites violence, hostility, intolerance and discrimination.

36. Achieving equality and self-determination for religious and ethnic minorities also requires Myanmar to realize the goal of federalism and devolution of power committed to by all parties in the peace process. Given the deeply entrenched discrimination and inequalities in Myanmar, it may also be necessary to introduce affirmative action measures to achieve

⁵⁹ Advisory Commission on Rakhine State, Final Report, *Towards a peaceful, fair and prosperous future for the people of Rakhine* (August 2017).

⁶⁰ https://www.ohchr.org/Documents/Publications/Durban_text_en.pdf

⁶¹ A/HRC/22/17/Add.4, appendix.

full equality in law and practice, particularly for the most vulnerable and marginalized communities. This could include targeted affirmative action in recruitment programmes for public offices, law enforcement bodies, and education and health institutions so that they reflect the diversity of the population of Myanmar. To strengthen inclusion, a system of multilingual community liaison officers could be established within public institutions, including States administrations, police, and education and health facilities to help overcome language barriers and to form a bridge between communities and State institutions.

37. Real or perceived exclusion of minority communities from equitable resource-sharing has generated grievances. This dimension is central to the peace process as ethnic groups have long demanded a devolved system of governance whereby ethnic communities have greater control over their land and natural resources. Development projects, including concessions for natural resource extraction, should only be approved where environmental, social and human rights safeguards are respected, after effective consultation and participation of affected communities, and in accordance with relevant domestic and international legal standards. The customary rights of ownership and possession over lands should also be recognized.

38. The Government has begun important reforms in the education system which are an opportunity to protect the ethnic, cultural, linguistic and religious identity of minorities. New initiatives are underway in the context of education reforms to develop ethnic language curricula and promote teaching in some ethnic languages in Government schools. Children from minority communities should be able to exercise the right to learn in their mother tongue in addition to the mainstream curriculum. Such policy options should be made through a decentralized, participatory approach, and children should be given a choice regarding the language of instruction, as there are many minority languages in the country. Furthermore, the Government should be encouraged to engage constructively with non-State education actors, some of which provide extensive services in ethnic languages outside the Government system, particularly to highly vulnerable and marginalized children in areas affected by armed conflict. National curricula and textbooks must be conceived as vehicles to overcome stereotypes, prejudices and mistrust so that differences are accepted and celebrated as part of the national fabric. The Government reports it has begun to promote social cohesion through civics education in schools and this should be encouraged. All children should have the opportunity to learn about the history, culture, religion, identity, and contribution of all communities to foster an understanding of commonalities and shared values to pave the way for peaceful coexistence.

39. The role of political and religious leaders in speaking out firmly and promptly against intolerance, discriminatory stereotyping and instances of hate speech is critical.⁶² The Beirut Declaration and its 18 Commitments on “Faith for Rights”⁶³, along with positive examples from other countries,⁶⁴ can provide a roadmap in this regard. In developing strategies to counter the impact of hate messages, civil society initiatives such as the “Panzagar (flower speech)” campaign should be encouraged. The National Reconciliation and Peace Centre is also undertaking programs to promote peace and conflict resolution among students and youth.

40. A greater consciousness of, and respect for, diversity among the majority community is essential to create a space for unity and equality in Myanmar. This requires leadership at all levels to counteract the effects of decades of harmful ethno-nationalism and allow for space for the people of Myanmar to forge a national identity that brings people together as one. This would be greatly supported by people-led, nationally-owned and context sensitive comprehensive measures aimed at individual and collective healing and trust-building.

⁶² A/HRC/22/17/Add.4, appendix, para. 36 and A/HRC/40/58, annex II.

⁶³ A/HRC/40/58, annexes I and II. These are guidance developed in collaboration with the United Nations, international human rights mechanisms and faith actors, designed to empower the latter to optimize their impact as human rights defenders and to address incitement to hatred. The #Faith4Rights toolkit, which translates this vision into 18 practical modules of peer-to-peer learning for faith actors, academic institutions and training experts, is a useful resource.

⁶⁴ The OHCHR Anti-Discrimination Database, for example, provides searchable access to measures taken at the international, regional and national levels to combat racism, racial discrimination, xenophobia and related intolerance. Reports of the Special Rapporteurs on minority issues, on racism and on freedom of religion or belief are also useful resources.

Transitional justice policies that seek to strategically pursue truth, justice, reparations and guarantees of non-recurrence have helped many deeply divided societies advance peacebuilding and reconciliation in a victim-centred manner. In Myanmar, such a process could help to achieve the societal transformation that is required to break the cycles of violence and systemic human rights abuse, and building a foundation for sustainable peace and development. In addition to ensuring accountability, such a process should include national consultations, trauma-healing, memorialization, revision of educational curricula including teaching of history, truth-seeking initiatives, reparation programmes, community reconciliation initiatives, institutional reforms, etc. It is essential that victims, affected communities and broader civil society are given opportunity to take an active role in designing and implementing such strategy and process.

41. The importance of an adequate, effective and comprehensive reparation programme cannot be overstated, as a tangible means to remedy the harm suffered by victims, but also as a recognition of the responsibility of the State and a powerful message of a commitment to positive change. Reparations programmes that combine different kinds of benefits are generally considered more effective, including forms of material (e.g. compensation, provisions for education, health and housing) and symbolic reparation (e.g. official apologies, commemoration initiatives, rehabilitation). Such programmes can include individual and collective measures, benefitting entire communities. Pending the development of such a comprehensive programme, emergency relief measures should be considered to address the urgent needs of victims and avoid exposing them to further harm. Effective participation and consultation of victims, taking into account the need for an intersectional approach to overcoming exclusion, in the design and implementation of such programmes is critical.

42. The full achievement of the rule of law, human rights, and democratic principles requires fundamental structural reforms to ensure the non-recurrence of systematic human rights violations. Without changes in the underlying, structural political, economic and societal conditions that have contributed to systemic human rights abuse, development and peace building efforts will remain ineffective.

43. In addition to constitutional reforms, security sector and judicial reforms, creating conditions for a vibrant and free civil society to thrive, are indispensable. The degree of success of any constitutional reform, the peace process and national reconciliation will be measured by the level of trust, ownership and legitimacy conferred on them by all stakeholders, particularly minority communities. It is therefore paramount that these processes are firmly grounded in a participatory approach through meaningful, public, transparent, and institutionalized consultations with the widest possible range of actors to facilitate social cohesion across multiple identity markers, such as ethnicity, religion and gender⁶⁵. The role of coalitions or networks of civil society organizations that go beyond the traditional ethnic and religious identity lines, such as women's groups, are critical in countering the dominant narrative and in building understanding among communities.

44. The role of the international community is to assist and encourage, to provide the necessary resources and share knowledge and experience that may be relevant to the Myanmar context, while taking a strictly principled position that prioritizes a human rights-based, victim-centred and conflict sensitive approach. Ultimately, the reforms must be guided by, and belong to, the people of Myanmar, in all their diversity.

Recommendations

45. OHCHR reiterates the recommendations contained in previous reports by the High Commissioner⁶⁶ and other human rights mechanisms, including the Special Rapporteur on

⁶⁵ In this regard, it is important to draw on the United Nations Security Council resolution 1325 (2000) on women and peace and security and general recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations of the Committee on the Elimination of All Forms of Discrimination against Women, "Analyzing the Principle of Gender Equality adopted by Union Peace Conference" by Women's League of Burma, 2018, is also a useful resource.

the situation of human rights in Myanmar and the Fact-Finding Mission. In particular, it calls on the Government and ethnic armed organizations to immediately cease hostilities and violations of international humanitarian and human rights law, and for the State of Myanmar to ensure prompt, independent, impartial, and thorough investigations into all allegations of human rights violations, to cooperate with international justice mechanisms, and to ensure perpetrators are punished. OHCHR also stresses the importance of expediting the constitutional reform with a view to ending military impunity, increasing civilian oversight over the security apparatus, and achieving concrete progress in establishing a federal model of governance with meaningful devolution of powers.

46. The below recommendations relate specifically to the promotion and protection of the rights of Rohingya and other minorities in Myanmar. OHCHR remains ready to provide technical assistance to the implementation of these recommendations, as required, including through the establishment of a country presence.

OHCHR recommends that the Myanmar authorities:

- (a) Ratify all outstanding international human rights treaties, including the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination; and the International Labour Organization Convention no. 169 concerning indigenous and tribal peoples in independent countries;
- (b) Review and repeal laws and policies that perpetuate discrimination on the basis of ethnic, religious, linguistic or cultural identity, including, but not limited to, those on citizenship, the four “race and religion” laws, and laws perpetuating economic exclusion of minorities, such as in relation to land and natural resources. The concept of “national races” should be revoked to allow for self-identification on ethnic, religious and linguistic grounds for all official and legal purposes;
- (c) Enact a comprehensive anti-discrimination law, and adopt related policies and programmes;
- (d) Ensure institutional and dedicated attention to the protection of minority rights, including by adopting a National Plan of Action to ensure the operationalization of the 2015 Ethnic Rights Protection Law in line with international human rights law and minority rights standards; ensure that the Ministry of Ethnic Affairs has the mandate and resources, as well as a diverse workforce that includes representatives of minority communities, particularly women;
- (e) Undertake necessary reforms to guarantee the independence of the Myanmar National Human Rights Commission in full conformity with the Paris Principles, including establishment of fully-resourced regional offices in ethnic areas, with dedicated capacity on gender⁶⁷;
- (f) Introduce policies and measures to achieve equitable representation of minorities in the political sphere, and in public institutions, particularly in decision-making positions; these may include affirmative action measures, with particular attention to those facing multiple and intersecting forms of discrimination, such as minority women and groups without political representation such as the Rohingya and other Muslims;
- (g) Consider introducing a pilot system of multilingual community liaison officers (including women) in close consultation with the local community representatives, and provide the necessary resources;
- (h) Ensure that land appropriation is carried out based on the principle of free, prior, and informed consent of the affected communities and that adequate compensation is provided; systems of shared or collective land rights and customary land tenure and property rights should be recognized and protected within the national legal system, with particular attention to the rights of women; land disputes and reports of judicial and other harassment should be investigated transparently while protecting the safety of land rights activists; ensure transparent and impartial judicial process for cases of disputed land

appropriation, including through the enactment of a new land law in full consultation with civil society;

- (i) Make sure that investment and infrastructure projects are conditioned to transparent and independent review of compliance with environmental, social and human rights safeguards, while ensuring meaningful and systematic participation and inclusion of local populations in decision-making at all stages, including the planning and execution, and with a view to ensuring equitable revenue sharing;
- (j) Take strengthened measures to combat internal and cross-border trafficking in persons for all purposes, paying particular attention to the situation of victims; ensure the provision of sufficient resources for remedy to, rehabilitation and social integration of trafficked persons; and take steps to prosecute those responsible for trafficking and other human rights violations in line with international standards.
- (k) Develop a national policy to promote mother-tongue education with sufficient federal Government funding, giving decision-making powers to the state government and allowing minority children a choice of languages⁶⁸;
- (l) Create a multi-ethnic, multi-religious task force to conduct a review of the official curriculum and textbooks to ensure they fully reflect the ethnic and religious diversity in Myanmar, including teaching of history⁶⁹;
- (m) Introduce human rights education, including minority rights and gender equality, as part of the official curriculum at all levels, in teacher training and in police and military academies;
- (n) Include in any peace agreement and relevant laws specific provisions to enable the use of ethnic languages in schools, hospitals, government institutions and the courts;
- (o) Ensure full protection of all minority places of worship as well as heritage sites, including by ensuring there are no policy or legal obstacles for their registration, renovation, reconstruction or construction; Develop a clear policy framework for combating religious intolerance including hate speech in line with international human rights standards, clearly outlining the roles of political, religious and community leaders, traditional and online media, women, youth and other civil society actors;
- (p) Halt the ongoing criminalization of civil society actors for the legitimate and peaceful exercise of freedom of expression and opinion, and review the body of legislation that unduly constrains the free operation of civil society organizations and independent media; Develop a multi-stakeholder process, including judicial and non-judicial measures, to ensure accountability and redress to victims of past, present and future human rights violations and abuses. In parallel, initiate a participatory national reconciliation process aimed at the development of a shared vision for an inclusive and just society; the building of positive relationships between communities and individuals; the dismantling of attitudes of suspicion, fear and mistrust; and addressing root causes of violence at the social economic and political levels. In this regard, consider establishing a multi-stakeholder task force that is diverse and representative of the different communities and identities in Myanmar, to lead the design of such an action plan and a broader reconciliation process;
- (q) Strengthen institutional 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;
- (r) Extend invitations to the Special Rapporteurs on minority issues, on racism, on freedom of religion or belief, and on the promotion of truth, justice, reparation and guarantees of

⁶⁸ “Language Rights of Linguistic Minorities: A Practical Guide for Implementation” (https://www.ohchr.org/Documents/Issues/Minorities/SR/LanguageRightsLinguisticMinorities_EN.pdf) is a useful resource in this regard.

⁶⁹ The report of the Special Rapporteur in the field of cultural rights on the writing and teaching of history (A/68/296) is a useful resource in this regard.

non-recurrence to undertake country visits; and resume cooperation with the Special Rapporteur on the situation of human rights in Myanmar.

OHCHR recommends religious leaders and religious communities to:

- (a) Systematically, promptly and firmly condemn any incident of incitement to religious hatred against Rohingya, other Muslims and other religious minorities by speaking out against intolerance, discriminatory stereotyping and instances of hate speech; and refrain from incitement to violence, hostility or discrimination;
- (b) Stand up for equality for all people in Myanmar, in all circumstances, and for the rights of persons belonging to minorities, by defending their rights to participate equally and effectively in cultural, religious, social, economic and public life and to freedom of religion or belief.⁷⁰

OHCHR recommends social media platforms active in Myanmar to:

- (a) Strengthen efforts to monitor and respond to incitement to violence, in particular against the Rohingya and other religious minorities, while protecting freedom of expression and access to information, including by significantly increasing the number of content reviewers able to review in Burmese and other ethnic languages trained in human rights;
- (b) Support the digital dissemination inside Myanmar and among Burmese speakers elsewhere of the tools and guidance developed by the United Nations to combat incitement to hate, religious intolerance and discrimination.

OHCHR recommends the international community to:

- (a) Continue to support accountability efforts at the international level, including at the International Criminal Court and through the Independent Investigative Mechanism for Myanmar;
- (b) Continue to support civil society organizations, in particular through provision of urgent interim relief for victims and witnesses who engage with international accountability efforts and may require protection and psychosocial and legal assistance;
- (c) Countries hosting persons from Myanmar should ensure their access on a non-discriminatory basis to the rights to health, education and decent work; should scrupulously respect the fundamental principle of non-refoulement; and seek in a timely manner to identify rights-based durable solutions for those individuals who are unable to return to Myanmar, including local integration and third country resettlement options.
- (d) Provide the resources required for humanitarian actors - particularly civil society and community-based organizations providing critical life-saving and other long-term assistance (including psychosocial care) for displaced communities inside and outside of Myanmar to continue their operations, including in Bangladesh and Thailand;
- (e) Ensure all foreign business and investment operations in Myanmar are fully transparent and conform to the highest international standards, including the United Nations Guiding Principles on Business and Human Rights;
- (f) Provide increased support to grassroots initiatives aimed at national reconciliation and social cohesion, including those that bring communities and groups together to build foundations of a peaceful coexistence. Donors should actively encourage for such initiatives to be context-sensitive, locally-owned, community-led and representative of diverse views and identities.

⁷⁰ A/HRC/40/58, annex I, para. 17 and annex II, commitment VI.