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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 Muslims 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, in which the Council requested the United Nations High Commissioner for Human Rights to submit to it, at its forty-third session, a report on the root causes of the human rights violations and abuses faced by the Rohingya Muslim minority and other minorities in Myanmar. In the report, factors are identified that underlie the historical and current patterns of human rights violations and abuses against ethnic and religious minorities in Myanmar. The report concludes with recommendations on measures to be taken by the Government, the international community and other stakeholders to improve the situation.

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



I. Introduction

1. In its resolution 39/2, the Human Rights Council requested the United Nations High Commissioner for Human Rights to submit to it, at its forty-third session, a report on the root causes of the human rights violations and abuses faced by the Rohingya Muslim minority and other minorities in Myanmar, including discrimination, racial intolerance and xenophobia and Islamophobic practices, in violation 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 present report was prepared based on primary and secondary information gathered by the Office of the United Nations High Commissioner for Human Rights (OHCHR) 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 in a note verbale dated 3 February 2020, and comments on the draft report were received in a note verbale dated 24 February 2020. Efforts have been made to reflect the information received 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 of 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, Myanmar (A/HRC/40/37). Considering the extensive documentation of the human rights situation in Myanmar contained in these reports, and in the reports of successive Special Rapporteurs on the situation of human rights in Myanmar and of the independent international fact-finding mission on Myanmar, repetition of previous findings has been avoided in the present report.

II. Root causes of the human rights violations and abuses against Rohingya Muslims 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 the human rights of ethnic minorities in other states, including extrajudicial killings, arbitrary arrest and detention, torture, forced labour, sexual and gender-based violence, and extensive forced displacement. This situation has gravely hampered the ability of minorities to enjoy other rights, including freedom of movement, health and education, and has imposed significant limitations on 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 independent international fact-finding mission on Myanmar concluded that the serious violations that it had documented amounted to war crimes and crimes against humanity and, concerning the persecution of the Rohingya in Rakhine State, that there was 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, multidimensional and long-standing. Unpacking and untangling this multifaceted human rights challenge therefore requires broader historical analysis, including the political, legal, economic and social dimensions, as a prerequisite for

recommending possible solutions. In doing so, this report relies on the international normative framework on minority rights,¹ which is based on the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (General Assembly resolution 47/135) 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 Action and the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

6. Addressing the root causes of discrimination and human rights violations against ethnic and religious minorities and ensuring accountability are fundamental to achieving peace in Myanmar, consolidating democratic transition and rebuilding society on the basis of the principles of equality and non-discrimination. These principles are also a necessary foundation for sustainable development, as reflected in the 2030 Agenda for Sustainable Development, which is centred around the principle of leaving no one behind and includes Sustainable Development 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 [a] pervasive sense of injustice generated by inequitable distribution of resources”.² The recognition of these issues also lies at the core of the ongoing peace process and aspirations for a democratic, federal union, under the auspices of the 21st Century Panglong Conference, and the prospects for meaningful progress.

A. Historical legacies

8. The origins of mistrust and divisions among ethnic groups in Myanmar can be traced back through centuries of competition and conflict between rival ethnic kingdoms, which ultimately saw the ascendancy of the majority Burmans (Bamar) who considered the inhabitants belonging to 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,³ for the purposes of colonial administration. Burman nationalism evolved in opposition to colonial rule, but also to other ethnic groups that, through association with the British, were perceived to enjoy economic advantage and to pose a threat to the Burman people and their way of life.⁴ The Second World War created further divisions, with different groups fighting alongside the British or the Japanese.

9. A potential turning point on the path to independence came in 1947 with the historic Panglong Agreement, which aimed at establishing a federal union firmly grounded in

¹ The use of the international normative framework on minority rights 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 are access to power (position of non-dominance) and vulnerability to exclusion, though numerical size and demographics may be considerations. In this report, the term “minority”, as opposed to those such as “ethnic nationalities” or “national races”, is used in recognition of the status of minorities and the associated rights accorded in international law.

² Ministry of Planning and Finance, *Myanmar Sustainable Development Plan (2018–2030)*, p. 8.

³ Matthew J. Walton, “The ‘wages of Burman-ness’: ethnicity and Burman privilege in contemporary Myanmar”, *Journal of Contemporary Asia*, vol. 43, No. 1 (2013).

⁴ *Ibid.*

respect for minority rights and “full autonomy in internal administration”. The failure of successive Governments to achieve that vision has remained a key source of ethnic grievance, and is still 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 the promotion of the Burman language and culture and the Buddhist religion, while suppressing ethnic identities and aspirations, including to federalism, and portraying them as threats to national stability and unity.⁵

11. Under the socialist policies of General Ne Win, steps were taken to curb foreign influence in the national economy, such as the Enterprise Nationalization Law in 1963, and over time there was an exodus of approximately 500,000 to 800,000 ethnic Chinese and Indian people.⁶ 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” language⁷ and Buddhism as the dominant religion. This trend was also manifest in the renaming of cities, streets, geographical landmarks from indigenous languages to Burmese;⁸ curricula and textbooks that taught history only through a Burman lens;⁹ the construction of museums to institutionalize “Myanmar national culture”;¹⁰ the outlawing or termination of instruction in many ethnic languages beyond fourth grade in education, placing non-native speakers of Burmese at an educational disadvantage;¹¹ and the exclusion of ethnic minorities from senior levels in the military and the Government.¹² Restrictions on non-Buddhist religious groups were strictly enforced, including on educational activities, on meetings and on the importation and local publication of the Bible, the Qur’an and other Christian and Islamic texts. Permission was frequently denied for the building or reconstruction of 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 the 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, ethnic and 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” strategy.¹³ Protracted conflicts with ethnic armed groups have allowed the military – in the absence of any external threat – to legitimize its own central and outsize role in politics for over half a century. They have also provided a context for the commission of grave human rights

⁵ Ibid.

⁶ Robert A. Holmes, “Burmese domestic policy: politics of Burmanization”, *Asian Survey*, vol. 7, No. 3 (March 1967).

⁷ Ashley South and Marie Lall, “Language, education and the peace process in Myanmar”, *Contemporary Southeast Asia*, vol. 38, No. 1 (April 2016).

⁸ Ashley South, “Karen nationalist communities: the ‘problem’ of diversity”, *Contemporary Southeast Asia*, vol. 29, No. 1 (April 2007).

⁹ South and Lall, “Language, education and the peace process”.

¹⁰ Mikael Gravers, ed., *Exploring Ethnic Diversity in Burma* (Copenhagen, NIAS Press, 2007).

¹¹ Walton, “The ‘wages of Burman-ness’”.

¹² Martin Smith, *Burma (Myanmar): The Time for Change* (London, Minority Rights Group, 2002).

¹³ The “four cuts” counter-insurgency policy, initiated in 1960s and reportedly still implemented, involves “clearance operations” in which civilians are killed and entire villages destroyed, leading to mass displacement (A/HRC/39/64, para. 76).

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 military, extensively documented by women's organizations over decades, and most recently by the independent international fact-finding mission on Myanmar, has been 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 resources.¹⁴ This has created hugely lucrative illegal economies and business concessions in logging, gems, minerals, wildlife trafficking and drug trafficking. The majority of the profits have gone to private interests of the military and political elite, as well as to paramilitary groups and foreign corporations (A/HRC/40/68, para. 7), 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 and 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 the national average, the most prominent in Shan State at 65 per cent compared to the national average of 90 per cent.¹⁵ 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 under way. However, the “peace dividend”, expected with the extension of the Nationwide Ceasefire Agreement signed in 2015, has not materialized in many areas, as people are stuck between control by the Government and control by ethnic armed groups, 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 left many ethnic minority areas deserted. This has been compounded by prevalent land-grabbing, the harmful impact of extractive industries and infrastructure projects, and recurrent natural disasters. For instance, under the Vacant, Fallow and Virgin Land Management Act of 2012, the State has the power to reallocate land that it labels as “vacant, fallow and virgin” – but which is often actively cultivated by farmers – to third parties.¹⁶ The adoption of the Act created widespread fear among traditional communities in ethnic minority regions that it would lead to the usurpation of customary land use rights and to forced eviction. Approximately 241,000 people in Myanmar remain internally displaced,¹⁷ 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 owing to restrictions imposed by the authorities. In addition to the 914,998 Rohingya in Bangladesh as at 30 November 2019,¹⁸ there were 93,206 refugees from Myanmar in Thailand,¹⁹ and an unknown number in China. Although repatriation efforts by the Governments of Myanmar and Thailand have been under way, cross-border organizations assisting refugees from Myanmar in Thailand

¹⁴ See A/HRC/42/CRP.3 (available at www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/EconomicInterestsMyanmarMilitary.aspx).

¹⁵ Myanmar, Ministry of Immigration and Population, *The 2014 Myanmar Population and Housing Census: The Union Report – Census Report Volume 2* (Nay Pyi Taw, 2015).

¹⁶ Transnational Institute, “Access denied: land rights and ethnic conflict in Burma”, May 2013, p. 3.

¹⁷ See www.unocha.org/myanmar/about-ocha-myanmar (accessed 23 January 2020).

¹⁸ Office of the United Nations High Commissioner for Refugees (UNHCR), “Rohingya refugee response: Bangladesh – operational dashboard: 2019 indicators monitoring”, 30 November 2019.

¹⁹ UNHCR, “RTG/MOI-UNHCR verified refugee population”, 30 November 2019.

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 have domestic violence and drug and alcohol dependency.²⁰

D. Institutionalization of discrimination against ethnic and religious minorities

16. The military Governments of Myanmar constructed a legal regime that institutionalized discrimination against minorities. Among the laws that are still in force, the most notable one relates to citizenship (A/HRC/32/18, para. 19, and A/HRC/40/37, paras. 21–28). The Citizenship Law of 1982 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 on others.²¹ “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” (sections 35 (d) and 58 (d)). The detrimental impact of the citizenship regime and its discriminatory implementation on the Rohingya in particular has been widely documented, but there has also been a gradual degradation in citizenship rights for other Muslims over the past generation. This has led to a significant exodus to other countries in the region, where they have been suffering situations of extreme vulnerability owing to lack of documentation and to discrimination by local authorities and host communities, depriving them of opportunities for employment, education and health care and leaving many destitute.²²

17. Other laws with a discriminatory effect on ethnic or religious minorities include those restricting freedom of religion, especially for non-Buddhists. Article 354 of the Constitution places limitations that can be used to justify arbitrary restrictions on freedom of religion or belief among religious minorities, on grounds such as “public order and morality”, “law and order” and “union security”.²³ In addition, the Penal Code (sections 295, 295A and 298), of 1861, includes several colonial-era offences against religion (“blasphemy laws”). The package of four laws seeking to “protect race and religion” adopted in 2015 appear to specifically target non-Buddhists, in particular Muslims, and contain elements that are discriminatory against women (A/HRC/32/18, para. 20). These laws impose restrictions on marriage, religious conversion, extramarital 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 documented (A/69/398, para. 65) and is safeguarded by the Constitution,²⁴ the Defence Services Act (1959), the Presidential Security Act (2016) and the Myanmar Police Force Maintenance of Discipline Law (1995). Prosecutions of military elements for violations against ethnic minorities have been rare and perpetrators have often been given reduced sentences or spared from serving

²⁰ Progressive Voice, *There is No One Who Does Not Miss Home: A Report on Protracted Displacement Due to Armed Conflict in Burma/Myanmar* (2019), p. 130.

²¹ International Commission of Jurists, “Challenges to freedom of religion or belief in Myanmar: a briefing paper”, September 2019; and A/HRC/40/68.

²² Burma Human Rights Network, “Existence denied”, 2018.

²³ Christian Solidarity Worldwide, “Burma’s identity crisis: how ethno-religious nationalism has led to religious intolerance, crimes against humanity and genocide”, May 2019, pp. 28–29.

²⁴ Under article 343 (b) of the Constitution, decisions of the Commander-in-Chief concerning matters of military justice are “final and conclusive”, with no right of appeal.

full sentences while victims are 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.²⁵ In the absence of meaningful prospects for accountability at the domestic level, efforts have intensified at the international level, before the International Court of Justice and the International Criminal Court and with the establishment of the Independent Investigative Mechanism for Myanmar.

20. The weakness and lack of independence of the judiciary also remains detrimental to the rule of law. Both minorities and the majority population are affected by the overt influence of the military over civilian court proceedings, widespread corruption, violations of basic fair trial rights, and the reluctance of the prosecution to accept petitions from victims of gross human rights violations to initiate criminal proceedings.²⁶ Legal representation and access to judicial remedies, for both criminal and civilian cases, are further compromised by the difficult economic situation of most victims. The barriers routinely faced in the justice system by minorities, particularly women, and the general mistrust of the State mean that the majority of people do not utilize formal justice mechanisms.²⁷ Lawyers – as well as victims and their families – are often subjected to intimidation, reprisals and disciplinary action.²⁸ Discrimination against lawyers on the basis of ethnicity and religion is another obstacle for members of minorities seeking justice.²⁹

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 at improving 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.³⁰ While the Ministry is mandated to "effectively protect the rights of ethnic groups in accordance with the law",³¹ and the law provides a mechanism through which violations of rights may be reported to State or regional ministerial departments of ethnic affairs, the Ministry's 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 (A/71/361, para. 14).³² 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, as is the case with the national parliament, and generally lack significant powers.³³ 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 has been appointed to leadership roles within the current

²⁵ International Commission of Jurists, "Achieving justice for gross human rights violations in Myanmar: baseline study", January 2018.

²⁶ Ibid.

²⁷ Progressive Voice, *There is No One Who Does Not Miss Home*, p. 148.

²⁸ International Commission of Jurists, *Right to Counsel: The Independence of Lawyers in Myanmar* (Geneva, 2013).

²⁹ Ibid.

³⁰ Note verbale dated 24 January 2020 from the Permanent Mission of Myanmar to the United Nations Office and other international organizations in Geneva.

³¹ Ibid.

³² See also International Bar Association, *The Rule of Law in Myanmar: Challenges and Prospects* (London, 2012).

³³ Constitution, art. 161 (d).

Administration.³⁴ 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 disenfranchising ethnic minority voters.³⁵

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 practices, and in domestic legislation, policy and practice (see CEDAW/C/MMR/CO/4-5). The notion of male superiority is ingrained in society and in many minority groups, in which men are deemed to have innate qualities unattainable by women (according to the concept of *hpon*), perpetuating patriarchal attitudes and discriminatory gender stereotypes that continue to shape familial relationships, the gendered division of labour and the underrepresentation of women in political decision-making. This situation has created a culture of social acceptance of gender-based violence against women and girls.³⁶ Moreover, the gendered impact of the conflict has 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 the feminization of poverty and migration and trafficking of ethnic minority women.³⁷

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 have 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 (A/HRC/39/64, para. 79). Testimony recorded, including most recently by the independent international fact-finding mission on Myanmar, highlights that brutal sexual violence against women and girls – as well as against men, boys and transgender persons – was aimed at destroying those targeted, both physically and spiritually, and 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 Code.³⁸

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, they 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 ultranationalism that has drawn significant support from the majority population since 2012. The role of the 969 Movement and the Organization for the Protection of Race and Religion (also known as “MaBaTha”) in fuelling anti-Muslim bias and rumours and creating fear and hatred among the Buddhist population has been particularly prominent.

³⁴ Burma Human Rights Network, “Existence denied”, p. 17.

³⁵ International Crisis Group, “Peace and electoral democracy in Myanmar”, 6 August 2019, p. 12.

³⁶ In a 2014 study, the Gender Equality Network, a coalition in Myanmar of more than a hundred civil society organizations, found that almost half of the women surveyed had experienced either non-partner rape, sexual assault or sexual harassment.

³⁷ See Kachin Women's Association Thailand, *Driven Away: Trafficking of Kachin Women on the China-Burma Border* (Chiang Mai, 2005).

³⁸ Human Rights Watch and Fortify Rights, “Submission to CEDAW regarding Myanmar's exceptional report on the situation of women and girls from northern Rakhine State”, May 2018, p. 7.

27. These movements have been spearheaded by ultranationalist monks who have disseminated negative stereotypes and prejudices against Islam and Muslims as posing an existential threat to the 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 media such as sermons and pamphlets have been influential, social media have had a significant multiplier effect in spreading hatred.

28. Furthermore, the ability of Buddhist ultranationalists to exert influence on State institutions and on society at large has culminated in the adoption of the four “race and religion” laws following aggressive advocacy to legally restrict religious freedom in order to defend Buddhism. Their anti-Muslim campaign has directly led to mob violence, boycotts of and attacks against Muslim businesses, obstruction of Muslim religious practice, demolition of Muslim schools and homes, declaration of “no-go zones” for Muslims, and discrimination by local governments and in the justice system.³⁹

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 the 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 Myanmar,⁴⁰ out of a population of 54 million.⁴¹ Business for Social Responsibility conducted a human rights impact assessment for Facebook in Myanmar and observed significant shortcomings in the areas of digital literacy, privacy awareness and critical thinking, with a large proportion of Internet users lacking a basic understanding of how to navigate and make judgments on online content, including differentiation of real news from misinformation. It also found that people in rural areas, people with lower incomes and people with lower levels of education were more vulnerable to hate speech and misinformation.⁴²

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 of 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 supporters against their critics including journalists and ethnic human rights activists who have tried to raise awareness of human rights abuses by the military.⁴³ 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 prevention.⁴⁴ While the Government has taken some steps to challenge Buddhist ultranationalists together with the State-backed Buddhist sangha council – including the declaration of MaBaTha as an unlawful organization and the banning of U

³⁹ See Christian Solidarity Worldwide, “Burma’s identity crisis”; Burma Human Rights Network, *Persecution of Muslims in Burma: BHRN Report* (London, 2017); and reports of the Karen Human Rights Group (see www.khrg.org/reports).

⁴⁰ Business for Social Responsibility, *Human Rights Impact Assessment: Facebook in Myanmar* (2018).

⁴¹ According to the website of the Department of Population, of the Ministry of Labour, Immigration and Population (www.dop.gov.mm/en).

⁴² Business for Social Responsibility, *Human Rights Impact Assessment*.

⁴³ San Yamin Aung, “Total number of defamation cases under Telecommunications Law hits 200”, Irrawaddy, 24 June 2019.

⁴⁴ Note verbale dated 24 January 2020 from the Permanent Mission of Myanmar.

Wirathu, an ultranationalist 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 marginalized and are working at great risk.⁴⁵ 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 rule, with people conditioned to accept information with limited critical thinking. These factors have contributed to widespread disengagement, apathy and lack of sympathy with respect to 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 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, and of investors pursuing development and infrastructure projects. This is particularly evident in Rakhine State, where the ethnic Rakhine people, a non-Burman ethnic group, have also suffered marginalization and deprivation. In recent years, the perception of bias on the part of the international community in favour of the Rohingya against the Rakhine appears to have exacerbated anti-Rohingya sentiments. The recommendations made by the Advisory Commission on Rakhine State provide a comprehensive road map to address the security, humanitarian and development needs of all communities in Rakhine State.⁴⁶

III. Addressing the root causes

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 reform on democratic federal lines to remove the control of the military and ensure its accountability to elected civilian authorities. The shift also requires the legacies of the decades of violence, discrimination and exclusion to be recognized and addressed as the main obstacle to peaceful coexistence and to fulfilment of the promise under the 2030 Agenda of a peaceful and inclusive society that leaves no one behind.

35. Myanmar has a historic opportunity to develop a strong regime of minority rights and non-discrimination that recognizes, protects and fulfils the rights of all. Putting in place legal and institutional guarantees for equality for all will require the current system of discriminatory laws, policies and practice to be dismantled, and positive measures taken to effectively promote and protect equality for all and minority rights. Key international

⁴⁵ Christian Solidarity Worldwide, "Burma's identity crisis", p. 13.

⁴⁶ Advisory Commission on Rakhine State, *Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine: Final Report of the Advisory Commission on Rakhine State* (August 2017).

standards, including those set out in the Durban Declaration and Programme of Action and the Rabat Plan of Action, provide guidance for the elaboration of national strategies, policies, programmes and legal frameworks that promote tolerance, encourage positive interreligious and intercommunal 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 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 state administrations, the 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 be approved only where environmental, social and human rights safeguards are respected, after effective consultation of and participation by 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 under way 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 that 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, in order 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.⁴⁷ The Beirut Declaration on Faith for Rights and the associated commitments (A/HRC/40/58, annexes I and II),⁴⁸ along with positive examples from other countries,⁴⁹ can provide a road

⁴⁷ Rabat Plan of Action (A/HRC/22/17/Add.4, appendix), para. 36.

⁴⁸ The Beirut Declaration and the 18 commitments constitute 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.

⁴⁹ The OHCHR Anti-Discrimination Database, for example, is a searchable resource that provides access to measures taken at the international, regional and national levels to combat racism, racial

map 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 programmes to promote peace and conflict resolution among students and youth.

40. 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 space for the people of Myanmar to forge a national identity that brings people together as one. This would be greatly supported by comprehensive people-led, nationally-owned and context-sensitive measures aimed at individual and collective healing and trust-building. 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 build 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 the teaching of history), truth-seeking initiatives, reparations programmes, community reconciliation initiatives and institutional reforms. It is essential that victims, affected communities and broader civil society are given the opportunity to take an active role in designing and implementing that strategy and process.

41. The importance of an adequate, effective and comprehensive reparations 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 commitment to positive change. Reparations programmes that combine various kinds of benefits are generally considered more effective, including forms of material reparations (such as compensation and provisions for education, health and housing) and symbolic reparations (such as official apologies, commemoration initiatives and rehabilitation). Such programmes may include individual and collective measures, benefiting 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 by and consultation of victims in the design and implementation of such programmes, taking into account the need for an intersectional approach to overcoming exclusion, is critical.

42. Full achievement of respect for 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 peacebuilding efforts will be 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 gender.⁵⁰ The role of coalitions or networks of civil society organizations that go beyond

discrimination, xenophobia and related intolerance. The reports of the Special Rapporteur on minority issues, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on freedom of religion or belief are also useful resources.

⁵⁰ In this regard, it is important to draw on Security Council resolution 1325 (2000), on women and peace and security, and general recommendation No. 30 (2013) of the Committee on the Elimination of Discrimination against Women, on women in conflict prevention, conflict and post-conflict

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.

IV. Conclusions and recommendations

45. **The High Commissioner reiterates the recommendations contained in previous reports by the High Commissioner and other human rights mechanisms, including the Special Rapporteur on the situation of human rights in Myanmar and the independent international fact-finding mission on Myanmar. In particular, the High Commissioner calls on the Government and ethnic armed organizations to immediately cease hostilities and violations of international humanitarian and human rights law, and on the Government to ensure prompt, independent, impartial and thorough investigations into all allegations of human rights violations, to cooperate with international justice mechanisms and to ensure that perpetrators are punished. The High Commissioner 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 for the implementation of these recommendations, as required, including through the establishment of a country presence.**

47. **The High Commissioner 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 Indigenous and Tribal Peoples Convention, 1989 (No. 169), of the International Labour Organization;**

(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 laws on citizenship, the four “race and religion” laws, and laws perpetuating the 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 for the operationalization of the 2015 Ethnic Rights Protection Law in accordance with international human rights law and minority rights standards; and ensure that the Ministry of Ethnic Affairs has the mandate and resources necessary, as well as a diverse workforce that includes representatives of minority communities, particularly women;**

(e) **Undertake the reforms necessary to guarantee the independence of the Myanmar National Human Rights Commission in full conformity with the principles relating to the status of national institutions for the promotion and protection of**

situations. Another useful resource is Women's League of Burma, “Analyzing the principles of gender equality: adopted by Union Peace Conference” (October 2018).

human rights (the Paris Principles), including the establishment of fully-resourced regional offices in ethnic areas, with dedicated capacity on gender;

(f) Introduce policies and measures to achieve equitable representation of minorities in the political sphere and in public institutions, particularly in decision-making positions; such policies and measures may include affirmative action measures, with particular attention paid to those facing multiple and intersectional 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 local community representatives, and provide the necessary resources;

(h) Ensure that land appropriation is carried out on the basis of the principle of the free, prior and informed consent of the affected communities and that adequate compensation is provided; that systems of shared or collective land rights and customary land tenure and property rights are recognized and protected within the national legal system, with particular attention to the rights of women; that land disputes and reports of judicial and other harassment are investigated transparently, while protecting the safety of land rights activists; and that there is 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 on transparent and independent review of compliance with environmental, social and human rights safeguards, while ensuring meaningful and systematic participation by and inclusion of local populations in decision-making at all stages, including planning and execution, and with a view to securing 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, rehabilitation and social integration for trafficked persons; and take steps to prosecute those responsible for trafficking and other human rights violations in accordance with international standards;

(k) Develop a national policy to promote mother-tongue education with sufficient funding from the federal Government, giving decision-making powers to state governments and allowing minority children a choice of languages;⁵¹

(l) Create a multi-ethnic, multireligious task force to conduct a review of the official curriculum and textbooks to ensure that they fully reflect the ethnic and religious diversity in Myanmar, including the teaching of history;⁵²

(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 the full protection of all minority places of worship and heritage sites, including by ensuring that there are no policy or legal obstacles for their registration, renovation, reconstruction or construction; and develop a clear policy

⁵¹ A useful resource in this regard is the following: Special Rapporteur on minority issues, "Language rights of linguistic minorities: a practical guide for implementation" (OHCHR, March 2017).

⁵² A useful resource in this regard is the report of the Special Rapporteur in the field of cultural rights to the General Assembly at its sixty-eighth session, on the issue of the writing and teaching of history (A/68/296).

framework for combating religious intolerance, including hate speech, in accordance with international human rights standards, clearly outlining the roles of political, religious and community leaders, traditional and online media, women, youth and 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 for victims of past, present and future human rights violations and abuses; in parallel, initiate a participatory national reconciliation process aimed at developing a shared vision for an inclusive and just society, building positive relationships between communities and individuals, dismantling attitudes of suspicion, fear and mistrust and addressing the root causes of violence at the social economic and political levels; and, 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 an action plan and broader reconciliation process;

(q) Strengthen institution-building and structural reforms to uphold the rule of law, human rights and democratic principles through a participatory and inclusive approach, including efforts to ensure the independence of the judiciary and reform the security sector to enhance civilian control;

(r) Extend invitations to undertake country visits to the Special Rapporteur on minority issues, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; and resume cooperation with the Special Rapporteur on the situation of human rights in Myanmar.

48. The High Commissioner recommends that religious leaders and religious communities:

(a) Systematically, promptly and firmly condemn any incident of incitement to religious hatred against the 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 equal and effective participation in cultural, religious, social, economic and public life and to freedom of religion or belief.⁵³

49. The High Commissioner recommends that social media platforms active in Myanmar:

(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 who are able to review in Burmese and other ethnic languages and are 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 hatred, religious intolerance and discrimination.

⁵³ Beirut Declaration on Faith for Rights (A/HRC/40/58, annex I), para. 17, and commitment VI (ibid., annex II).

50. **The High Commissioner recommends that the international community:**

(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 the 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) **In the case of countries hosting persons from Myanmar, ensure their access on a non-discriminatory basis to the rights to health, education and decent work; 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 that all foreign business and investment operations in Myanmar are fully transparent and conform to the highest international standards, including the Guiding Principles on Business and Human Rights;**

(f) **Provide increased support to grass-roots initiatives aimed at national reconciliation and social cohesion, including those that bring communities and groups together to build the foundations of peaceful coexistence; donors should actively encourage initiatives that are context-sensitive, locally owned, community-led and representative of diverse views and identities.**
