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Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Report on the implementation of the recommendations of the independent international fact-finding mission on Myanmar

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the United Nations High Commissioner for Human Rights on the implementation of the recommendations of the independent international fact-finding mission on Myanmar and on progress in the situation of human rights in Myanmar, pursuant to Human Rights Council resolution [42/3](#).

* [A/75/150](#).



Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Myanmar

Summary

The independent international fact-finding mission on Myanmar issued two reports and four thematic papers. For the present report, the Office of the United Nations High Commissioner for Human Rights analysed 109 recommendations, grouped thematically on conflict and the protection of civilians; accountability; sexual and gender-based violence; fundamental freedoms; economic, social and cultural rights; institutional and legal reforms; and action by the United Nations system.

I. Introduction

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

2. The report was prepared on the basis of primary and secondary information collected from various sources, including primary witness testimonies, the Government, the United Nations, civil society organizations, representatives of ethnic and religious minority communities, diplomats, media professionals, academics and other experts. Without access to the country, the Office of the United Nations High Commissioner for Human Rights (OHCHR) adhered to a consistent methodology in gathering information through interviews conducted remotely with over 80 victims and witnesses of human rights violations and abuses. Primary sources were subjected to a rigorous verification and corroboration process using a variety of independent or other sources, including satellite imagery and reports and statements by the Government. Factual determinations of cases, incidents and patterns were made where there were reasonable grounds to believe that incidents had occurred as described. OHCHR sought input from the Government on the issues raised in the report, and a draft was shared with the Government for comment. No response has yet been received.

3. The mandate of the fact-finding mission, established by the Human Rights Council in its resolution [34/22](#), expired in September 2019. The mission issued two mandated reports ([A/HRC/39/64](#) and [A/HRC/42/50](#)) and four thematic papers ([A/HRC/39/CRP.2](#), [A/HRC/42/CRP.3](#), [A/HRC/42/CRP.4](#) and [A/HRC/42/CRP.5](#)). For the present report, OHCHR analysed 109 recommendations made by the fact-finding mission to the Government and the United Nations in Myanmar, grouped thematically on conflict and the protection of civilians; accountability; sexual and gender-based violence; fundamental freedoms; economic, social and cultural rights; institutional and legal reforms; and action by the United Nations system.

II. Situation of human rights

A. Conflict and the protection of civilians

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

Rakhine and Chin States

5. In its reports to the Human Rights Council, the fact-finding mission called for a halt to all current security operations that were unlawful, unnecessary and disproportionate. Those calls were reiterated by the High Commissioner and the

Special Rapporteur on the situation of human rights in Myanmar. However, since 2019, fighting between the Tatmadaw and the Arakan Army in Rakhine and Chin States has intensified in scale and ferocity, resulting in death and injury and the destruction of civilian property and other civilian objects, including schools and places of worship, and has forced tens of thousands of people into internal displacement.

6. Tatmadaw tactics have shifted, with periodic reliance on air power against the Arakan Army, but in some instances it appears that civilians may have been directly targeted. There was a significant increase in the number of air strikes by fighter jets, helicopter and heavy artillery attacks, and ground battles in more densely populated civilian areas. For the most part, it appears that the Arakan Army was not active or present in the areas in which those attacks occurred, and no armed clashes were reported at the time. On 7 April 2020, fighter jets conducted an air strike in Chin State, leaving seven civilians dead and six women and one child wounded. Eight houses and a rice mill were destroyed and villagers were forced to flee. They remained displaced as at July 2020.

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

8. Schools, religious sites and civilian homes have been targeted in attacks and damaged by heavy artillery or by Tatmadaw patrols.¹ On 13 February 2020, at least 17 schoolchildren aged between 5 and 12 years were wounded when a mortar shell hit a primary school in the village of Khamwe Chaung in the Buthidaung township. Over 60 students were in the school at the time. On 13 March, three artillery shells hit a monastery in the village of Tin Ma in the Kyauktaw township, causing serious damage to the building. On 29 March, in the village of Pha Pyo in the Minbya township, soldiers set on fire houses and a school and destroyed the local monastery with a rocket-propelled grenade.

9. Tatmadaw units have carried out widespread arbitrary arrests and detention of civilians. The use of torture and other cruel, inhumane or degrading treatment or punishment of detainees has also been alleged. In some cases, the Tatmadaw rounded up the entire male population of villages, often blindfolding them, before transferring them to unknown locations. On 19 April, in Kyauk Seik, 39 men were arrested and subjected to ill-treatment. At the time of reporting, five remained in custody, charged with terrorism offences. Their identities were confirmed by family members from a video that was circulated online showing soldiers abusing the men on a boat. In another incident, on 26 February, two of the six men arrested by the Tatmadaw near the village of Tin Ma died in custody after being beaten, stabbed and burned with boiling water. One of the men was hung by his feet from a tree and beaten by soldiers. Their bodies have not been returned to their families. Several people were arrested or disappeared at military checkpoints. A number of them were subsequently convicted of terrorism offences and detained, whereas others remain missing. In some instances, family members found bodies of victims bearing severe injuries, days after their

¹ Of the 12 attacks on schools recorded in 2019, 8 were attributed to the Tatmadaw (see [A/74/845-S/2020/525](#), para. 127).

initial arrest. For example, on 16 April, in Kyauktaw, the bodies of three men were found in a river several days after being detained at a military checkpoint, with gunshot wounds and signs of severe abuse.

10. There is evidence that Tatmadaw units have unlawfully killed civilians in circumstances in which no armed clashes occurred. On 22 April, Tatmadaw soldiers fired a rocket-propelled grenade, severely injuring a man as he tended buffalo in the Minbya township. He died on his way to hospital. On 30 May, a 73-year-old woman was shot dead by the Tatmadaw while collecting firewood in the Paletwa township.

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

12. Between 19 March and 29 April, three attacks targeting humanitarian actors occurred in Chin and Rakhine States. In each incident, the vehicles or vessels involved displayed official logos or flags. On 19 March, a Relief International boat was shot at and damaged in the Taw Kan area of Rakhine State. On 20 April, a World Health Organization vehicle came under attack in the Minbya township while transporting coronavirus disease (COVID-19) samples from Rakhine to Yangon. Both the driver and a passenger, a Ministry of Health and Sports official, sustained gunshot injuries, as a result of which the driver subsequently died. On 29 April, the President of Myanmar ordered the establishment of a committee to investigate the incident. At the time of writing, the committee had not announced its findings. Finally, on 29 April, a convoy of five World Food Programme trucks came under attack in Chin State while transporting food aid to Paletwa. One contractor was wounded.

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

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

15. According to official statistics,² as at 7 July, 81,637 people were displaced by the conflict, with local humanitarian actors putting the figure as high as 190,708. Internally displaced persons are presently sheltering in makeshift temporary displacement sites, schools, churches and monasteries. A majority lack access to

² See <https://reliefweb.int/map/myanmar/myanmar-myanmar-armed-forces-arakan-army-conflict-generated-displacement-rakhine-and-0>.

adequate food and clean water and are facing security threats from fighting, including landmines, restrictions on freedom of movement and a lack of access to livelihoods and basic services. Living in unhygienic and overcrowded camps, they are also at risk of disease, including COVID-19.

16. Humanitarian access to people in need, in particular internally displaced persons, has declined greatly. An estimated 750,000 people are currently in need of humanitarian assistance in Rakhine alone. For many, the loss of sources of income and food has made humanitarian support the sole means of survival. Humanitarian organizations have been refused access to affected areas since the introduction of new regulations governing travel and access at the end of 2019. Access to rural areas has been severely reduced since March 2020 owing to township-level restrictions imposed by the authorities in Rakhine and Chin. In June 2020, an additional layer of security clearance was added for the transportation of aid from Yangon to Sittwe, with the possibility of humanitarian deliveries being blocked at military checkpoints on suspicion that the assistance will be diverted to the Arakan Army, even when all the necessary permissions have been obtained from the authorities. Few international organizations are allowed access to areas outside the main towns with non-food assistance. Bureaucratic procedures for such authorization have complicated humanitarian activities in both Rakhine and Chin, resulting in interruptions to and delays in the provision of critical services. Access restrictions have also undermined the provision of protection services in conflict-affected areas.

17. Ongoing blockades and armed clashes have exacerbated problems relating to food access in Rakhine and Chin. Authorities have imposed roadblocks, effectively reducing movement along inter-township roads and traditional waterways, disrupting supply chains. The blockade has resulted in food scarcity, empty food storage areas and local markets without any stock, as well as a manifold increase in prices of essential goods, leaving residents with dwindling daily rations. In the Paletwa township, where the Tatmadaw has blocked road and waterway transportation routes since early 2020, the cost of a bag of low-quality rice has increased from 30,000 kyat (\$21) to 120,000 kyat (\$84). Some residents have been forced to resort to drastic measures, such as relying on a fruit-only diet, eating trunks of banana trees or consuming animal feed. Residents of the Ann township in Rakhine are also facing food shortages as transportation and supply chains have been affected by the blockade imposed by the Tatmadaw since January 2020.

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

Kachin and Shan States

19. Patterns of violations and abuse have also been reported in Kachin and Shan States. Although ceasefires were declared by parties to the conflict, clashes between the Tatmadaw and ethnic armed organizations, including parties to the Nationwide Ceasefire Agreement, continued to be reported. Civilians living in affected areas have been victims of human rights violations and abuses committed by security forces and ethnic armed organizations. Such events underline the fragility of security in those

areas owing to a stalled peace process and raise concerns about the intensification of hostilities in the north and north-east of the country.

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

21. Ethnic armed organizations reportedly abducted, beat and killed civilians, forcibly recruited villagers to serve as guides and porters, demanded taxation from individuals living in areas under their control and endangered civilians by occupying villages or encamping nearby. Landmines, reportedly laid by the Tatmadaw and ethnic armed organizations, and unexploded ordnance represent major threats to civilians living in such areas, especially agricultural workers and others whose work brings them into contact with mine-contaminated areas. Hundreds of casualties occurred as a result of mines and unexploded ordnance. Conflicts continued to cause displacement, and 105,000 people remain internally displaced in 170 sites throughout Kachin and Shan since becoming displaced in 2011. Thousands of others have been forced to temporarily flee their homes owing to clashes, but have since been able to return. In mid-2020, the Tatmadaw reportedly destroyed COVID-19 screening points operated by the Kachin Independence Organization and the Restoration Council of Shan State.

Kayin State

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

B. Accountability

23. Myanmar made limited progress on the fact-finding mission's recommendations to conduct prompt, effective, thorough, independent and impartial investigations and to hold perpetrators accountable for crimes committed across the country. In April 2018, the Tatmadaw announced that a court martial, whose entire proceedings remain secretive, had sentenced four officers and three soldiers to 10-years' imprisonment with hard labour for their participation in the killing of 10 Rohingya men in the village of Inn Din. In November 2018, however, the Commander-in-Chief pardoned and released them after they had served less than a year of their sentences. Both the proceedings and the pardon highlight the lack of transparency and independence in the military justice system in Myanmar and the Commander-in-Chief's influence over cases. Similarly, on 30 June 2020, the Tatmadaw announced that a court martial had convicted two officers and a soldier for "weakness in following instructions" during

the Gu Dar Pyin incident in Buthidaung in 2017. Consistent with previous military proceedings, and despite the Tatmadaw's assurances of transparency, information on the identities and ranks of the perpetrators, the crimes for which they were prosecuted, the trial proceedings, the evidence and the sentences remain undisclosed. Secrecy and the lack of independence characterize all proceedings run by the Tatmadaw, making court martial proceedings inadequate in obtaining justice for crimes committed by military personnel against civilians. In the case of Kachin and Shan States, there have been no investigations or prosecutions, and the armed forces have total impunity for crimes documented by the fact-finding mission in those areas.

24. Consistent with previous action aimed at providing a notion of accountability,³ the Independent Commission of Enquiry established by the Government submitted its report to the President on 20 January 2020. Except for a 14-page executive summary with recommendations and some annexes, the report remains unpublished. A full assessment of the factual and legal analysis underpinning the Commission's findings and recommendations, as well as its methods of work, including the type and selection of sources and access to and protection of witnesses, in particular the failure to interview any Rohingya victims and witnesses in Bangladesh, is not possible on the basis of the information made available. Significant concerns previously raised about the structure, mandate, timing, independence and impartiality of the Commission persist. Given that its mandate was focused narrowly on specific events in Rakhine during a 12-day period, there was no investigation into broader patterns of violations or crimes committed in other parts of the country. The Myanmar authorities remain in denial that crimes in those areas have occurred, and that cyclical violence and continuous serious human rights violations against minorities across the country are fundamentally linked to discriminatory policies and practices.

25. In its recommendations, the Independent Commission of Enquiry failed to consider and fully address the institutional weaknesses of the national justice system. To address the grave violations that have been perpetrated over decades and to strengthen democracy and the rule of law, Myanmar must ensure accountability, including through transitional justice initiatives, in full compliance with international standards and through impartial and credible mechanisms. A broad process of constitutional, legal, institutional and administrative reform is needed, involving all relevant stakeholders and with a view to ending impunity and preventing the recurrence of violations.

26. In December, Myanmar appeared before the International Court of Justice in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*. During the public hearings on the request for the indication of provisional measures submitted by the Gambia, which sought to preserve, pending the Court's final decision in the case, the rights of the Rohingya group in Myanmar, of its members and of the Gambia under the Convention on the Prevention and Punishment of the Crime of Genocide, the representative of Myanmar noted that disregard for international humanitarian law could not be ruled out and restated the willingness of Myanmar to prosecute those responsible. So far, however, steps taken by the Independent Commission of Enquiry and military justice processes appear to have been insufficient and to have replicated past patterns of delaying effective accountability processes and maintaining impunity. During the hearings before the Court, representatives of Myanmar did not fully address the issue of sexual and gender-based violence, notwithstanding the documentation by the fact-finding mission of endemic rape, mass gang rape and sexual violence against Rohingya women and girls, and sometimes against men and boys. The available

³ See [A/HRC/39/64](#), paras. 95–99; [A/HRC/39/CRP.2](#), paras. 1601–1609; [A/HRC/40/37](#), paras. 56–59; and [CEDAW/C/MMR/CO/EP/1](#), para. 9.

findings of the Commission, combining denial or rejection of responsibility, call into question both the willingness of the authorities to ensure genuine accountability and the independence of the national Commission.

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

28. The presidential directives on preserving evidence were issued almost three years after the incidents in Rakhine State. The fact-finding mission concluded that, since August 2017, Myanmar had actively sought to prevent the return of the Rohingya through the “appropriation of vacated land and terrain clearance” and by “erasing every trace of the Rohingya communities”. In addition, satellite imagery unequivocally confirms that physical structures built since October 2017 for the return of the Rohingya, including the Taung Pyo Let Yar and Nga Khu Ya reception centres and the Hla Poe Kaung transit centre, were constructed where Rohingya villages had previously stood, thereby potentially destroying any evidence that may have existed at those sites. There is evidence that similar reconstruction has occurred since 2017 in several villages in the Maungdaw township, as well as in the village of Paung Zar in the Rathedaung township.

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

C. Sexual and gender-based violence

30. Impunity regarding sexual and gender-based violence continues. No safe, effective, accessible and gender-sensitive reporting mechanisms for such crimes are in place, and the Government continues to flatly deny their occurrence in both conflict and non-conflict settings. The Independent Commission of Enquiry also excluded evidence of sexual and gender-based violence documented by the fact-finding mission. Victims and their families continue to face significant barriers in reporting violence and obtaining access to services. Challenges reported by victims’ advocates include language barriers for ethnic minority communities, stigma and the fear of being subject to criminal defamation laws if cases involve members of the armed forces. Such shortcomings make it difficult to assess the extent of sexual violence in

Myanmar, with the few cases reported likely representing only a fraction of those occurring across the country. Such challenges are particularly acute in rural and non-government-controlled areas, where cases are usually addressed through compensation payments made by third-party intermediaries, if at all.

31. Since February 2019, the Government has introduced “one-stop crisis centres” and “one-stop women’s support centres” offering health services to survivors, shelter for mothers and children and legal support for victims of sexual violence. While these are positive steps, the number of centres is low and access for the most vulnerable populations is limited. Unrestricted access to free, confidential, multisectoral sexual and gender-based violence response services is still absent in Myanmar. While the Ministry of Social Welfare, Relief and Resettlement and the Ministry of Health and Sports have developed protocols and guidelines to promote survivor-centred responses, services must be scaled up considerably in order to ensure access for populations in hard-to-reach areas and those affected by conflict. Humanitarian access must also be granted to partners specialized in delivering survivor-centred response services.

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

33. In January 2020, the draft law on the prevention of violence against women was submitted to Parliament following a drawn-out drafting process that began in 2013. Despite concerns raised by civil society and the United Nations about the content of the draft, it continues to fall short of international standards as set out in the Convention on the Elimination of All Forms of Discrimination against Women, as highlighted by the Committee on the Elimination of Discrimination against Women. Concerns therefore remain as to whether the draft law, if passed in its current form, will provide adequate legal protection for women.

D. Fundamental rights and freedoms

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

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

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

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

38. The fact-finding mission made detailed recommendations to the Government regarding hate speech. On 20 April 2020, the Office of the President issued a directive to all ministries and state and regional governments to take all measures possible to denounce and prevent all forms of hate speech and to encourage participation in and support for anti-hate speech activities. This first positive step needs to be followed by fair, non-discriminatory and equal implementation of the directive, as well as the establishment of a comprehensive legal and policy framework to address discrimination on any grounds, including ethnicity, religion, gender and sexual orientation. OHCHR and other United Nations entities have offered to assist the Government in developing such a framework in lieu of a draft anti-hate speech law that may further limit space for freedom of expression. Vague provisions in the draft law are open to misapplication and could, if it is adopted in its current form, significantly infringe upon the right to freedom of expression.

39. A significant amount of content posted online contains language that is derogatory and offensive to minorities and demonizes those who allegedly support ethnic armed organizations. Recently, activists involved in an online anti-discrimination campaign have faced threats and harassment for their advocacy. Despite Facebook having taken steps to improve its operations in Myanmar since 2018, including removing military officials' personal accounts and organizational pages, military propaganda pages containing racist language that incite hatred remain online.

40. Contrary to the fact-finding mission's recommendation to facilitate the return of internally displaced persons to their homes or places of origin, thousands remain in

camps. In November 2019, the Government finalized its national strategy on the resettlement of internally displaced persons and the closure of their camps, which contains references to key international standards and has the potential to contribute to durable solutions for displaced persons. Current attempts to close the Kyauk Ta Lone camp in Rakhine State, however, have raised serious concerns. Meaningful consultations with the camp's Kaman and Rohingya residents have not been held, but they nevertheless desire to return to their places of origin. In addition, the relocation site currently under construction is near the existing camp, prone to flooding and lacks access to livelihood opportunities and basic services, including health care and education. The proposal threatens permanent segregation and ghettoization of the displaced persons.

E. Economic and social rights

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

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

43. In September 2018, through amendments to the Vacant, Fallow and Virgin Lands Management Law of 2012, new bureaucratic requirements were introduced to obtain permits for the use of lands declared vacant, fallow or virgin under the law – most of which are located in states in Myanmar with large minority populations – thereby facilitating large-scale agriculture, mining and other activities. Although customary land use was recognized in the amendments for the first time, customary tenure remains legally undefined and is not subject to specific protection within the complex legal framework governing land use in Myanmar. The result of the amendment is the dispossession of millions of smallholder farmers and the criminalization of their ongoing land use, unless they applied for and were granted the newly required permits within six months of the entry into force of the amendment.

44. In August 2019, Parliament passed the Land Acquisition, Resettlement and Rehabilitation Law, which replaced the Land Acquisition Act of 1894. Although the new law includes positive policy objectives, a definitive list of “public purpose” categories for land expropriations and requirements for surveys to identify some potentially affected populations, for environmental and social impact assessments and for resettlement and rehabilitation plans, it still falls far short of the country's obligations under the International Covenant on Economic, Social and Cultural Rights. Certain public purpose categories are overly broad, risking the prioritization of commercial interests over individual rights and social costs. In addition, the law does not cover numerous categories of persons who would be affected by it – such as those displaced by conflict who have restitution rights and those who use land communally – which runs counter to the non-discrimination obligation in the Covenant.

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

46. In parallel, the Government launched the Myanmar Sustainable Development Plan in August 2018, and in early 2019 introduced a project bank, which together provide a policy framework and publicly accessible repository of investment projects. Over more or less the same period, the Government also committed itself to the China-Myanmar Economic Corridor, a framework for large-scale infrastructure, trade and transportation projects forming part of the Belt and Road Initiative.

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

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

F. Institutional and legal reforms

49. Contrary to the recommendations of the fact-finding mission, laws, orders, policies and practices at all levels of government that limit freedoms of movement,

expression, association and assembly or that are discriminatory in their application or impact have not been reviewed, amended or repealed. The four laws on the protection of race and religion remain in place and continue to pose serious risks to the rights of minority ethnic communities, women and children. Laws that are discriminatory in wording or effect continue to be adopted by the Parliament, including the amendments in 2018 to the Vacant, Fallow and Virgin Lands Management Law. In 2019, Myanmar enacted a new Child Rights Law that protects many of the rights enshrined in the Convention on the Rights of the Child and criminalizes the six grave violations against children in armed conflict. While it provides for universal birth registration, it does not guarantee to all children the right to nationality.

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

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

52. National legislation still fails to encompass crimes under international law, and there has been no progress in amending the law to grant national courts jurisdiction in international crimes. Prosecutors and the judiciary continue to lack independence, and fair trial rights are frequently violated. The Fair Trial Guidebook issued by the Office of the Union Attorney General and the Code of Judicial Ethics promulgated by the Supreme Court require adherence to standards in the conduct of proceedings, but have had little impact in reality.

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

That raises further concerns about its independence and ability to act to promote and protect human rights.

G. Action by the United Nations in Myanmar

54. On the basis of the fact-finding mission's recommendations, the United Nations country team, with the support of OHCHR, has taken numerous steps to implement the Human Rights Up Front action plan and the Secretary-General's subsequent call to action in all its in-country engagements. While several processes were successfully completed, the COVID-19 pandemic resulted in delays to others. A working group composed of representatives of the United Nations country team's human rights theme group and the humanitarian country team, including non-governmental organizations and donors, was established to assess the relevance of the fact-finding mission's recommendations to their human rights and humanitarian work in Myanmar and to monitor their implementation. An independent report on the brief and independent inquiry into the involvement of the United Nations in Myanmar from 2010 to 2018 was commissioned by the Secretary-General, in which, among other things, the establishment of mechanisms was recommended to ensure continuous dialogue between donors and non-governmental organizations on human rights and, through existing mechanisms such as the humanitarian country team's protection strategy, to monitor and report on the implementation by the Government of the fact-finding mission's recommendations.

55. Central to the work of the United Nations country team was the development, supported by the Office of the Resident and Humanitarian Coordinator, of a common human rights strategy to provide a tailored policy framework to promote respect for human rights in line with the Secretary-General's call to action on human rights and the Human Rights Up Front action plan. A strategy was developed through broad consultations with relevant stakeholders within and outside the United Nations, which also draws upon the findings of the report on the brief and independent inquiry. It encompasses four key objectives: leaving no one behind; protecting and promoting human rights; the standing of the United Nations as a credible, principled and effective actor; and cultural change in the United Nations.

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

57. OHCHR is supporting a process to carry out a human rights due diligence analysis of United Nations engagement with Myanmar authorities and the private sector in line with the human rights due diligence policy. To that end, in August 2019, the Resident and Humanitarian Coordinator formally notified the Government of the obligation of the United Nations to implement the process. Moreover, the United Nations country team duly noted all findings and conclusions of the fact-finding mission's report on the economic interests of the Myanmar military ([A/HRC/42/CRP.3](#)) and took specific action to ensure that its programmes and procurement activities underwent a thorough due diligence process. Other United Nations agencies, funds and programmes in the country have implemented their own due diligence processes to vet aspects of their own programming and project implementation.

58. In April 2019, the United Nations established a multi-stakeholder working group on the monitoring, analysis and reporting arrangements for conflict-related sexual violence. Its purpose is to systematically gather data on conflict-related sexual violence, inform trend analysis and identify opportunities for United Nations engagement to increase compliance with the international obligations of Myanmar. Efforts are under way to strengthen survivor-centred response services by working closely with partners in areas in which the United Nations has no physical access.

III. Conclusions

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

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

IV. Recommendations

61. **OHCHR reiterates the recommendations contained in previous reports by the High Commissioner and human rights mechanisms, including the Special Rapporteur on Myanmar and the independent international fact-finding mission. In addition, it recommends that the Government of Myanmar:**

(a) **Immediately extend the ceasefire throughout the country and end violations of international humanitarian and human rights law, including all restrictions on humanitarian access;**

(b) **Conduct prompt, independent, impartial and thorough investigations into all allegations of violations of international humanitarian law, including**

conduct that may constitute war crimes and crimes against humanity in Rakhine and Chin States, and human rights violations, and ensure that perpetrators are brought to justice through transparent and credible processes;

(c) Acknowledge that sexual crimes have occurred in Rakhine State and other parts of the country, take specific measures to identify and hold perpetrators accountable and ensure health-care and psychosocial services for survivors;

(d) 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;

(e) Facilitate access for OHCHR to the country, pending the establishment of an OHCHR office, and engage with OHCHR in technical cooperation;

(f) Amend the Burma Citizenship Law of 1982, removing links between ethnicity and citizenship, and restore the citizenship of the Rohingya;

(g) Ensure sustainable solutions for displaced persons and implement the national strategy for the closure of camps for internally displaced persons, in compliance with international standards;

(h) Ensure that the Myanmar National Human Rights Commission fully complies with the Paris Principles, and that commissioners are appointed through a transparent process and include representatives from civil society and ethnic minority groups;

(i) Issue a moratorium on land expropriation under the Farmland Law of 2012, the Vacant, Fallow and Virgin Lands Management Law of 2012 and the Land Acquisition Act of 1894 or the Land Acquisition, Resettlement and Rehabilitation Law of 2019 until a land governance framework is established in line with the national land use policy of 2016;

(j) Create an enabling environment for independent media and civil society, including by publicly acknowledging their value in a democratic society and ceasing to criminalize the exercise of their rights and freedoms;

(k) Cooperate and engage meaningfully with the newly appointed Special Rapporteur on Myanmar and relevant international justice and accountability mechanisms.

62. OHCHR also recommends that ethnic armed organizations in Myanmar take all measures to end hostilities, violations of international humanitarian law and abuses of human rights law.

63. Furthermore, OHCHR recommends that the United Nations in Myanmar:

(a) Continue to pursue the implementation of the recommendations issued by the fact-finding mission and to advocate accountability for perpetrators of serious crimes under international law, in a comprehensive and multifaceted manner centred upon the realization of victims' rights and the prevention of recidivism;

(b) Ensure that all in-country programmes incorporate a human rights-based approach and undergo due diligence processes.