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Human rights situations that require the Council's attention

Albania,* Australia, Austria, Belgium,* Bulgaria, Canada,* Croatia,* Cyprus,* Czechia, Denmark, Estonia,* Finland,* France,* Germany, Greece,* Hungary,* Iceland,* Ireland,* Italy, Latvia,* Liechtenstein,* Lithuania,* Luxembourg,* Maldives,* Malta,* Monaco,* Montenegro,* Netherlands, New Zealand,* North Macedonia,* Norway,* Poland, Portugal,* Romania,* San Marino,* Slovakia, Slovenia,* Spain, Sweden,* Switzerland,* Turkey* and United Kingdom of Great Britain and Northern Ireland*: draft resolution

43/... Situation of human rights in Myanmar

The Human Rights Council,

Guided by the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenants on Human Rights, and reaffirming all relevant Human Rights Council and General Assembly resolutions and decisions on the situation of human rights in Myanmar, the most recent being Assembly resolution 74/246 of 27 December 2019, and Council resolutions S-27/1 of 5 December 2017, 37/32 of 9 April 2018, 39/2 of 27 September 2018, 40/29 of 22 March 2019 and 42/3 of 26 September 2019,

Welcoming the work and the reports of the Special Rapporteur on the situation of human rights in Myanmar, including her report submitted to the Council at its forty-third session,¹ while deeply regretting the ongoing non-cooperation of the Government of Myanmar with the Special Rapporteur and the denial of access to Myanmar since December 2017,

Welcoming also the work of the independent international fact-finding mission on Myanmar and in particular its final report² and its detailed findings,³

Welcoming further the conclusions on Myanmar of the Working Group on Children and Armed Conflict of the Security Council,⁴ and noting the concern expressed by the Working Group about the grave violations committed against children,

Welcoming the work of the Independent Investigative Mechanism for Myanmar, established by the Human Rights Council in its resolution 39/2, to collect, consolidate,

* State not a member of the Human Rights Council.

¹ A/HRC/43/59.

² A/HRC/42/50.

³ See conference room paper A/HRC/42/CRP.5, available from www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/ReportHRC42thSession.aspx.

⁴ S/AC.51/2019/2.



preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011, in particular in Rakhine, Kachin and Shan States, making use of the information handed over by the independent international fact-finding mission, and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have, or may in the future have, jurisdiction over these crimes, in accordance with international law,

Welcoming also the work of the Special Envoy of the Secretary-General on Myanmar, and encouraging her further engagement and dialogue involving all relevant stakeholders, including civil society, as requested by the General Assembly in its resolution 72/248 of 24 December 2017,

Welcoming further the report of the United Nations High Commissioner for Human Rights on the root causes of the human rights violations and abuses the Rohingya people and other minorities in Myanmar are facing,⁵

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

Recognizing also the complementary and mutually reinforcing work of the various United Nations mandates working on Myanmar to improve the humanitarian situation and the situation of human rights in the country,

Noting that the International Criminal Court has authorized a prosecutor to investigate alleged crimes within the Court's jurisdiction in the situation in Bangladesh and in Myanmar,

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

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

Recalling that States have the primary responsibility to respect, protect and fulfil human rights, and have the responsibility to comply with their obligations to prosecute those responsible for violations of international law, including international humanitarian law, international human rights law and international refugee law, and for abuses of human rights law, and to provide an effective remedy to any person whose rights have been violated or abused with a view to end impunity,

Reiterating the urgent need to ensure that all those responsible for violations of international law, including international humanitarian law, international human rights law and international refugee law and for abuses of human rights law, in particular in Rakhine, Kachin and Shan States, are held to account through credible, competent and independent national or international criminal justice mechanisms, while recalling the authority of the Security Council to refer the situation in Myanmar to the International Criminal Court, and reiterating its invitation to Myanmar to become a party to the Rome Statute or to accept the exercise of jurisdiction of the International Criminal Court in accordance with article 12 (3) of the Rome Statute,

⁵ A/HRC/43/18.

Reiterating its deep concern at the escalation of violence between the Myanmar armed forces (the Tatmadaw) and the Arakan Army in Rakhine and Chin States, the continuing forced displacement of civilians, including of ethnic minorities, abductions, arbitrary detentions and killings, and the use of facilities, functioning as schools, for military purposes, as well as reports of violations and abuses of human rights, including the use of landmines, making conditions unsuitable for the voluntary, safe, dignified and sustainable return of all refugees and forcibly displaced persons, including Rohingya,

Expressing deep concern at the fact that diversion and unregulated or illicit arms transfers may seriously undermine human rights, especially those of persons belonging to minorities, women, children, the elderly, persons with disabilities and other vulnerable groups,

Regretting the lack of progress in the peace process and that the Myanmar armed forces decided to end its unilateral ceasefire in northern and eastern conflict areas in September 2019, while encouraging them to announce a new ceasefire,

1. *Expresses grave concern* at continuing reports of serious human rights violations and abuses in Myanmar, including sexual and gender-based violence and violations and abuses against children, in particular in Rakhine, Kachin and Shan States, and calls upon all parties and armed groups, in particular the Myanmar military and security forces, to end immediately violence and all violations of international law, including of international human rights law and international humanitarian law, and human rights abuses in Myanmar;

2. *Also expresses grave concern* at the ongoing conflict in Rakhine, Chin, Kachin and Shan States between the armed forces of Myanmar, the Arakan Army and other armed groups, the culture of impunity that exists in the Myanmar security forces, and at the continuing forced displacement of civilians, mass and systemic human rights violations and abuses, and killings, and the dire humanitarian situation due to the conflict, encourages the eradication of deployed landmines and the cessation of their use in all circumstances, and calls upon all parties to show restraint and cease conflict, to respect their relevant obligations under international human rights law and international humanitarian law, to ensure the safety and protection of civilians, to hold perpetrators accountable in ensuring justice to victims and survivors and to show readiness to re-engage in dialogue;

3. *Welcomes* the order of the International Court of Justice of 23 January 2020, and urges the Government of Myanmar, in accordance with the Court's order in relation to members of the Rohingya group in its territory, to take all measures within its power to prevent the commission of all acts within the scope of article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide, to ensure that its military and any irregular armed units that may be directed or supported by it and any organizations and persons that may be subject to its control, direction or influence do not commit, inter alia, any such acts, to prevent the destruction and ensure the preservation of evidence, and to report to the Court as ordered on all measures taken to give effect to the order, notes the priority accorded to the International Court of Justice process by Myanmar to date, and notes the meeting of the Security Council held on 4 February 2020;

4. *Calls upon* the Government of Myanmar to ensure the protection of the human rights of all persons in Myanmar and to take all measures necessary to ensure justice and accountability, to end impunity for all violations and abuses of human rights by undertaking a full, transparent, impartial and independent investigation into all reports of violations and abuses of international human rights law and international humanitarian law, and to ensure that perpetrators are held accountable in fair and independent criminal proceedings, in courts or tribunals, in accordance with international law standards;

5. *Also calls upon* the Government of Myanmar to fully recognize and address the needs of victims and survivors and their right to effective remedy, including by prompt, effective and independent casualty recording, and guarantees of non-recurrence;

6. *Urges* the Government of Myanmar to make public in its entirety the final report of the Independent Commission of Enquiry, including the annexes thereto, without further delay, and calls upon the Government to set out its plan of action, with the full

participation of all stakeholders, on how it will implement the recommendations, including by taking credible action to bring to justice those responsible for serious violations and abuses of human rights;

7. *Deplores* the release, after only nine months of detention, of the members of the Myanmar military who were convicted by court martial of the unlawful killing of Rohingya civilians in Inn Din, Rakhine State, and repeats its call upon the Government and the Myanmar armed forces to take the measures necessary to ensure accountability and to end impunity for those crimes;

8. *Welcomes* the release of journalists Wa Lone and Kyaw Soe Oo, and reiterates its call for the immediate and unconditional release of all other journalists, media workers, human rights defenders and activists detained, charged and arrested and for the Government of Myanmar to fulfil its commitment to release unconditionally all political prisoners and to provide for the full rehabilitation of former political prisoners;

9. *Calls for* the Independent Investigative Mechanism for Myanmar established by the Human Rights Council in its resolution 39/2 to continue to discharge its mandate, making use of the information collected by the independent international fact-finding mission and other credible sources, and for close and timely cooperation between the Mechanism and any future investigations by national, regional or international courts or tribunals, including by the International Criminal Court or the International Court of Justice;

10. *Calls upon* the United Nations to ensure that the Independent Investigative Mechanism for Myanmar is afforded the necessary support and resources in terms of staffing, location and operational freedom so that it can deliver as effectively as possible on its mandate, and urges Myanmar and Member States to cooperate with the Mechanism, to grant it access and to provide it with every assistance in the execution of its mandate and with other sources of information, and the appropriate protection of confidentiality, security and support for victims and witnesses to fully respect and comply with the principle of “do no harm”;

11. *Stresses* the need to effectively address the root causes of human rights violations and abuses against ethnic minorities, including the Rohingya, in Rakhine State, and also the need to create conditions and to establish a plan conducive to the voluntary, safe, dignified and sustainable return of all refugees and forcibly displaced persons, including Rohingya;

12. *Reiterates* the importance of the full implementation of all recommendations made by the Advisory Commission on Rakhine State,⁶ including those on access to citizenship, freedom of movement, the elimination of systematic segregation and all forms of discrimination, and inclusive and equal access to health services and education, and birth registration, in full consultation with all ethnic and minority groups, including the Rohingya, and persons in vulnerable situations, as well as civil society, and calls upon the Government of Myanmar to regularly report to the United Nations on the concrete steps taken to implement each of the Commission’s 88 recommendations;

13. *Notes* the commitment of the Government of Myanmar to enable Muslim youth to attend classes at universities across Myanmar, making scholarships available to students from all communities living in Rakhine, and strongly encourages the Government to broaden the scope of that commitment to include all ethnic and religious minorities, including the Rohingya, and to conduct a review of its official curriculum to fully recognize the country’s ethnic and religious diversity;

14. *Calls upon* the Government of Myanmar, in line with the bilateral instruments on repatriation signed by Bangladesh and Myanmar in November 2017, to take concrete steps towards the creation of a conducive environment for the voluntary, safe, dignified and sustainable return of the forcibly displaced Rohingya residing in Bangladesh, and to disseminate authentic information, in partnership with the United Nations and other relevant actors, on the conditions in Rakhine State in order to reasonably address the core concerns of

⁶ See Advisory Commission on Rakhine State, “Towards a peaceful, fair and prosperous future for the people of Rakhine”, August 2017.

the Rohingya, thereby encouraging them to return to their places of origin or their place of choosing, including through the implementation of the memorandum of understanding signed by the Government of Myanmar, the United Nations Development Programme and the Office of the United Nations High Commissioner for Refugees;

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

16. *Notes* the adoption of a national strategy on the resettlement of internally displaced persons and the closure of camps for internally displaced persons by the Government of Myanmar in November 2019, urges the implementation of the strategy in accordance with international standards, in full consultation with the internally displaced persons and by promoting their voluntary, safe, dignified and sustainable return to places of origin or places of choosing and the removal of any restrictions on movement as the priority in Kachin, Rakhine, Shan States and in the south-east of Myanmar, as well as in consultation with the United Nations system and relevant civil society organizations, and encourages ensuring consultation with and the representation of women at all levels of decision-making relating to the camp-closure strategy and its implementation;

17. *Calls upon* the Government of Myanmar to cooperate fully with and to grant full, unrestricted and unmonitored access for all United Nations mandates and human rights mechanisms, including the Independent Investigative Mechanism for Myanmar, the Special Rapporteur and relevant United Nations agencies and international and regional courts and human rights bodies to independently monitor the situation of human rights, and to ensure that individuals have unhindered access to and can communicate with the United Nations and other human rights entities without fear of reprisal, intimidation or attack;

18. *Also calls upon* the Government of Myanmar to ensure full respect for international humanitarian law and to allow free and unhindered access to the entire country for local and international staff of humanitarian and other relevant international agencies to provide humanitarian assistance, including age-, disability- and gender-responsive assistance, and the delivery of supplies and equipment in order to allow said personnel to perform efficiently their task of assisting affected civilian populations, including internally displaced persons;

19. *Urges* the Government of Myanmar to grant full and unhindered access to the diplomatic corps, independent observers and representatives of the national and international independent media, without fear of reprisal, intimidation or attack, and to lift the Internet shutdown in Rakhine and Chin States that has been in place in four townships since 21 June 2019 and five more townships since 3 February 2020;

20. *Welcomes* the involvement of the Association of Southeast Asian Nations in finding solutions in Rakhine State and the establishment of an ad hoc support team of the Association's secretariat, and calls for an even stronger engagement by the Association in close collaboration with relevant United Nations agencies in supporting voluntary, safe, dignified and sustainable returns in compliance with international law, including international humanitarian law, international human rights law and refugee law;

21. *Calls upon* the Government of Myanmar to safeguard those who report violations and abuses, and in this regard expresses concern at reports of the arrest of individuals exercising those rights, and also calls upon the Government to amend or repeal restrictive laws and to end remaining curbs on exercising the rights to the freedoms of religion or belief, expression, association and peaceful assembly, both online and offline, which are essential to ensure a safe and enabling environment for all, notably for civil society, journalists and media workers, human rights defenders, casualty recorders, lawyers, environmental and land rights activists and civilians;

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

23. *Expresses concern* at the continued erosion of the freedoms of expression and the press, and urges the Government of Myanmar to proceed with the reform of the Media Law and to review, repeal or reform all relevant legislation, including the Official Secrets Act, the Unlawful Associations Act, the Peaceful Assembly and Peaceful Procession Law, articles 66 (d), 77 and 80 (c) of the Telecommunications Act, the Law Protecting the Privacy and Security of Citizens, and articles 500, 505 (a) and 505 (b) of the Penal Code to bring them into line with international human rights law obligations;

24. *Welcomes* the steps taken within the Parliament of Myanmar towards amending the Constitution and in preparation for credible, inclusive and transparent elections to be held in 2020, ensuring equal opportunity for the representation and participation of women and minority groups as candidates and voters and that all people of Myanmar are able to cast their vote, allowing all candidates to contest fairly and the international community to monitor the elections, and ensuring that the democratic transition of Myanmar is sustained by bringing all national institutions, including the military, under a democratically elected, fully representative civilian government;

25. *Urges* the Government of Myanmar to restore full citizenship and voting rights of all ethnic minorities in Myanmar, including the Rohingya, and to ensure free and fair participation of the Rohingya and other minorities in the elections to be held in 2020 in Myanmar;

26. *Calls upon* the Government of Myanmar to take the measures necessary to promote the inclusion, human rights and dignity of all people living in Myanmar, to address sexual and gender-based violence, discrimination and the spread of prejudice, including the spread of disinformation, hate speech and inflammatory rhetoric also through social media, and to combat the incitement to hatred and violence against ethnic, religious and other minorities in accordance with the Rabat Plan of Action, also in line with recommendation 9 of the executive summary of the independent commission of Enquiry;

27. *Encourages* the Government of Myanmar to accede to international human rights conventions, in particular the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

28. *Welcomes* the establishment by the Government of Myanmar of a committee for the prevention of grave violations against children in armed conflict and looks forward to its concrete results, and its ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, while urging the Government to accelerate the implementation of the joint action plan to end and prevent the recruitment and use of children by government forces, including by the Tatmadaw, and to ensure accountability for grave violations against children, and emphasizes the need for the Government to further protect the right of all children to acquire citizenship in order to eliminate statelessness, in accordance with the State's obligations under the Convention on the Rights of the Child, and to ensure the protection of all children in armed conflict;

29. *Calls upon* the Government of Myanmar to ratify the Minimum Age Convention, 1973 (No. 138) of the International Labour Organization, to eliminate child and forced labour, including for ethnic groups such as the Rohingya, and to amend the draft labour organization law, and further amend the Settlement of Labour Disputes Law to promote freedom of association in accordance with international labour standards;

30. *Encourages* all business enterprises, including transnational corporations and domestic enterprises operating in Myanmar, to respect human rights in accordance with the Guiding Principles on Business and Human Rights and the recommendations made by the

independent international fact-finding mission in its conference room paper on the economic interests of the Myanmar military,⁷ and requests the home States of businesses investing in Myanmar or with parts of their supply chains in Myanmar to advise those businesses to conduct appropriate due diligence so that their activities do not support, or risk being seen to be supporting, any human rights violations or abuses;

31. *Welcomes* the dialogue between the Government of Myanmar and the United Nations on addressing conflict-related sexual and gender-based violence in Myanmar, and encourages the Government to take action, inter alia, to hold perpetrators accountable, to ensure adequate assistance and access to justice to victims and survivors of sexual and gender-based violence and to support legal reforms, including a law on the prevention of violence against women, and to provide training and capacity-building to justice and security sector actors;

32. *Also welcomes* the Myanmar National Human Rights Commission Strategic Plan (2020–2024) and the Commission’s reform efforts, and encourages the Myanmar Parliament to enable the Commission to fulfil its mandate independently and in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), regrets the lack of a transparent selection process for commissioners and a clear intention to ensure that the Commission reflects the country’s ethnic, religious, regional and gender diversity and includes human rights expertise, and calls upon the Government of Myanmar to ensure the independence of the Commission, including by supporting its compliance with the Paris Principles and accreditation with the Global Alliance of National Human Rights Institutions;

33. *Calls upon* the Government of Myanmar to demilitarize mining regions and to ensure the protection of human rights for workers in natural resource extraction and the enforcement of environmental safety standards, and urges the Government to work with relevant stakeholders and affected populations to develop inclusive policies for natural resource management and benefit-sharing;

34. *Reiterates its call upon* the Government of Myanmar to act on its commitment to open a country office of the Office of the United Nations High Commissioner for Human Rights, with a full mandate, and encourages the Government to issue a standing invitation to all special procedures of the Human Rights Council;

35. *Encourages* the Government of Myanmar to maintain and enhance its engagement with the Special Envoy of the Secretary-General on Myanmar, and allow her continued access to support the ongoing fulfilment of her mandate;

36. *Decides* to extend the mandate of the Special Rapporteur on the situation of human rights in Myanmar for a further period of one year, requests the new mandate holder to present an oral progress report to the Human Rights Council at its forty-fourth and forty-fifth sessions and to submit a report to the Third Committee at the seventy-fifth session of the General Assembly and to the Council at its forty-sixth session, in accordance with its annual programme of work, and invites the Special Rapporteur to continue to monitor the situation of human rights and to measure progress in the implementation of the recommendations made by the mandate holder;

37. *Requests* the Special Rapporteur to undertake thematic research with a view to monitoring the implementation of the recommendations made by the independent international fact-finding mission on Myanmar, and to provide detailed updates on the issues covered by the mission in its reports and conference room papers;

38. *Calls upon* the Government of Myanmar to resume without delay its cooperation with the Special Rapporteur in the exercise of the mandate, including by facilitating visits and granting unrestricted access throughout the country, and to resume its work with the Special Rapporteur to develop a work plan and time frame for the swift implementation of the proposed joint benchmarks identified by the mandate holder in her

⁷ See conference room paper A/HRC/42/CRP.3, available from www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/EconomicInterestsMyanmarMilitary.aspx.

previous reports, and for progress in priority areas of technical assistance and capacity-building;

39. *Welcomes* the Secretary-General's initiative to take concrete action based on the recommendations contained in the report entitled "A brief and independent inquiry into the involvement of the United Nations in Myanmar from 2010 to 2018", and invites the Secretary-General to provide an oral update to the Human Rights Council at its forty-sixth session on progress made in the implementation of follow-up action to enable more effective work in the future and to strengthen the prevention capacity of the United Nations system;

40. *Requests* the Secretary-General and the United Nations High Commissioner for Human Rights to provide the Special Rapporteur and the Independent Investigative Mechanism for Myanmar with the assistance, resources and expertise necessary to enable them to discharge their mandates fully.
