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Annual report of the United Nations High Commissioner
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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, submitted pursuant to Human Rights Council resolution 29/21, examines the situation of human rights of Rohingya Muslims and other minorities in Myanmar. It analyzes patterns of human rights violations and abuses, particularly discrimination, and concludes with recommendations on measures to be taken by the Government to improve the situation of minorities in Myanmar.

I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 29/21, which requested the High Commissioner for Human Rights to report on the “human rights violations and abuses against Rohingya Muslims and other minorities in Myanmar, particularly the recent incidents of trafficking and forced displacement of Rohingya Muslims”.

2. The report is based on information received by the Office of the United Nations High Commissioner for Human Rights (OHCHR) from various sources, including the Government of Myanmar, United Nations entities, the Myanmar National Human Rights Commission and civil society. It also considers reports of the Special Rapporteurs on the situation of human rights in Myanmar (Special Rapporteur) since 1992. The report takes into account written and oral comments received from the Government of Myanmar.

II. Context

3. Myanmar is one of the most ethnically diverse countries in Asia, with 135 recognized “national ethnic groups” as per the 1982 “Citizenship Law” (Citizenship Law),¹ categorized into eight major “national ethnic races”: Bamar (approximately two-thirds of the population), Chin, Kachin, Kayah, Kayin, Mon, Rakhine and Shan. An estimated 90 per cent of the population are Buddhists, four per cent Muslims, four per cent Christians and under two per cent Hindus. Most Christians belong to ethnic minorities, including Chin, Kachin and Kayin. Some Muslim communities are officially recognized as a distinct ethnic group (like the Kaman), others are known as “Bamar Muslims”, “Chinese Muslims” or “Indian Muslims”.

4. Rohingya Muslims represent the largest percentage of Muslims in Myanmar, with the majority living in Rakhine State.² They self-identify as a distinct ethnic group with their own language and culture, and claim a longstanding connection to Rakhine State. Successive governments have rejected these claims and Rohingya were not included in the list of recognized ethnic groups. Most Rohingya are stateless.

5. In 2014, the Government conducted the first census in 30 years. A directive prohibiting Rohingya from identifying as such led to their de facto exclusion from the official count.³ Data on ethnicity and religion are yet to be released.⁴ Data gaps, combined with lack of access to parts of the country, pose significant challenges in analyzing the situation of minorities.

6. Ethnic and religious minorities in Myanmar have a complex and contested history. The 1947 Panglong Conference envisaged the creation of a federal union based on voluntary association and political equality. Yet, upon independence in 1948, Myanmar became a quasi-federal union largely dominated by the Bamar ethnic group. Subsequent claims by ethnic minorities for self-determination, greater autonomy and an equitable share of power and resources have driven non-international armed conflicts, varying in scope and intensity. Following military assumption of power in 1962, ethnic minorities were

¹ See 1983 Procedures relating to “Citizenship”.

² UNHCR, Mid-Year Trends, 2015, 17.

³ See Government of Myanmar, Census Report Volume 2, 2015, p. 8.

⁴ The publication of census data disaggregated by religion is one priority included in the 100 days plan of the Ministry of Labour, Immigration and Population.

increasingly excluded from positions of authority facing restrictions, inter alia, in education, use of languages and religious freedom.

7. Myanmar is undergoing significant transformation. In 2011, the Government embarked on wide-ranging reforms, including opening up democratic space after decades of military control. This culminated in historic elections on 8 November 2015, and the transfer of power to a civilian Government on 31 March 2016. Yet, the military retains 25 per cent of seats in Parliament, giving it a de facto veto on any Constitutional amendment. Moreover, the Commander-in-Chief appoints key Ministers: Home Affairs, Border Affairs and Defence.

8. In May 2015, 700,000 individuals from minority communities were disenfranchised.⁵ Muslim candidates were disqualified from standing for election, and the current Parliament does not count any Muslim member.

9. On 15 October 2015, the Government and eight of the over 20 ethnic armed groups in Myanmar signed a nationwide ceasefire agreement. Yet, armed conflict persists in Kachin and northern Shan States, along with sporadic skirmishes including in Chin, Kayin and Rakhine States. The new Government – the most ethnically diverse Government in decades – has proposed a “21st century Panglong Conference” to advance the peace process.

10. Rakhine State is one of the poorest states in Myanmar, with limited access to basic services and livelihood opportunities for all inhabitants. There are long-standing grievances between Rohingya Muslims (population of just over one million) and Rakhine Buddhists (hereinafter “Rakhine”) (around two million), and both communities and Bamar-majority-led central governments. Many Rakhine contest the Rohingya’s claims of distinct ethnic heritage and historic links to Rakhine State. They view the Rohingya as “illegal immigrants” (“Bengali”), with no cultural, religious or social ties with Myanmar. Some Rakhine also perceive that international assistance has focused on the Rohingya at their expense. The Rakhine have been subject to longstanding discrimination by past military governments. Kaman Muslims from Rakhine State are an officially recognized ethnic group. Yet, they also face entrenched discrimination and other human rights violations (A/HRC/28/72, para. 41). Since 2012, incidents of religious intolerance and incitement to hatred by extremist and ultra-nationalist Buddhist groups have increased across the country. Rohingya and other Muslims are often portrayed as a “threat to race and religion”.

11. Against this backdrop, tensions have occasionally erupted into violence. The last major outbreak occurred in June and October 2012, causing hundreds of deaths, injuries, destruction of property and the ultimate displacement of 140,000 people (A/67/383, paras. 56–58; A/HRC/22/58, paras. 47–48). Around 120,000 individuals remain in Internally Displaced Persons (IDP) camps in central Rakhine State, with ongoing segregation between Rakhine and Rohingya communities.

12. Systemic human rights violations and lack of opportunities have triggered irregular migration flows of Rohingya from Rakhine State to Thailand and Malaysia, in the same boats as irregular migrants from Bangladesh. Trafficking and smuggling networks have facilitated these flows.⁶ Over 94,000 Rohingya and Bangladeshis are believed to have departed since early 2014, with a peak of 31,000 in the first half of 2015.⁷ In May 2015, Thailand and Malaysia cracked down on international smuggling networks, and 5,000

⁵ See para. 47 and 48.

⁶ UNODC, *Protecting peace and prosperity in Southeast Asia*, 2016, p. 37-41.

⁷ UNHCR, *Mixed Maritime Movements in South-East Asia*, 2015.

irregular migrants were abandoned at sea.⁸ Malaysia and Indonesia ultimately offered temporary shelter to migrants affected by the Andaman Sea crisis, provided the international community grant resettlement and repatriation within one year. Many of those rescued at sea remain detained in shelters, camps or immigration detention, facing uncertain futures. The policies and practices of discrimination against Rohingya, a key root cause of irregular migration from Rakhine State, remain to be addressed as part of larger reforms to protect all minorities in Myanmar.

13. Meanwhile, access to justice for victims of human rights violations and abuses has been severely lacking. The military and other security forces have generally enjoyed impunity. Endemic corruption and limited capacity and will to conduct effective investigations and prosecutions add to a general lack of public trust in the administration of justice. Structural issues impacting on the independence of the judiciary and legal profession remain. Judicial independence has been further undermined by the executive branch's undue influence and interference in politically sensitive cases. Social and cultural stigma prevents victims of sexual and gender based violence from reporting. Minorities face additional obstacles further limiting their access to justice, including language, geography and fears of reprisal.

14. In his inaugural address, President U Htin Kyaw outlined four main priorities for the new Government: national reconciliation, peace, a Constitution that will lead to a democratic federal union, and improved quality of life. In April 2016, State Counsellor Daw Aung San Suu Kyi reiterated the importance of national reconciliation and the rule of law for all citizens. Recent steps taken by the Government include the establishment of a Ministry of Ethnic Affairs and the transformation of the Myanmar Peace Centre into the National Reconciliation and Peace Centre. According to the new Government, addressing the situation in Rakhine State has been "one of the highest priorities on its agenda" and it calls for "more time to find durable solutions".⁹ On 30 May 2016, the Government formed the "Central Committee on the Implementation of Peace, Stability and Development of Rakhine State" with the State Counsellor as its Chairperson. The objectives of the Committee are to "bring peace, stability and development to all people in Rakhine State".

15. Key to Myanmar's transformation is the need to address ongoing and past human rights violations, which may otherwise undermine the transition. The present report identifies patterns of entrenched discrimination against minorities and suggests measures to address them. This will be a challenging process that will require resolve, resources, and time. Specific constraints include the continued influence exercised by the military in critical areas of governance. In Rakhine State, this is further complicated by the highly politicized and polarized environment, including tensions between political parties and continued activity by armed groups. Yet, the new Government has a unique opportunity to create positive momentum by taking crucial steps to halt discrimination against minorities in law and practice.

III. Legal framework

16. Myanmar's human rights obligations are grounded in both treaty and customary law. Myanmar is a party to the Convention on the Rights of the Child (CRC), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the Convention on the Rights of Persons with Disabilities (CRPD) and other key international treaties.¹⁰ It

⁸ The Government of Myanmar rescued two boats on 22 and 29 May 2015.

⁹ Response of Government of Myanmar to draft version of the present report.

¹⁰ Including the Optional Protocol to the Convention on the Rights of the Child on the sale of children,

is a signatory to the International Covenant on Economic, Social and Cultural Rights, therefore requiring the authorities to refrain from actions contrary to the object or purpose of the Covenant. Obligations under these treaties are complemented by customary international law, which includes a number of rights in the Universal Declaration of Human Rights (UDHR).

17. Non-discrimination is central to promoting and protecting the rights of minorities. According to Article 2 of UDHR, Myanmar must protect and respect the human rights of all, without distinction such as “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.¹¹ Article 30 CRC outlines the right of children belonging to minorities to enjoy their own culture, profess and practise their own religion, and use their own language. The United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities requires States to take positive measures to protect the rights and identity of minorities.¹²

18. Considering the context of past and ongoing armed conflict in Myanmar, it is also important to note the relevant provisions of international humanitarian law, which regulate the conduct of parties to an armed conflict.¹³ International criminal law applies to situations in which individuals can be held individually criminally responsible under international law, such as for crimes against humanity and war crimes.¹⁴ States have the primary obligation to ensure accountability for such crimes.¹⁵ They must investigate and prosecute gross violations of international human rights law and serious violations of international humanitarian law.¹⁶

19. The 2008 Constitution of Myanmar offers some protection to recognized “national races”, requiring the Union Government to assist in developing their language, literature, and culture; promote solidarity and respect among them; and promote their socio-economic development.¹⁷ Chapter VIII of the 2008 Constitution of Myanmar protects the rights to equality and non-discrimination, education and health care, and prohibits forced labour and arbitrary detention. Yet, many rights are reserved for “citizens”, whereas international human rights law generally requires the State to respect, protect and fulfil the human rights of all individuals within its jurisdiction or control.¹⁸ Moreover, the Constitution imposes limitations on several fundamental rights,¹⁹ or permits their suspension on vague or impermissible grounds.²⁰

child prostitution and child pornography; the Genocide Convention; the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children; ILO Forced Labour Convention (No. 29); and ILO Worst Forms of Child Labour Convention (No. 182).

¹¹ See also UN Charter, Art. 1(3).

¹² Art. 4.

¹³ Geneva Conventions, ratified by Myanmar in 1992.

¹⁴ Rome Statute, Art. 7-8.

¹⁵ See Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, Principles 20 and 21.

¹⁶ UDHR, Art. 8; CEDAW, Art. 2; Genocide Convention, Art. 1.

¹⁷ Myanmar Constitution, s. 22.

¹⁸ CRC, Art. 2; see OHCHR, *The Rights of Non-Citizens*, 2006, p. 15.

¹⁹ E.g., “Nothing shall, *except in accord* [sic] *with existing laws*, be detrimental to the life and personal freedom of any person” (emphasis added), Myanmar Constitution, s. 353.

²⁰ E.g., the President, in declaring a state of emergency, “may, if necessary, restrict or suspend as required, one or more fundamental rights of the citizens residing in the areas where the state of emergency is in operation”: Myanmar Constitution, s. 414(b).

20. The right to nationality is a fundamental human right.²¹ The Citizenship Law, which creates three types of citizenship, contravenes the principle of non-discrimination, as the acquisition of nationality is primarily based on ethnicity as opposed to objective criteria.²² “Full citizenship” is reserved for “nationals such as the Kachin, Kayah, Karen [Kayin], Chin, Burman [Bamar], Mon, Arakan [Rakhine] or Shan and ethnic groups who have settled in Myanmar before 1823”. The list of 135 recognized “national ethnic groups” does not include the Rohingya or people of Chinese, Indian or Nepali descent, thereby denying them access to “full citizenship”. “Associate citizenship” applies to those whose application for citizenship under the 1948 “Citizenship Law” was pending when the 1982 law entered into force. “Naturalized citizenship” can be granted to those furnishing “conclusive evidence” of entry and residence in Myanmar before 1948, who have command of one of the national languages, and whose children were born in Myanmar. “Associate” and “naturalized” citizens have fewer rights than “full citizens”. For example, their citizenship can be revoked on broad-ranging grounds.

21. In 2015, the previous Parliament adopted a package of laws seeking to “protect race and religion”. These laws discriminate against ethnic and religious minorities and women in violation of Myanmar’s international obligation. The “Religious Conversion Law” establishes a State-regulated system for changing religion, which contravenes the right to freedom of religion or belief.²³ The “Population Control Healthcare Law” adopts a selective and coercive approach to population control, including a potential requirement of 36 months birth spacing that would violate women’s right to choose the number and spacing of their children.²⁴ The law could be used to target areas with significant minority communities. The “Buddhist Women’s Special Marriage Law” seeks to “protect” Buddhist women marrying non-Buddhist men, in contravention of the right to freely choose a spouse.²⁵

IV. Patterns of human rights violations and abuses

A. Incitement to hatred and religious intolerance

22. Myanmar’s Constitution prohibits the abuse of religion for political purposes and acts intended or likely to promote hatred, enmity or discord between racial or religious communities.²⁶ Furthermore, according to international law, Myanmar must uphold the right of all in its territory to freedom of religion and the principle of non-discrimination.²⁷

23. Yet, since the 1990s, extremist or ultra-nationalist Buddhist organizations have actively promoted messages of hatred and intolerance against Muslims and other religious minorities. Groups including the “Organization for the Protection of Race and Religion” (known as MaBaTha) spread messages based on fear and hatred, compare Muslims to animals, use derogatory language, and present Muslims as a threat to the “Buddhist State”.²⁸ During a public rally in Yangon in May 2015, a politician encouraged the crowd to “kill and bury” all Rohingya, with the crowd cheering and repeating his statements

²¹ UDHR, Art. 15; CRC, Art. 7; CEDAW, Art. 9; CRPD, Art. 18.

²² UDHR, Art. 2.

²³ UDHR, Art. 18.

²⁴ UDHR, Arts. 12, 16; CEDAW, Art. 16; CRPD, Art. 23.

²⁵ CEDAW Art. 16; UDHR Art. 16.

²⁶ Myanmar Constitution, s. 364.

²⁷ UDHR, Arts. 2, 7 and 18.

²⁸ See C4ADS, *Sticks and Stones: hate speech narratives and facilitators in Myanmar*, 2016.

(A/HRC/31/79, p. 37). This rhetoric fuels enmity and discord. Recently, ultra-nationalist Buddhist organizations have also targeted moderate Buddhists, interfaith activists, women's rights activists and the Special Rapporteur.²⁹

24. Efforts must be made to prevent and counter acts of incitement to discrimination, violence and hatred, including through the development of a comprehensive strategy based on international human rights standards. The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (A/HRC/22/17/Add.4) provides useful guidance. The Parliament has taken recent steps to revive discussions on the "Maintenance of Religious Harmony Bill". These should be based on wide consultations with civil society and take into account the Rabat Plan of Action.

25. Underlying root causes should also be addressed, including through preventive education and awareness raising. Programmes conducted by interfaith and civil society actors to build a more tolerant, diverse and inclusive society should be supported and promoted.

B. Violations and abuses against Rohingya in Rakhine State

26. The following sections highlight patterns of human rights violations against the Rohingya, some of which have been documented by successive Special Rapporteurs since 1992. Many result from national, state or local laws, policies and practices targeting the Rohingya due to their ethnicity, race or religion, either directly or through selective, discriminatory implementation. The tightening of restrictions after the 2012 violence has also severely impacted the Kaman community, increasing their vulnerability to human rights violations and abuses.

1. Arbitrary deprivation of nationality

27. A State's prerogative to grant or remove nationality is constrained under international law (A/RES/50/152).³⁰ The 1982 Citizenship Law is discriminatory and contravenes the prohibition of arbitrary deprivation of nationality. It violates the right of every child to acquire nationality³¹ as it fails to protect the acquisition of citizenship for children born in Myanmar with no "genuine link" to another State (see CRC/C/MMR/CO/3-4, paras. 41-42). It also gives overly broad powers to the Government to revoke citizenship without due protection. It has led and continues to lead to statelessness. There are around 1,090,000 stateless people in Myanmar – one of the largest stateless populations in the world – predominately Rohingya in Rakhine State. The Rohingya's lack of citizenship heightens their vulnerability to a range of human rights violations.

28. In June 2014, the Government initiated a citizenship verification process, piloted in Myebon (Rakhine State). Rohingya refusing to identify as "Bengali" were arbitrarily excluded from the verification process. It was reportedly suspended in 2015. Those granted citizenship in Myebon were allowed to vote in 2015 but their freedom of movement and access to basic services and livelihoods after receiving citizenship has not improved. On 7 June 2016, a citizenship verification process – conducted within the framework of the 1982 Citizenship Law – was relaunched in Kyaukpyu, Myebon and Ponnagyun.

²⁹ See Comment by UN High Commissioner for Human Rights on the abuse of the Special Rapporteur on human rights in Myanmar, 21 January 2015.

³⁰ UDHR, Art. 15(2); CRC, Arts. 7, 8; CEDAW, Art 9; CRPD, Art 18.

³¹ CRC, Art 7.

2. Restrictions to freedom of movement

29. Rohingya and Kaman face severe restrictions on their freedom of movement. Although in place in northern Rakhine State for decades, restrictions were tightened after 2012 and differ in severity between townships. Their stated purpose is to ensure security but their application is disproportionate and discriminatory by exclusively targeting Muslims. The majority of Rohingya live in northern Rakhine State, where they require official authorization to move between, and often within, townships.³² The procedures to secure travel are onerous and time-consuming. Failure to comply with requirements can result in arrest and prosecution. Restrictions routinely lead to extortion and harassment by law enforcement and public officials.

30. Since the June 2012 violence, township administrators have imposed a curfew in northern Rakhine State, allegedly to “protect the safety of both communities”. It has been regularly extended since 2012. The curfew is reportedly based on Section 144(1) of the Myanmar Code of Criminal Procedure, which permits temporary orders in urgent cases and requires a Magistrate or delegate to issue the curfew order. OHCHR has received credible allegations that the applicable procedure as per Section 144(1) has not been complied with. The curfew gives wide discretionary powers to the authorities, including limitations on assembly and prohibiting movement between dusk and dawn. The curfew limits the ability of Muslims to worship and practice religion freely by limiting gatherings of more than five people. Reportedly, it is only enforced against the Rohingya. While a separate Presidential State of Emergency order was lifted in March 2016 in northern Rakhine State, the curfew remains in place.

31. Most of those displaced from the 2012 violence reside in central Rakhine State, in approximately 39 IDP camps. Restrictions on movement in camps are severe and many are under extreme security measures. In certain locations, there is strict control of access and exits through security checkpoints. Given the nature, extent and duration of the confinement, many camps could be considered as places of deprivation of liberty under international law (see CCPR/C/GC/35, paras. 3 and 5).³³

32. The blanket restrictions on freedom of movement for Muslim communities clearly violate international human rights law, which requires any limitations to be necessary and proportionate (see CCPR/C/21/Rev.1/Add.9 para. 14).³⁴ The restrictions discriminately target the Muslim population and severely constrain their access to livelihoods, food, healthcare and education. Lifting these restrictions is essential to address other human rights and humanitarian concerns in Rakhine State.

3. Threats to life, liberty and security

33. Successive Special Rapporteurs have reported patterns of serious human rights violations of the Rohingyas’ rights to life, liberty and security by State security forces and other officials. This includes summary executions, enforced disappearances, arbitrary arrests and detention, torture and ill-treatment, and forced labour (see A/HRC/28/72, para. 38; A/67/383, para. 64).³⁵ Following the 2012 violence, OHCHR received credible reports of the arbitrary arrest and detention of hundreds of Rohingya, including women and children and consistent allegations of torture and ill-treatment. This included severe beating, burning by cigarettes, burning of beards, forced labour, sexual humiliation and

³² In northern Rakhine State, for example, a village departure certificate is required to stay overnight in another village.

³³ Guiding Principles on Internal Displacement, Principle 12: 1-2.

³⁴ UDHR, Arts. 13 and 29(2).

³⁵ In violation of UDHR, Arts. 3, 4, 5 and 9.

abuse, denial of medical treatment, degrading conditions of detention and deaths in custody. The indiscriminate nature and scale of arrest and detention without due process and the subsequent treatment in detention has raised concerns of collective punishment.

34. In northern Rakhine State, the arbitrary arrest and detention of Rohingya remains widespread. Their statelessness leaves them particularly vulnerable and a target for extortion. Arrests are often carried out without grounds, formal processing, or laying charges, until release is secured by payment of a bribe. OHCHR has received reports of violence, forced entrance and search of homes, confiscation of property, extortion and excessive use of force related to arrest. Inability to pay onerous bribes can lead to violence, detention or retributive action against the victim's relatives. For those formally charged, fair trial guarantees are often not respected.

35. Arbitrary arrest and detention provide a context for other violations such as torture and extrajudicial killings. OHCHR has received credible reports of torture and deaths in custody of individuals arrested and detained on charges related to arson or alleged links to terrorist groups. The lack of regular and independent detention monitoring heightens detainees' vulnerability to torture and ill-treatment.

36. Excessive use of force in the context of demonstrations and law enforcement activities has also been reported, including during patrols and enforcement of movement restrictions. Deaths resulting from excessive, unnecessary or disproportionate use of force by law enforcement officials constitute an arbitrary deprivation of the right to life.

4. Sexual and gender-based violence

37. Sexual and gender-based violence perpetrated by security forces against the Rohingya in Rakhine State has been reported for decades. Yet, its prevalence has most likely been underreported due to lack of access to justice, cultural barriers, stigma and fear of reprisals. OHCHR has received reports of sexual violence, including rape, against women who have been arrested or detained, or in the course of law enforcement operations, such as house searches or at checkpoints. OHCHR has no information that such allegations have been investigated or perpetrators held accountable.

38. Domestic violence has been reported within the Rohingya community. Protracted displacement, overcrowding in camps, the lack of livelihoods and constraints on all aspects of life exacerbate tensions and risks of domestic violence. The lack of available and accessible health and other support services remains a concern. The Government has an obligation to protect all individuals from all forms of violence and address sexual and gender based violence within the private and public sphere.³⁶

5. Denial of the right to health

39. The availability, accessibility, affordability and quality of health facilities, goods and services are extremely poor across Rakhine State. The consequences of limited access to health facilities include delays in treatment, reliance on alternative healthcare, the escalation of preventable diseases, and poor overall health outcomes.

40. Rohingya and Kaman communities face a disproportionate burden due to discriminatory barriers, including freedom of movement restrictions, which severely impact the right to health. This is particularly acute regarding access to emergency and life-saving care. OHCHR has received credible reports of deaths due to the inability to access health facilities or treatment in time, often where there was a township hospital in close

³⁶ CEDAW, Art. 2.

proximity.³⁷ In townships surrounding Sittwe, including Pauktaw and Myebon, Muslims cannot freely access township hospitals. Emergency cases must be referred to Sittwe General Hospital through an onerous and time-consuming referral process, which includes the need for boat travel and police escorts. Muslim patients are restricted to a segregated ward where allegations and rumours of discriminatory treatment persist. This leads to a general reluctance to receive care at the facility. In northern Rakhine State, patients can access township hospitals but are required to obtain costly and time-consuming travel authorizations, pass through checkpoints, and face additional limitations imposed by the curfew. This can cause serious and life-threatening delays in emergency situations. Delays in seeking or receiving emergency obstetric treatment have particularly devastating consequences and can be a major cause of death of babies and for women experiencing complications during pregnancy and childbirth.

41. Restrictions placed on Muslim communities to access public health facilities constitute a violation of the right to health.³⁸ They may also amount to a violation of the right to life if they lead to death. Equal and non-discriminatory access to medical treatment, facilities and care must be ensured for all people in Myanmar, irrespective of religion, ethnicity or citizenship status.

6. Denial of the right to education

42. Rakhine has one of the lowest literacy rates in the country and the lack of education opportunities and access to adequate education affects the whole population in this state. Muslim communities face additional barriers due to protracted displacement, restrictions on freedom of movement and discrimination (see CRC/C/MMR/CO/3-4, paras. 96–97; A/70/412, para. 36; A/HRC/28/72, para. 55).³⁹ Non-citizens, including Rohingya, are excluded from studying a number of “liberal professions” such as medicine, economics and engineering.⁴⁰ Since the 2012 violence, they are also excluded from tertiary education at Rakhine State’s only university in Sittwe, on “security grounds”.

43. Approximately 30,000 Muslim children in IDP camps depend on temporary learning spaces supported by humanitarian organizations. The quality of education is concerning, due to lack of qualified teachers, textbooks, teaching materials, and insufficient instructional time. The consequences of lost years of education are devastating for future livelihood opportunities and the ability of Rohingya and Kaman youth to contribute to Myanmar’s development. Preventing co-education of Rohingya and Rakhine is discriminatory and a violation of the right to equal access to education. It also restricts opportunities for interaction and reconciliation between communities.

7. Other restrictions based on local orders

44. In northern Rakhine State, a series of local orders targeting the Rohingya are discriminatory in intent and effect. Many of these orders have no legal basis but are policies and directives from Government authorities or law enforcement bodies, purportedly to prevent illegal immigration and control movement and population growth. The degree to which these orders are enforced is unclear, but their impact remains pervasive. Under a local order, couples are required to follow costly and arduous administrative procedures to

³⁷ OHCHR cannot determine in the cases reported, whether patients would have survived had emergency treatment been given.

³⁸ Myanmar Constitution, s. 367; CRC Art. 24; CEDAW Art. 12; CRPD Art. 25.

³⁹ In violation of CRC, Arts. 2, 28.

⁴⁰ See, e.g., University Admission Guide 2013 requiring university applicants to be citizens of Myanmar.

secure marriage permission. Such permission includes restrictions on the number of children and a requirement to use contraception. Non-compliance is a criminal offence, punishable by up to 10 years in prison. OHCHR has received reports of women and girls resorting to unsafe abortions for fear of contravening the orders.

45. An estimated 5,000 children born in contravention of local orders are excluded from the official household lists and placed on a separate list (known as a “blacklist”). Moreover, Rohingya children have not been issued birth certificates since the 1990s. The lack of official documentation and effective legal identity has serious consequences on all stages of life, further restricting freedom of movement, access to health care and education. It also heightens vulnerability to human rights violations such as arbitrary arrest and detention, and extortion.

46. These local orders constitute a violation of fundamental rights, including the principle of non-discrimination, freedom of movement, the right to privacy, to marry and to found a family, and rights of the child.⁴¹

8. Limitation on political rights and documentation

47. In February 2015, the previous Government announced the expiry of “temporary identity certificates” (TICs) held by some 700,000 stateless people across the country, including Rohingya, Chinese and other minority groups. The TIC was the primary document held by stateless people in Rakhine to confirm their legal residence in Myanmar. In June 2015, a new “identity card for nationality verification” was announced. However, it was widely viewed with suspicion and acceptance has been extremely low. Consequently, hundreds of thousands of stateless people in Rakhine have no valid individual identity document confirming their legal residence.

48. During the 2010 elections, TIC holders were granted the right to form and join political parties, and to vote. However, before the November 2015 elections, steps were taken to exclude TIC holders from participating in political life.⁴² In September 2014, the Parliament amended the Political Parties Registration Law, introducing a requirement for party leaders to be “full citizens”, and for party members to be “full” or “naturalized” citizens. In May 2015, the right of temporary card-holders to vote in the general election was revoked.

9. Forced labour

49. Myanmar has taken significant steps to eliminate forced labour, including by establishing a complaints mechanism and joint action plan with the International Labour Organization. Yet, credible reports indicate that whilst the practice has generally declined, it persists in parts of the country particularly affecting minority groups.

50. Reports that forced labour has been exacted from Rohingya in northern Rakhine State continue to be received. Tasks include sentry duty, building and maintenance work, and provisions of materials for such work. Victims state that they cannot refuse work due to fear of repercussions, including violence, arrest and detention, fines or other forms of coercion, punishment and intimidation. Forced labour has severe consequences on the mental and physical health of victims and a long-term impact on livelihoods and food security. OHCHR has also received reports of forced labour imposed on Rakhine communities, including recently, in the context of the conflict between the Tatmadaw and the Arakan Army. It is likely that forced labour practices are under-reported in Rakhine

⁴¹ See, eg, CEDAW, Arts. 1, 16; CRPD, Arts. 18, 22, 23; CRC Arts, 2, 7, 16.

⁴² UDHR, Art. 21.

State due to lack of access for independent observers, lack of awareness of the ILO complaints mechanism, and fear of reprisal.

10. Trafficking in persons and migrant smuggling

51. In May 2015, the Andaman Sea crisis highlighted a pattern of human rights violations and abuses linked to irregular regional migration flows facilitated by trafficking and smuggling networks. This included unlawful confinement on boats and at land-based transit points, sexual and gender-based violence and ill-treatment. It is estimated that some 2,000 Rohingya and Bangladeshi died at sea between 2012 and 2015.

52. Myanmar is a party to the 2015 ASEAN Convention Against Trafficking in Persons, Especially Women and Children. It also signed the 2016 Bali Declaration on People Smuggling, which pledges to tackle human trafficking in part by improving the conditions that force people to flee.⁴³ The second half of 2015 saw a 96 per cent reduction in boat departures from Rakhine State and Bangladesh compared to the same period in 2014. The decrease in boat departures since June 2015 can be attributed to various factors, including increased scrutiny of irregular migration by governments in the region and a higher passage price demanded by smugglers. In order to fully address irregular maritime movements originating from Rakhine State, concrete and meaningful efforts are required to address the push factors and coercive circumstances highlighted in this report.

11. Protracted displacement and denial of an adequate standard of living

53. Four years after the 2012 violence, close to 120,000 predominantly Rohingya and Kaman people remain internally displaced in Rakhine State. Protracted displacement in deteriorating shelter, limited access to basic services, and the inability to move freely, create particularly oppressive living conditions for Rohingya and Kaman. Besides violating the right to freedom of movement, this affects the enjoyment of several economic and social rights, including the rights to education, the highest attainable standard of health, and an adequate standard of living.⁴⁴ A significant number of IDPs are not officially recognized or receiving adequate assistance due to issues in clarifying and defining who is an IDP. The violence and related restrictions have also severely affected the non-IDP population across Rakhine State, including those located in remote or isolated communities who do not receive adequate assistance.

54. An estimated 25,000 IDPs returned or were integrated at the site of displacement in 2015 through the Rakhine State Government Resettlement Plan. Yet, there is an urgent need to find durable solutions for all those who remain displaced. The process should be informed, transparent, voluntary and rights-based. Furthermore, IDPs should be able to access an effective mechanism that ensures or restores housing, land and property, or provides adequate compensation where return is not feasible. Sufficient guarantees should be ensured so that housing, land and tenure issues do not lead to further human rights concerns.

55. The segregation of communities in Rakhine poses a significant challenge to finding durable solutions. This is particularly the case in Sittwe town, where no plans have been produced to address the situation of over 90,000 IDPs in camps, who often reside only a few miles from their place of origin. This enforced segregation of communities requires urgent attention. Targeted measures of peace-building, inter-faith initiatives and the gradual restoration of social and economic bonds are vital.

⁴³ This includes “full respect for human rights ... and measures to prevent and reduce statelessness”.

⁴⁴ UDHR, Art. 25, 26; ICESCR, Art. 11-13.

12. Assessment

56. The above paragraphs lay out a pattern of gross human rights violations against the Rohingya that affect fundamental civil, political, economic, social and cultural rights. Widespread discriminatory policies and/or practices targeting them on the basis of their ethnic and/or religious identity have led to severe deprivation of fundamental rights. Many of these acts would suggest a widespread or systematic attack against the Rohingya; in turn giving rise to the possible commission of crimes against humanity if established in a court of law (see also A/HRC/25/64, para. 51).

C. Violations and abuses against other minorities

57. Decades of armed conflicts, varying in scope and intensity, have taken place against a complex backdrop of long-standing grievances against the Bamar dominated central government and military. Successive Special Rapporteurs have reported consistent allegations of violations of international humanitarian and human rights law in the context of these conflicts. The absence of adequate accountability mechanisms has resulted in impunity, further eroding the rule of law and undermining sustainable peace and reconciliation. While the signing of a Nationwide Ceasefire Agreement is a significant step, it is only a starting point. Inclusive political talks – with the full participation of ethnic minority communities, including women representatives – are critical to address the root causes of conflict and long-standing grievances of ethnic communities. The new Government’s proposal for a national peace conference is welcome.

58. In the context of armed conflict, allegations of violations of international humanitarian and human rights law involving the military have included the deliberate targeting of and indiscriminate attacks against civilians, use of child soldiers, forced displacement, summary execution of civilians and captured fighters, forced labour, arbitrary arrest and detention, torture and ill-treatment, and sexual violence. Credible reports detail practices which include the military ordering civilians to walk ahead of them as “human mine sweepers”, a policy of categorizing certain areas as “black areas” giving the military discretion to target anyone in that territory including civilians, contrary to the principle of distinction; and the “live off the land” policy, which resulted in the confiscation by the military of land, livestock, or harvested crops from civilians.

59. In Kachin and northern Shan States, where fighting has intensified, there are ongoing reports of violations by all parties to the conflicts (A/HRC/31/71, para. 52; A/70/412, para 50). In June 2011, the breakdown of a 17-year ceasefire in Kachin State caused significant displacement of which 96,000 people remain internally displaced. Fighting in 2015 caused the displacement of an additional 100,000 people, including 80,000 from the Kokang Self-Administered Zone. Credible reports of violations of international humanitarian law by the military include lack of distinction between civilians and fighters and indiscriminate firing.

60. Reports of abuses by ethnic armed groups against civilians include the forced recruitment and use of children in hostilities, forced displacement of the population, torture, ill-treatment and summary execution of captured Tatmadaw personnel and ongoing reports of harassment, arbitrary detention, and extortion by some of these groups (A/HRC/31/71 para. 52). There are also ongoing reports of the use by both the military and ethnic armed groups of civilians for portering, sentry and guide duty, as human shields, and also the use of anti-personnel mines in civilian areas (A/HRC/28/72, para. 31).

61. Sexual and gender-based violence against women of ethnic minority communities perpetrated by Myanmar security forces has been documented for many years. Such violence continues to be reported, and is particularly prevalent in conflict-affected areas,

such as Kachin and Shan States, with credible reports of rape, sexual slavery, and forced and servile marriages (S/2014/181, paras. 37–39). Reports indicate that victims include women and men, girls and boys, including children as young as seven years old (S/2014/181, para. 38). Risk of sexual violence appears to be higher during home invasions, movement of populations and forced portering. Some reports from civil society allege that rapes and sexual torture take place on military bases and in prisons. Reports of sexual violence increase for communities in close proximity to high military presence.

62. Land confiscation by the military for barracks and military camps, crop confiscation, the production of food for soldiers, and designation of forbidden “high security areas”, have consistently been reported in areas where ethnic communities reside (A/66/365, para. 64). Violations of housing, land and property rights, including through development-induced displacement have also been increasingly documented since 2012. Private local commercial interests, often with strong links to the military, have allegedly engaged in land grabbing and forced evictions. Years of continuing conflict and military campaigns in ethnic areas have resulted in extensive displacement in eastern Myanmar and along the border with Thailand. Many of the long-term displaced, including over 100,000 refugees in Thailand, are reportedly reluctant to return, for reasons including fears for their safety given sporadic skirmishes, continued military presence, and the presence of landmines and unexploded ordnance.

63. Significant disparity in access to education remains. In ethnic minority areas, especially conflict-affected areas, many schools are either not operational or inaccessible. Under the policy of previous military governments, the use and teaching of minority languages in schools was prohibited and informal community schools providing learning in minority languages were banned in some areas. Recent national education legislation has opened up space for the use of ethnic languages in classrooms,⁴⁵ while state and regional governments are empowered to develop and implement language policy at regional and state levels.

64. For many years, Christian communities in Myanmar have faced restrictions in their freedom of religion or belief, especially in Chin, Kachin, Kayin and Kayah States. Special Rapporteurs have reported allegations of forced labour targeting Christians for the construction of monasteries and pagodas, the forcible confiscation of land and forced or coerced conversions to Buddhism. Allegations of arbitrary arrest, detention and torture of religious leaders, missionaries, church workers and others have been reported (A/HRC/25/74, p. 105). Additionally, State officials have allegedly destroyed Christian buildings and crosses. Like Muslim communities, Christian groups report difficulties in obtaining permission to renovate, extend or construct religious buildings (A/69/398, para. 40).

1. Assessment

65. The information received by OHCHR suggests that minority groups have suffered a wide range of human rights violations and abuses. Moreover, in the context of armed conflicts, reports over many decades have documented violations of international humanitarian law allegedly committed by the military and armed groups. If established in a court of law, some of these violations could amount to war crimes.

⁴⁵ See, eg. National Education Law (2014), s. 43(b).

V. Conclusion and the way forward

66. The human rights situation of the Rohingya and other minorities in Myanmar is of the utmost concern. The scope and patterns of violations and abuses reported cannot be ignored: systematic and systemic discrimination and policies of exclusion and marginalization are too often the roots of future conflicts. In 2013, the Special Adviser of the Secretary-General on the Prevention of Genocide warned that failing to address the immediate consequences and root causes of violence between Rakhine Buddhists and Rohingya Muslim could have “serious consequences which the international community has solemnly promised to prevent”.⁴⁶

67. Conversely, addressing the violations and abuses identified in this report may help provide a safe and peaceful environment for all in Myanmar, planting the seeds for growth, prosperity and harmony.

68. The new Government has the responsibility and the opportunity to halt these violations and abuses. It must seize momentum by stopping discriminatory policies and practices and repealing discriminatory laws.

69. Measures are needed to break the cycle of impunity and promote accountability so as to serve justice, achieve reconciliation, and protect the human rights of all people in Myanmar. In line with its obligations under international norms and standards, the authorities should ensure that all past and ongoing allegations of human rights violations and abuses are investigated promptly, thoroughly, impartially and independently. This will ensure accountability and provide access to an effective remedy for victims, including adequate reparation and respect for their right to know the truth about violations.

70. Such efforts should be undertaken in close collaboration with civil society, and with the support of the international community. These efforts will be essential to lay solid and sustainable foundations for the rule of law, based on full and equal respect for human rights, including the rights of persons belonging to minorities and to consolidate Myanmar’s democratic transformation.

71. The Government should also take comprehensive legal and policy measures that address the root causes of all human rights violations and abuses, and prevent their recurrence. Victim and community perspectives should be central to such a process, including through broad and inclusive consultations and participation throughout the design and implementation of any measures seeking to address the past.

72. Progress should also be made in reforming the legal framework, including the 2008 Constitution and the 1982 Citizenship Law, so that it is fully consistent with Myanmar’s international human rights obligations. The Special Rapporteur’s March 2016 report (A/HRC/31/71) provides a useful tool in this regard. It is also critical to establish mechanisms to ensure that any new legislation is fully compliant with Myanmar’s international human rights obligations.

73. With strengthened independence and an enhanced protection mandate, the Myanmar National Human Rights Commission could play a critical role in upholding and protecting the human rights of all people in Myanmar. Its powers to inquire into violations committed by law enforcement officials, demand accountability from the

⁴⁶ Statement of the Special Adviser of the Secretary-General on the Prevention of Genocide, on the situation in Myanmar, 25 March 2013.

Government, denounce discrimination and incitement to hatred or violence, and visit places of detention, could be utilized to increase protection for minorities.

74. While some of the necessary measures to address concerns raised in this report should be taken promptly, it is acknowledged that others will require a staged, longer-term approach in the context of the political transition.

75. OHCHR stands ready to provide support to the Government in its efforts to protect and promote the human rights of all people in Myanmar, and strengthen effective rule of law. The strong focus on discrimination that underpins the Sustainable Development Goals provides an important framework to ensure no minority is left behind in Myanmar's accelerated development. The collective and collaborative effort of the United Nations in country will also be crucial in addressing critical human rights issues.

VI. Recommendations

A. Policies and practices

76. The High Commissioner recommends that the relevant authorities in Myanmar:

(a) Abolish all discriminatory local orders in Rakhine State, including those restricting movement and the rights to marriage and family life; immediately remove arbitrary requirements for travel; facilitate movement within and between townships; promptly and clearly communicate these decisions to all relevant authorities;

(b) Establish a roadmap and timeframe for lifting all freedom of movement restrictions in Rakhine State; where security considerations remain, ensure restrictions are necessary, proportional and not discriminatory;

(c) Promptly lift the curfew order in northern Rakhine State; remove arbitrary limitations on assembly; and guarantee freedom of worship;

(d) Remove all discriminatory and restrictive bureaucratic requirements for emergency medical referrals and ensure unhindered access for all communities to Government hospitals in all townships in Rakhine State;

(e) Ensure replacement or issuance of identity documentation for all individuals residing in Myanmar, notwithstanding their citizenship status. Ensure that all children are registered at birth, without discrimination, and promptly implement a process to register all unregistered children, including all Rohingya children;

(f) Find durable solutions for all IDPs in Rakhine State and conflict areas in line with the Guiding Principles on Internal Displacement.

B. Legislation

77. The High Commissioner recommends that the relevant authorities in Myanmar:

(a) Take progressive steps towards the removal of all discriminatory legal provisions, including in the Constitution, the 1982 Citizenship Law and the four "race and religion laws";

(b) Prevent and sanction incitement to discrimination, hatred and violence, including through the development of a comprehensive strategy based on international human rights standards; ensure that Parliament takes into account the Rabat Plan of Action when discussing the “Maintenance of Religious Harmony Bill”;

C. Accountability

78. The High Commissioner recommends that the relevant authorities in Myanmar:

(a) Undertake a comprehensive inquiry into the situation of minorities in Rakhine State and other areas in Myanmar, in consultation with all relevant stakeholders, and in line with international human rights law and standards, with a view to recommending measures of accountability, and to address the root causes, foster reconciliation and prevent recurrence;

(b) Ensure prompt, thorough, independent and impartial investigations into all alleged violations of human rights and international humanitarian law, including those committed by law enforcement officers and security officers, and subsequent prosecutions. To that effect, remove any legal or legislative barriers to criminal accountability;

(c) Ensure national laws on arrest and detention and their application are consistent with international human rights standards. Ensure law enforcement action is in line with human rights standards including the principles of necessity, proportionality, legality and non-discrimination. Ensure independent civilian and parliamentary oversight mechanisms and establish robust mechanisms to receive complaints;

(d) Ensure investigations into allegations of forced labour, and the prosecution of those responsible.

D. Prevention of further violations and abuses

79. The High Commissioner recommends that the relevant authorities in Myanmar:

(a) Ensure that persons belonging to minorities can enjoy all their human rights and fundamental freedoms without discrimination and in full equality before the law;

(b) Issue clear instructions on the prohibition of forced labour to police, border guard police and the general administration department;

(c) Issue clear instructions on the prohibition of trafficking of persons to law enforcement agencies, and ensure the protection and treatment of victims in accordance with international human rights standards;

(d) Ensure that measures aimed at addressing irregular migration and combating transnational organized crime (including trafficking of persons and smuggling of migrants) do not adversely affect the human rights and dignity of migrants and refugees.

E. Peace process

80. The High Commissioner recommends that the relevant authorities in Myanmar:

- (a) Ensure broad consultations with and the full participation of all local and affected communities in the peace process, including ethnic minorities, civil society and women;
- (b) Ensure that human rights protection is placed at the centre of the work of the National Reconciliation and Peace Centre and ceasefire monitoring mechanisms.

F. Institutions

81. The High Commissioner recommends that the relevant authorities in Myanmar:

- (a) Undertake institutional reforms to ensure respect for the rule of law;
- (b) Improve access to justice before independent and impartial courts through fair procedures; ensure that the administration of justice fully complies with international human rights norms and standards, including the principles of independence and impartiality of the judiciary;
- (c) Strengthen the mandate of the Myanmar National Human Rights Commission so that it performs its functions independently and in full compliance with the Paris Principles, including monitoring of all places of detention;
- (d) Increase sustained engagement and cooperation with OHCHR to enhance the promotion and protection of human rights in Myanmar.

G. Implementation

82. The High Commissioner recommends that the Human Rights Council closely follows the implementation of the above-mentioned recommendations and encourages the Government to make meaningful progress in this regard.
