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

## **Situation of human rights of Rohingya Muslims and other minorities in Myanmar**

### **Report of the Secretary-General**

#### *Summary*

The present report is submitted pursuant to General Assembly resolution [74/246](#) and covers the period from 14 August 2019 to 13 August 2020, focusing on the role of the Secretary-General and his good offices in support of democratic consolidation in Myanmar, including towards a more inclusive society. The importance of ensuring a unifying electoral process, with no tolerance of hate speech and incitement, ahead of the elections to be held on 8 November is stressed in the report, as well as the need for urgent action on durable solutions to alleviate the Rohingya crisis and other ethnic tensions and conflict, which continue to threaten internal and regional stability. The Secretary-General advocates the advancement of an inclusive peace process and an end to intensifying hostilities, especially between the Tatmadaw and the Arakan Army, which have renewed concern about civilian protection and human rights in Rakhine State. The conflict has also complicated efforts towards the voluntary, safe, dignified and sustainable repatriation of Rohingya refugees and risks further disenfranchising all communities affected by the ongoing violence. Concerns also persist in relation to restrictions on humanitarian access and fundamental freedoms, including ongoing bans on Internet access. The implications of the coronavirus disease (COVID-19) are assessed in the report, especially in conflict-affected areas, and the importance of an inclusive response to the pandemic is stressed. Key developments are highlighted in relation to accountability and the importance of national cooperation with international mechanisms to help to promote a process that can provide survivors with justice, prevent further atrocities and strengthen national reconciliation. The Secretary-General highlights efforts that he, his Special Envoy on Myanmar and others have made to mobilize coherent international support for the country.

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



## I. Introduction

1. The present report is submitted pursuant to General Assembly resolution 74/246, in which the Assembly requested me to continue to provide my good offices and to pursue discussions relating to Myanmar, involving all relevant stakeholders, and to offer assistance to the Government of Myanmar, as well as to report to the Assembly at its seventy-fifth session on the progress made in the implementation of all relevant issues addressed in the resolution. The report covers the period from 14 August 2019 to 13 August 2020.
2. The United Nations continued to actively support efforts by Myanmar to address accountability, disenfranchisement and governance in pursuit of democratic consolidation.
3. As Myanmar transitions out of decades of military rule, the complex challenges require collective support. I therefore maintained close dialogue with key stakeholders, including regional organizations, such as the Association of Southeast Asian Nations (ASEAN), the Organization of Islamic Cooperation and the European Union.
4. During the tenth ASEAN-United Nations summit, held in November 2019, I expressed deep concern about the situation in Myanmar, including in Rakhine State, and the plight of the very large number of refugees still living in difficult conditions. I stressed that it remained the responsibility of Myanmar to address the root causes and ensure an environment conducive to the safe, voluntary, dignified and sustainable repatriation of refugees to their places of origin or choice, in accordance with international norms and standards. I advocated a number of specific steps, including the facilitation of dialogue with refugees, confidence-building measures, full and unfettered humanitarian access to communities in need and rapid progress on durable solutions for those still internally displaced in the country.
5. As the political transition continues, there remains a fundamental need for urgent and inclusive action by Myanmar to advance justice, peace, human rights and development for the benefit of all. For that to succeed, the underlying causes of violence, institutionalized discrimination and statelessness need to be addressed.
6. Compounding existing disruption caused by previous waves of communal violence in Rakhine State, the mass forced displacement of Rohingya and other communities in August 2017 highlighted persistent shortcomings in addressing the root causes. Rohingya people in Rakhine State still face systemic discrimination, and those who were forced to flee the country have reported that they do not feel safe to return at the current time.
7. Effective action is also necessary for accountability and to end the vicious cycle of violence. On 23 January, I welcomed the order of the International Court of Justice, in which it indicated provisional measures in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*.
8. In the order, the Court required Myanmar to take all measures within its power to prevent the commission of acts constituting genocide under the Convention on the Prevention and Punishment of the Crime of Genocide, and to ensure that its armed forces, as well as any irregular armed units that might be directed or supported by it and any organizations and persons that might be subject to its control, do not commit genocidal acts. It also required Myanmar to prevent the destruction and ensure the preservation of evidence related to allegations, and to report to the Court on compliance with the order. Pursuant to the Charter of the United Nations and the Statute of the Court, decisions of the Court are binding.

9. The reporting period was marked by growing frustration by several countries at the perceived lack of meaningful action on accountability and continued impunity, resulting in extended and new bilateral sanctions, including some targeting the senior leadership of the Myanmar armed forces.

10. Bangladesh continued to provide shelter and vital support to some 860,000 refugees from Myanmar, primarily Rohingya, most of whom arrived after August 2017 and remained in temporary conditions with little hope of returning home, and continued fear of persecution if they do. Acting in solidarity with Bangladesh as a major refugee-hosting country is critical, as is the provision of continued support in the spirit of meaningful responsibility-sharing.

11. The recent increase in the maritime movement of Rohingya refugees, risking their lives in perilous conditions at the hands of exploitative smugglers, highlights their desperate situation and the urgent need to address their plight. It also underlines the regional impact of the ongoing crisis and the need for countries to work collectively to support change in Myanmar.

12. My Special Envoy on Myanmar continued to advocate genuine progress in addressing the situation facing minorities throughout the country, especially the Rohingya people, who have been subjected to violence and discrimination in Rakhine State. In promoting national reconciliation through inclusive political dialogue, she remained in close contact with key stakeholders and undertook regular engagements with affected communities, ethnic armed organizations, religious and local leaders and civil society organizations.

13. While intensifying violence in many parts of Rakhine and Chin States severely hampered access for United Nations entities to conflict-affected areas during the reporting period, which was compounded by the outbreak of the coronavirus disease (COVID-19), my Special Envoy enjoyed good access before the pandemic. Despite global travel restrictions owing to the pandemic, she remained actively engaged through virtual and remote discussions with the civilian and military leadership of Myanmar, ASEAN leaders and others. Earlier in the reporting period, she had visited Myanmar three times, including one field visit to the northern part of Rakhine State. She had also travelled to other locations, notably Bangladesh, including a return visit to the refugee camps in Cox's Bazar. She shared more than 30 observations and recommendations on a range of issues with the leadership of Myanmar regarding human rights, social cohesion, women and peace and security, durable solutions, citizenship, freedom of movement, accountability, humanitarian access, education, housing, and land and property rights. She also continued to help to strengthen system-wide coordination and coherence through close consultation with other United Nations entities and independent mandate holders. On the central issue of accountability, she consistently urged Myanmar to cooperate with United Nations mechanisms such as the Independent Investigative Mechanism for Myanmar and the Special Rapporteur on the situation of human rights in Myanmar.

14. In September 2019, the independent international fact-finding mission on Myanmar concluded its mandate and made important recommendations. It handed evidence of the most serious international crimes and violations of international law to the Independent Investigative Mechanism.

15. The United Nations will continue to reflect my priorities with regard to prevention, early warning and human rights in its work. Based on the brief and independent inquiry into the involvement of the United Nations in Myanmar from 2010 to 2018, the United Nations country team developed a human rights strategy to strengthen the promotion and protection of human rights for all.

16. In line with my system-wide call to action for human rights, which incorporates the Human Rights Up Front initiative, and the follow-up to the report on the brief and independent inquiry, a regular early warning reporting system was established in October 2019. Such steps, along with a human rights due diligence framework for United Nations programming, will guide common action in Myanmar and support efforts to undertake a comprehensive review of the implementation of the recommendations of the Advisory Commission on Rakhine State.

## **II. Context and political developments**

### **A. Political situation**

#### **Democratic transition**

17. The Tatmadaw (armed forces) continued to hold significant political influence, notably through its constitutionally mandated 25 per cent of seats in Parliament and a majority in the National Defence Council and the National Security Council, and resisted efforts to advance a constitutional reform process that sought to reduce its influence over the legislative and executive branches.

18. General elections scheduled for 8 November 2020 will be a test for the democratization process in Myanmar. Close to 100 parties, as well as independent candidates, will compete for over 1,100 seats in the Union and regional or state-level parliaments. To be nationally unifying, the electoral process has to be inclusive, transparent and accessible.

19. Fighting between the Tatmadaw and the Arakan Army in Rakhine State could result in the suspension of polling in several locations and further aggravate political grievances among the ethnic Rakhine population in the second poorest state in Myanmar. Moreover, the vast majority of Rohingya remaining in Rakhine State, along with other minority communities, may not be able to vote as they do not meet government-mandated eligibility requirements or lack the citizenship documents that are required to vote. Those communities are similarly denied the ability to run for political office, as documentation and other eligibility requirements to vote or run for public office have changed since the general election held in 2015.

20. Although the Union Election Commission indicated that internally displaced persons would have the right to participate in the elections, they, in particular the Rohingya, face challenges in proving their identity under the current laws, as well as in overcoming continued, limited access to public services and restrictions on movement.

21. More broadly, women are underrepresented in the political sphere in Myanmar. Based on the Commission's policy and action plan on gender equality and the empowerment of women for the period 2019–2022, follow-up will be important in promoting the political participation of women and protecting them from election-related violence.

22. National and international observers will enhance the level of transparency and help to build trust in the electoral process. Political parties and candidates committed themselves to adhering to the recently revised code of conduct, in which expectations for ethical and peaceful campaigning and the promotion of diversity and media freedom are clearly set out.

23. The publication by the Commission of updates on registered parties will help to promote transparency in the elections. The process of party and candidate registration and the finalization of voter lists should be fair and transparent, in order to avoid

accusations of unfairness or favouritism. An effective dispute resolution mechanism could allow for the timely adjudication of individual complaints and enable the Commission to quickly resolve allegations against election administrators.

24. Although the President, Win Myint, and other leaders have publicly denounced hate speech, the lack of policy measures consistent with international standards and best practices and the fact that hate speech continues to be used to incite discrimination, hostility and violence in Myanmar remained serious concerns.

25. As electioneering gained momentum, derogatory and offensive language targeting minority communities and politicians was pervasive, in particular on social media. Activists promoting an online anti-racism campaign were threatened and harassed. The COVID-19 pandemic also contributed to a rise in xenophobic anti-Chinese and anti-Muslim sentiments.

26. The United Nations, through the Peacebuilding Fund, sought to launch a project in partnership with the Government of Myanmar to prevent hate speech and promote a peaceful society through media and information literacy. Addressing related concerns was a priority for my Special Envoy, who urged the authorities in Myanmar to enact legislation against incitement to hostility, discrimination and violence, in line with international human rights standards. With support from the United Nations, the Office of the Union Attorney General produced and, on 28 November 2019, issued the first guide to legislative drafting for Myanmar, which is aimed at ensuring that the country's laws and regulations conform to best practices, are clearly written and do not contradict other laws or the Constitution.

#### **Armed conflict and national reconciliation**

27. Reconciliation is vital to the future of Myanmar and requires a real and sustained commitment by all communities, the Government and the security forces. During the reporting period, the peace process remained stalled as conflict and violence in several border states widened the trust deficit, most notably in Rakhine and Chin States, while sporadic fighting continued in Kachin, Kayin and Shan States.

28. In an effort to advance progress and build momentum ahead of the elections, authorities planned to convene, in late August, the fourth round of the 21st-Century Panglong Conference, a Union-level peace dialogue on federal principles. In discussions with all leaders of Myanmar, my Special Envoy amplified the appeal that I made on 23 March for a global ceasefire and called upon all sides to respect international humanitarian and human rights law and pursue solutions through inclusive dialogue. She continued to offer support for such a process.

29. Ongoing tensions between Rakhine nationalists and the Union Government have shown that the complexities in Rakhine State are not limited to the plight of the Rohingya. While the appointment by the Government of a peace adviser in April to focus on alleviating tensions in the state was a positive step, the designation of the Arakan Army as a terrorist organization a week earlier deepened the grievances of the ethnic Rakhine people and narrowed the scope for a political solution.

30. Under the auspices of anti-terrorism legislation, Rakhine village administrators and locals, especially young men, were arrested on allegations of unlawful association with the Arakan Army. There were reports of the arrest of children, despite specific provisions for their protection during armed conflict following the enactment of the Child Rights Law in July 2019. There were also reports of pro-government residents being kidnapped by the Arakan Army. Such incidents have fuelled tensions. A cancellation of voting in parts of Rakhine State owing to security concerns could result in electoral outcomes that further inflame the conflict.

31. Communities in Rakhine State that have been subjected to cycles of suffering and displacement are now faced with the COVID-19 pandemic, which is exacerbating pre-existing instability and fragility. Although on 10 May the Tatmadaw declared a national unilateral truce until the end of August, making reference to my appeal for a global ceasefire, an exception was made in areas in which groups declared to be terrorists by the Government had taken positions, effectively excluding Rakhine State and the southern part of Chin State, which were most affected by fighting.
32. That decision hampered ongoing humanitarian operations, including COVID-19 response programming. The violence, in addition to reported sporadic attacks by the Arakan Rohingya Salvation Army, is depriving all communities of effective and efficient COVID-19 preparedness and response assistance.
33. Furthermore, Internet restrictions in eight townships in Rakhine and Chin States remained in place. The ongoing shutdown has had a severe impact on an effective COVID-19 response, which could have repercussions for the rest of country.
34. The reported indiscriminate use of air strikes and artillery, as well as Tatmadaw ground operations, to drive Arakan Army troops out of villages was part of the deteriorating security situation, fuelling new waves of internal displacement and leading to a spike in civilian casualties. Civilian infrastructure, including schools and private homes, were destroyed, along with livelihoods.
35. At the end of July, more than 86,000 people remained displaced across Rakhine and Chin States alone, as clashes affected all communities. Soldiers establishing a presence in certain villages or frequent visits by parties to the conflict to populated areas also drove people out of their homes. Parties to the conflict are required under international humanitarian law to undertake measures to protect civilians against the dangers arising from military operations and to allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction.
36. It is the collective responsibility of the international community to take early action necessary in order to prevent another catastrophe in Rakhine State. The most recent crisis there also hampers efforts to promote intercommunal harmony and create conditions conducive to the voluntary, dignified, safe and sustainable return of Rohingya refugees.
37. Advancing the peace process and convergence towards a shared understanding among all stakeholders of how the Nationwide Ceasefire Agreement of 2015 will continue during the electoral and subsequent transition period in a more inclusive manner will be critical.
38. During the reporting period, high-level meetings between the Government and some ethnic armed organizations laid the foundation for renewed participation in the Joint Ceasefire Monitoring Committee of all signatory groups to the Agreement. However, the Government was not able to reach agreement with other ethnic armed organizations, including the Kachin Independence Army and the Ta'ang National Liberation Army, on signing the Agreement. A resurgence of fighting between the Tatmadaw and some of the non-signatory groups, in addition to the Arakan Army, displaced thousands in Shan and Kachin States.
39. Notwithstanding some efforts by the civilian leadership to spearhead an inclusive COVID-19 response anchored in a whole-of-society approach that would leave no one behind in its fight against the pandemic, including in Rakhine State, continued fighting, as well as the reported removal of COVID-19 inspection gates established by ethnic armed organizations, contributed to prevailing mistrust of the authorities. Specific follow-up is necessary, including on the establishment of a committee to coordinate COVID-19 response efforts with such organizations.

40. Meanwhile, continued engagement in and expansion of illicit activities provided parties to the conflict in Myanmar with resources to sustain fighting. Such activities included the production and trafficking of narcotics; illegal timber and wildlife sales; extraction and smuggling of jade and gemstones; smuggling of and trafficking in persons; smuggling of consumer goods; and unregulated casinos implicated in money-laundering. All these activities generated significant profits.

41. The Myanmar police successfully conducted a major anti-narcotics operation from February to April in Shan State, resulting in the largest seizure of synthetic drugs in South-East and East Asian history, including 18 tons of methamphetamine. During the operation, the Tatmadaw also disarmed approximately 3,000 fighters belonging to militia involved in the narcotics trade.

42. Despite the unprecedented scale of the seizures, prices of synthetic drugs continued to fall globally, an indication of ever-increasing supply. Enhanced efforts to counter such illicit activities will help to both end the human rights violations associated with them and improve prospects for an end to ongoing conflicts.

43. On 2 July, I extended my condolences to the families of the victims and to the people and Government of Myanmar following the reported death of at least 172 people following a large landslide at a jade mine in the town of Hpakant, Kachin State. As Myanmar continues to strive for progress in the implementation of the Extractive Industries Transparency Initiative, support to strengthen natural resource governance focused on safe labour conditions will be crucial.

44. The United Nations Development Programme (UNDP) is promoting the implementation of the Guiding Principles on Business and Human Rights in Asia. There is increasing awareness among business and civil society actors in Myanmar of the need to proactively address business risks to human rights in order to advance sustainable economic development.

## **B. Accountability**

45. Accountability remains a prerequisite for genuine reconciliation among all ethnic groups. It is a fundamental principle of justice that victims have the right to justice and the right to seek an effective remedy for human rights violations, and it is a duty of the State to ensure that those rights are fulfilled. Preventing the recurrence of violations and addressing impunity will be crucial. During the reporting period, progress on prompt, effective, thorough, independent and impartial investigations into allegations of the most serious international crimes and violations of international law was limited.

46. In an op-ed published on 23 January, the State Counsellor underlined the importance of justice in building a stronger and safer Myanmar, stating: “Justice can help us overcome distrust and fear, prejudice and hate, and end long-standing cycles of intercommunal violence. This has always been my goal”. It is essential that such commitments be implemented for all communities in Myanmar.

### **National efforts**

47. In November 2019, the Tatmadaw announced the beginning of court martial proceedings in relation to Rohingya mass graves found in the village of Gu Dar Pyin in Rakhine State after the Tatmadaw security operations in 2017. It was reported that three military personnel had been found guilty, although no details were available on the specific charges and sentences. So far, there have been no known attempts by the Tatmadaw or the court martial process to determine command responsibility.

48. The national Independent Commission of Enquiry submitted to the President on 20 January its report on allegations of human rights violations and related issues following the atrocities of August 2017. Except for a 14-page executive summary, recommendations and 13 annexes on specific case files, the report remained unpublished. The Commission concluded in the executive summary that war crimes and serious human rights violations might have been committed in Rakhine State. However, contrary to the reports of the independent international fact-finding mission, it found no evidence of crimes of sexual violence or genocidal intent.

49. The independence of the Independent Commission of Enquiry and its investigation was contested, while the limitations in its investigation, including unsuccessful attempts to interview refugees in Cox's Bazar, were noted. My Special Envoy was informed by Myanmar authorities that a unit for inquiries into and the prosecution of crimes had been established under the leadership of the Attorney General to implement the Commission's recommendations. She encouraged the leadership of Myanmar to publish interim reports on the activities of the unit. Furthermore, the Tatmadaw announced on 8 July the formation of an investigative body to probe claims of mass killings by its troops in three additional villages, as set out in the Commission's report.

50. During the reporting period, building on initiatives such as arrangements for greater educational opportunities and interfaith dialogue, as well as social cohesion projects, the Office of the President of Myanmar issued two directives on 8 April: directive No. 1/2020 on compliance with the Convention on the Prevention and Punishment of the Crime of Genocide and directive No. 2/2020 on the preservation of evidence and property in areas of northern Rakhine State.

51. The directives were addressed to all civilian and military authorities at the central and local levels, who were instructed to "ensure that public officials do not commit acts of genocide and that they do not destroy or remove potential evidence in criminal investigations", in accordance with the findings of the report of the Independent Commission of Enquiry. The directives must apply to any Rohingya villages that existed before 2017 and are potential return sites, given that they are likely to contain evidence of what had happened there three years ago. Reports have emerged of ethnic Rakhine houses becoming targets of arson, as was the case previously in Rohingya villages.

52. On 20 April, the President issued an order on the prevention of incitement to hatred and violence and the prevention of proliferation of hate speech, in which all public officials were instructed to prevent and denounce instances of hate speech. The directives are important transitional justice measures and require practical implementation.

53. The Government of Myanmar has the primary responsibility to investigate and prosecute; provide protection, remedy and reparations for victims; and ensure that national accountability mechanisms are credible, independent and effective in delivering justice for victims. Effective international cooperation will be critical to ensure that Myanmar meets its obligations under international law. Significant constitutional, legal and institutional reform is needed to build a national accountability system that can effectively challenge impunity for serious crimes.

#### **International courts and mechanisms**

54. On 14 November 2019, the judges of the International Criminal Court authorized the Prosecutor to open an investigation into alleged crimes within the Court's jurisdiction committed in the context of the situation in Bangladesh and Myanmar. The investigation is ongoing. In the same month, the Gambia initiated proceedings against Myanmar before the International Court of Justice, which held

public hearings from 10 to 12 December and unanimously ordered four binding provisional measures on 23 January.

55. Myanmar presented its first report to the International Court of Justice on 22 May 2020. To date, the report has not been made public. Owing to the COVID-19 pandemic, the Court extended the time limits for the filing of the initial pleadings for the next stage of the case, with the time limit for the written pleading of the Gambia extended until 23 October 2020 and that of the response of Myanmar until 23 July 2021.

56. Separately, the Human Rights Council established the Independent Investigative Mechanism for Myanmar by its resolution 39/2 of 27 September 2018, and the Secretary-General deemed the Mechanism operational as from 30 August 2019. In its first year of activities, the Mechanism advanced its work on various fronts, including its operational and administrative processes, engagement with relevant entities and stakeholders, and collecting and analysing evidence of crimes within its mandate. It issued its first report to the Council on 7 August 2019 ([A/HRC/42/66](#)).

57. As progress is made in the work of the Independent Investigative Mechanism for Myanmar, the cooperation of Member States in the region, including, first and foremost, that of Myanmar, will be crucial to obtain access to witnesses, victims and other sources of information. That will enable the Mechanism to effectively implement its mandate, thereby contributing to accountability for serious international crimes committed in Myanmar since 2011 and to the deterrence of future crimes.

## **C. Forced displacement and durable solutions**

### **Situation of internally displaced persons**

58. In November 2019, the Government launched a national strategy on the resettlement of internally displaced persons and the closure of camps for them, in order to address the situation of more than 250,000 such persons, mostly in Rakhine, Kachin, Shan and Kayin States. The strategy includes important references to international standards on durable solutions and was welcomed by the United Nations, which will support its operationalization, including through the establishment of a dedicated durable solutions unit and funding mechanism in the Office of the Resident and Humanitarian Coordinator.

59. The Government committed itself to carrying out the process of implementing the national strategy in accordance with international standards and discussed possible support with the United Nations country team. The process could provide a positive signal to forcibly displaced Rohingya regarding improved conditions in Myanmar and build confidence for the peace process, if internally displaced persons are able to return with fundamental freedoms ensured.

60. Pursuing durable solutions in conflict-affected areas requires meaningful community consultations and the addressing of land rights, landmines and livelihoods. Notwithstanding the adoption of the national strategy, the Government continued to work on the closure of camps for internally displaced persons in Rakhine State without regard to the international norms and standards that it had otherwise adopted.

61. In a petition to the authorities in Nay Pyi Taw and Rakhine State, internally displaced persons in the Kyauk Ta Lone camp, the first camp scheduled for closure in Rakhine State after the adoption of the national strategy, indicated their refusal to be relocated to remote sites prone to flooding and asked that their right to return to their places of origin or choice be upheld. Closing camps by simply renaming them

or unilaterally moving them to nearby locations without addressing the fundamental problems facing internally displaced persons, and in a manner inconsistent with international norms and standards, serves only to highlight how much work is still to be done to achieve genuine durable solutions for internally displaced persons in Myanmar.

62. There were, however, some indications of progress. In February, the Government began to help a small number of Rohingya who had been internally displaced since 2017 from seven village tracts in the Maungdaw township in Rakhine State to return to their original house plots. In April, as part of the national strategy, the Government approved pilot projects for the Office of the United Nations High Commissioner for Refugees (UNHCR) and UNDP to provide complementary support to internally displaced Rohingya so that they could return to their places of origin in two village tracts.

63. Some 10,000 Rohingya remained internally displaced in northern Rakhine State. Consistent with international standards, their right to return to their places of origin should be respected and facilitated across Myanmar, including in Rakhine State. More initiatives, such as the creation in June of a committee in Kachin State for the implementation of the national strategy, involving the Kachin Humanitarian Concern Committee and the United Nations country team, will be crucial.

#### **Freedom of movement**

64. Freedom of movement and, as a consequence, access to livelihood opportunities and basic services – especially health care and education – remained heavily restricted for those confined in camps in Rakhine State, notably Rohingyas, including those residing in camps that had been closed prior to the adoption of the national strategy, as well as other non-encamped Muslim populations in Rakhine State.

65. Women and children are disproportionately affected in such conditions, in which the risk of domestic violence is high and health and education facilities are limited or non-existent. The Government made little genuine progress in ensuring greater freedom of movement and access to vital services for approximately 600,000 Rohingya and other Muslims remaining in Rakhine State, nearly a quarter of whom were internally displaced.

66. Those fundamental issues – including freedom of movement and equal access of displaced persons to livelihoods and non-segregated basic services – were identified in the report of the Advisory Commission on Rakhine State in August 2017, the recommendations of which the Government had accepted but had not yet implemented in full.

67. The Rohingya continued to face significant restrictions to their freedom of movement, which were further exacerbated by the COVID-19 pandemic. A handful of confirmed COVID-19 cases in Rakhine State among people with a travel history in Bangladesh sparked hate speech on social media, and fear of COVID-19 transmission further increased animosity towards the Rohingya. The Government reversed a previous position, charging dozens of spontaneous Rohingya returnees from Bangladesh under the Burma Immigration (Emergency Provisions) Act of 1947 and sentencing them to six months in prison.

68. During the reporting period, hundreds of Rohingya, many of them children, were charged with illegal travel under immigration law of Myanmar and subsequently sentenced to jail when attempting to flee Rakhine State. In April 2020, authorities withdrew all charges against those Rohingya charged with travelling without documents and released 880 already sentenced on such grounds as part of the country's new year presidential pardon.

### **Humanitarian access**

69. Following a meeting held on 23 March with the Resident and Humanitarian Coordinator for Myanmar, the State Counsellor confirmed the intention of the Government to enhance cooperation between Myanmar and the United Nations by including international partners in the provision of humanitarian assistance and by granting improved humanitarian access.

70. Vulnerable communities were still in desperate need of assistance, but access to them remained irregular. In addition to facing security challenges, the United Nations and the international community experienced frequent restrictions on access to Rakhine and southern Chin States, along with other conflict-affected zones in north-eastern Myanmar, severely constraining the delivery of humanitarian assistance and placing local communities and humanitarian and health workers at risk.

71. At the end of July, more than 30 per cent of new conflict-related displacement sites in Rakhine (46 out of 131) were inaccessible to the United Nations and partners in international non-governmental organizations. Access restrictions imposed by the Government in January 2019 on international humanitarian organizations in eight townships in Rakhine State and one township (Paletwa) in Chin State, except for downtown areas, continued. The World Food Programme and the International Committee of the Red Cross, which were initially exempt from the restrictions, are facing challenges in reaching communities in the areas specified. Access barriers remained in place in Kachin and Shan States for some 40,000 internally displaced persons in protracted displacement since 2011 in areas not controlled by the Government.

72. Access constraints were accentuated by direct attacks against humanitarian and health workers. On 20 April, a marked World Health Organization vehicle transporting COVID-19 surveillance samples was hit by gunfire in the Minbya township, Rakhine State. The driver later died from gunshot wounds sustained in the attack, and one official of the Ministry of Health and Sports who was a passenger in the vehicle was injured. I strongly condemned the attack and called for a full and transparent investigation into the incident and for the perpetrators to be brought to justice. An investigation committee was established to probe the shooting. Nine days later, a World Food Programme convoy carrying emergency food supplies for over 3,700 people in the Paletwa township in Chin State came under fire, injuring the driver.

### **Voluntary, safe, dignified and sustainable repatriation of refugees**

73. The Government of Bangladesh and UNHCR jointly completed the registration of all 860,000 Rohingya refugees in Bangladesh in December 2019, allowing the country to share data on them with Myanmar, with their consent, so that they could exercise their right to return. It will be important for Myanmar to expeditiously and comprehensively verify the data shared by Bangladesh with a view to enabling the refugees' voluntary return to their places of origin or choice.

74. On 22 August 2019, Bangladesh and Myanmar, through their Joint Working Group, made a second attempt to begin the repatriation of Rohingya refugees, following an initial attempt in November 2018. As before, no refugees returned as part of the bilateral process. Constructive cooperation between Myanmar and Bangladesh will be crucial to resolving the issue. Myanmar could also pursue greater confidence-building measures through regular dialogue with the refugees.

75. The visit by Myanmar authorities in December 2019 to the refugee camps in Bangladesh, as part of the Joint Working Group's activities, together with ASEAN representatives, was an important initiative.

76. China facilitated trilateral discussions with Myanmar and Bangladesh on the issue of repatriation, including at United Nations Headquarters on 23 September 2019. On that occasion, the Minister for Foreign Affairs of China presided over an informal meeting with his counterpart from Bangladesh and the Union Minister for the Office of the State Counsellor of Myanmar. My Special Envoy was also invited and participated.

77. In consultation with UNHCR, my Special Envoy was in close contact with key regional actors, including China and ASEAN leaders, to help to ensure complementarity and coordination in addressing related issues.

78. Notwithstanding various efforts, conditions were not conducive to Rohingya repatriation, and were further complicated by ongoing clashes between the Tatmadaw and the Arakan Army. Discriminatory restrictions on fundamental rights of the Rohingya continued, along with a lack of meaningful implementation of the recommendations of the Advisory Commission on Rakhine State. Rohingya refugees and internally displaced persons cited the lack of safety, citizenship and freedom of movement, as well as the inability to return to their places of origin, as key impediments to their repatriation. The Rohingya, including the 130,000 internally displaced Rohingya confined in camps in Rakhine State since 2012, continued to be subjected to discriminatory laws and practices that prevented their pursuit of livelihoods and access to basic services.

79. The tripartite memorandum of understanding between Myanmar, UNDP and UNHCR to support the creation of conditions for the return of refugees from Bangladesh was extended for a third year, until June 2021. Rapid needs assessments were conducted for 130 villages in the Maungdaw and Buthidaung townships in Rakhine State, and 75 quick-impact projects benefiting all communities have been approved and implemented to date.

#### **Irregular maritime movements**

80. An estimated 2,000 Rohingya refugees made the dangerous journey across the Indian Ocean in the first half of 2020, nearly double the figure for 2019, with 165 reportedly perishing en route. They were driven by the lack of livelihood prospects and educational opportunities in Myanmar and Bangladesh. Governments in the region expressed unwillingness to rescue refugees and allow them to disembark for fear of COVID-19 transmission, along with growing anti-Rohingya sentiment in some countries. Criminal groups operating the boats reportedly extorted money from family members of those on board in exchange for the latter to be allowed to disembark. On 6 May, the International Organization for Migration, UNHCR and the United Nations Office on Drugs and Crime reaffirmed their support for States across the region to provide immediate assistance to asylum seekers, refugees and vulnerable migrants, as well as to strengthen the broader response capacity to respond to irregular movements.

### **D. Rights of vulnerable groups**

#### **Freedom of expression, freedom of assembly and protection of journalists**

81. Freedom of expression is a pillar of democracy and inclusive societies. In Myanmar, there were several limitations on the right to freedom of opinion and expression. Human rights defenders, journalists and civil society representatives endured harassment and prosecution for exercising their right to freedom of expression during the reporting period.

82. Legal action was based largely on the Telecommunications Law or the Penal Code. Interventions by the Myanmar Press Council in cases against the media led by the Tatmadaw resulted in charges being dropped. Section 66 (d) of the Law, according to which the legally undefined action of defamation, among other things, is outlawed, was also used to open proceedings.

83. The right to freedom of assembly, while safeguarded under article 354 (b) of the Constitution, was undermined in practice by the Peaceful Assembly and Peaceful Procession Law, which was used, together with the Penal Code, to charge protesters, such as activists in Yangon protesting against the Internet shutdown. Such cases could deter people from exercising their rights to peaceful assembly and freedom of expression.

### **Citizenship issues**

84. Progress on citizenship verification for the Rohingya continued to be limited. Although a very small number of Rohingya were granted some form of citizenship during the reporting period, citizenship verification remained inaccessible to the vast majority owing to the discriminatory legal framework and implementation, as well as rigid documentation requirements and the high unofficial fees required, which had a disproportionate impact on ethnic and religious minorities. There was a significant trust deficit on the issue, and the current process requires Rohingya to list their ethnicity as Bengali while seeking citizenship.

### **Gender-based and conflict-related sexual violence**

85. Following the signing by the Government of Myanmar and the United Nations, of a joint communiqué on addressing conflict-related sexual violence in December 2018 and the visit to the country by my Special Representative on Sexual Violence in Conflict in February 2019, an interministerial national committee on conflict-related sexual violence, chaired by the Minister of Social Welfare, Relief and Resettlement, was established by presidential decree.

86. In November 2019, the United Nations and civil society organizations were invited by the interministerial national committee to review the joint action plan on conflict-related sexual violence. It could not be endorsed by the United Nations because Myanmar authorities expressed their inability to commit themselves to a joint action plan as set out in the joint communiqué of 2018. It was agreed that the United Nations would continue to engage with the national committee to help to ensure that the draft action plan adequately promoted accountability among security actors, included necessary elements on legislative and administrative reforms, strengthened aspects of inclusiveness and promoted a survivor-centred approach in line with Security Council resolution [2467 \(2019\)](#), including a complaints mechanism that protected survivors and responders from retribution.

87. The Office of the Union Attorney General and the Myanmar police worked with the United Nations to increase capacity to respond to the alarming level of gender-based violence. Recent engagement has been encouraging, but hesitation by some actors to include such violence in core training curriculums or to embrace coordination opportunities with essential service providers and criminal justice actors highlights the fact that it is still often seen as a domestic issue, and is therefore not a priority in terms of criminal justice.

### **Children and armed conflict**

88. In September 2019, the Government ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, enhancing the country's legal framework for the protection of children.

89. However, during the reporting period, there was an increase in child casualties and overall grave violations pertaining to children in armed conflict. My Special Representative for Children and Armed Conflict visited Myanmar in January. In accordance with the relevant Security Council resolutions, she urged the Government to sign a joint action plan to prevent killing, maiming, rape and other forms of sexual violence and urged all parties to sign and implement joint commitments to end and prevent further recruitment and use of children.

90. In March, two ethnic armed organizations agreed to sign joint commitments with the United Nations. In parallel, the national committee for the prevention of the six grave violations against children in armed conflict developed a national action plan, which was shared with the United Nations country task force on monitoring and reporting.

91. In June, the Tatmadaw was provisionally delisted from the annexes of my annual report on children and armed conflict for the violation of recruitment and use of children, following a continued significant decrease in recruitment, ongoing prosecutions and an agreement to continue to trace and release children who were identified in previous years. The delisting is conditional upon further progress in the next 12 months.

## **E. Coronavirus disease**

92. The many challenges facing Myanmar in the current critical period were accentuated by COVID-19, and vice versa. Through my Special Envoy and the country team, the United Nations provided coordinated support for and advocated an inclusive COVID-19 response as the country entered an election period.

93. While Myanmar avoided a large-scale outbreak of COVID-19, with around 300 confirmed cases as at July, it nevertheless experienced a significant economic shock from the crisis. Given the high infection rates in parts of the region, Myanmar remains at risk.

94. Despite improvements and a concerted effort by the Government, the country's health system is poorly equipped to manage a large outbreak, and the convergence of the pandemic with ongoing conflict in various parts of the country results in significant levels of vulnerability to COVID-19 for millions of people.

95. In addition, the pandemic forced more than 100,000 overseas migrant workers to return to Myanmar, placing an extra burden on the national health-care system and social services. The Government's mitigation efforts included testing and State-facilitated quarantine. In that context, the United Nations in Myanmar focused on increasing engagement with and building the capacity of local civil society organizations, many of which were active in conflict-affected areas as front-line responders.

## **III. Observations**

96. In the lead-up to the general elections to be held on 8 November, it will be important to prevent the political disenfranchisement of ethnic and religious minorities across Myanmar, including in Rakhine State. Citizens must have confidence that the outcome reflects their will in order for it to be accepted. Exclusion occurs for different reasons, depending on the specific situation of each ethnic and religious minority, such as populations in conflict-affected territories or those who are considered not to have the documentation necessary to participate and vote. Those underlying issues have to be addressed. Action by the Union Election Commission on instances of exclusion will greatly contribute to its credibility and independence as an election management body.

97. Political leaders bear the overriding responsibility for successful elections. As political parties prepare for elections, I urge the Government to ensure freedom of association, opinion and expression and of the media. The legal electoral framework for an election should be developed through an inclusive, transparent and participatory process. I urge the legislative and executive branches to initiate and pass legislation that clarifies existing laws and adheres to international standards for fundamental freedoms. All people of Myanmar, including members of all political parties, should be able to exercise their right to freely express their opinion through any media they choose, without fear of oppression.

98. It is particularly important that the Government speak with a unified voice against hate speech and take appropriate measures against those who promote it. A holistic approach is needed, tackling root causes and their impact on society. I encourage the Government to develop a comprehensive national strategy to combat incitement and hate speech and promote freedom of opinion and expression, in line with international human rights standards, thereby advancing tolerance, respect for diversity and pluralism. The United Nations stands ready to strengthen its support, including through the Peacebuilding Fund project on preventing hate speech and promoting a peaceful society and other related initiatives.

99. Where active conflict continues, I strongly urge all sides to respect their obligations under international human rights and humanitarian law and to take all measures to avoid civilian casualties and immediately stop the use of and damage to civilian infrastructure. I also renew my appeal for an immediate ceasefire in all parts of Myanmar, in line with my global call for unity and solidarity in combating the pandemic.

100. In order to assist those in need, full and unimpeded humanitarian access is essential. The Government and all parties to the conflict have a responsibility to facilitate humanitarian operations. The perpetuation of restrictions on access to basic, critical services, including health care during a global pandemic, must be addressed. I call upon the Government to pursue all means necessary, including the removal of landmines, to enable free and unhindered access. Access to information across all media, including the Internet, is crucial.

101. For the voluntary, safe, dignified and sustainable repatriation of the Rohingya from Bangladesh, it is vital that the Government of Myanmar makes real progress in addressing human rights concerns and the root causes of violence and discrimination in Myanmar. That includes durable solutions consistent with international norms and standards for Rohingya who remain displaced in Rakhine State. Increased educational opportunities for the Rohingya and the delivery of public services to all in a comprehensive and equitable manner will be crucial. Full implementation of the recommendations of the Advisory Commission on Rakhine State and the Independent Commission of Enquiry is a first step, in particular the lifting of discriminatory movement restrictions on the movement of marginalized groups.

102. I encourage the Government to conduct a systematic, inclusive and earnest verification exercise with regard to refugees in Bangladesh – facilitated by the registration of refugees jointly completed by the Government of Bangladesh and UNHCR – that upholds refugees' right to return voluntarily and reassures refugees that they would be able to return with their entire families and communities. The authorities should implement the national strategy on the resettlement of internally displaced persons and the closure of camps for them in line with its stated principles of community participation, freedom of movement and non-discrimination.

103. To address citizenship issues, the Government should take immediate and urgent measures to improve the transparency, accessibility and predictability of the citizenship application process and related requirements. That includes reducing the

evidentiary burden and administrative and financial barriers, ensuring that those who are eligible receive full citizenship and issuing citizenship documentation to all individuals who have held national registration cards. A clear and accessible pathway to citizenship in line with the recommendations of the Advisory Commission on Rakhine State should also be developed, which requires a review and the reform of the Burma Citizenship Law of 1982. I particularly urge the Government to prioritize a review of the national verification card process, as recommended by the Independent Commission of Enquiry.

104. In the interim, I call upon the international community, including development and humanitarian partners, to continue to support Bangladesh in hosting over 860,000 Rohingya refugees. Saving lives is a priority, and I call upon States to expand safe and legal pathways for the admission of refugees so that they do not need to resort to dangerous journeys. Countries in the region should build on the solid cooperation and planning that has already been undertaken by ASEAN and the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime to address irregular maritime movements. That includes investigating and prosecuting traffickers and smugglers in accordance with international human rights standards, while fully respecting the rights of victims and establishing effective, predictable and equitable disembarkation arrangements.

105. Accountability for crimes committed, including against the Rohingya population in Myanmar, is paramount; without accountability, peace and national reconciliation efforts will be undermined. The absence of legislation at the national level criminalizing the most serious crimes, including crimes against humanity, hampers national accountability. I call upon States, including Myanmar, to cooperate fully with existing accountability mechanisms, including the Independent Investigative Mechanism for Myanmar, to adopt national legislation to criminalize war crimes in accordance with international law and to ensure that national accountability efforts are independent, transparent and credible.

106. ASEAN and its dialogue partners have actively mobilized support for Rakhine State. Regional cooperation will be critical in addressing the root causes of conflict in the state, creating conditions conducive to the return of refugees and strengthening the COVID-19 response of Myanmar. In November 2019, ASEAN established an ad hoc support team to implement the recommendations of the preliminary needs assessment of repatriation conditions in Rakhine State, conducted by ASEAN in May 2019. My Special Envoy, the Office of the Resident and Humanitarian Coordinator and other parts of the United Nations system met with ASEAN representatives to discuss cooperation and ensure complementarity. The United Nations stands ready to strengthen cooperation with ASEAN and support its efforts in Myanmar, including through the mobilization of coordinated international support.

107. The stated commitment of Myanmar to cooperate with the United Nations presents an opportunity to strengthen the Organization's support for a nationally owned democratic reform process that upholds the values of the United Nations. The United Nations will continue to provide integrated support for the national priorities of Myanmar – such as inclusive socioeconomic development and human rights protection for all – in the current critical period, including through my Special Envoy, Christine Schraner Burgener, and the United Nations country team, whom I would like to thank for the commitment with which they have discharged the responsibilities entrusted to them, including in the face of the COVID-19 pandemic. I would also like to thank the outgoing Special Rapporteur, Yanghee Lee, for her tireless dedication since 2014, and to encourage the Government of Myanmar to extend its cooperation to Thomas Andrews, who succeeded her earlier this year.