

Universal Periodic Review of Myanmar

UNCT submission

1. Introduction

This submission from the United Nations Country Team in Myanmar relates to the implementation by the Government of Myanmar (GoM) of the UPR recommendations from the second cycle. This submission is complemented by an overview of GoM responses during the COVID-19 pandemic (Annex II).

2. Cooperation with UN human rights mechanisms

Since 2015, Myanmar ratified CESC¹ and CRC-OP-AC² and reported to CEDAW³ in 2019 under the Committee's exceptional reporting procedure. A follow-up report was due in March 2020. Reports on other treaties remain pending.

Myanmar did not extend standing invitations to Special Procedures. GoM withdrew cooperation with the country mandate holder in 2017 and did not admit any thematic mandate holders for country visits.⁴ Myanmar also did not allow OHCHR to open an office.

3. Institutional and Human Rights Infrastructure

In January 2020, GoM appointed 11 new Commissioners of the Myanmar National Human Rights Commission (MNHRC), including four women.⁵ The selection process came under heavy criticism by members of the international community for failing to meet the Paris Principles on NHRI, as it lacked transparency and did not include meaningful consultations with civil society organizations (CSOs). CSOs' calls for ethnic, religious and professional diversity were not taken into account as all new commissioners are ethnic Bamar. No civil society member is among the new Commissioners - mostly former civil servants with ties to the military.⁶ MNHRC is under-funded, with limited capacity and expertise to investigate independently and report on human rights violations. Offices have limited functions in undertaking protection work as they are required to inform prison and other responsible officials ahead of visits and field offices remain inaccessible to most people.

4. Administration of justice and the rule of law

Political and military influence over judges remains of concern. The President appoints judges to the Supreme Court and the Chief Justices of the High Courts, with a limited opportunity for review by the Union Parliament.⁷ Corruption, routine violations of fair trial rights, and inability of victims to cover legal representation costs pose serious challenges to access to justice.⁸

The Union Attorney General's Office (UAGO) adopted a Code of Ethics and disseminated a Manual on Fair Trials encompassing the principles of the right to counsel, the right to remain silent and other due process guarantees. However, due process standards continue to be violated.⁹

Standard Operating Procedures developed in August 2018 by the Prison Department and the Ministry of Health and Sports (MoHS) on health care in prisons, strengthened the right of prisoners to access health care.¹⁰ In July 2015, a draft Prisons Law, aimed at reforming the outdated prison legal framework, was introduced to Parliament but remains pending. This has contributed to violations, including torture, beating, cramming prisoners into small cells, overcrowded spaces, forced labor, denial of adequate healthcare, punitive transfers, and sexual violence.¹¹

a. Accountability

Investigations and prosecutions of serious violations of human rights and international humanitarian law by security forces remains an issue despite allegations in relation to the

2016 and 2017 security operations in Rakhine, and to armed conflict in Kachin, Shan and Kayin. The court martial that ended in June 2020 demonstrated lack of transparency.

Constitutional and legal provisions shield the military from prosecution by civilian authorities or by military courts from several crimes. This lack of accountability opens for a culture of impunity.¹² In November 2018, seven Tatmadaw soldiers, sentenced to 10 years in prison for executing 10 Rohingya,¹³ were pardoned by Senior General Min Aung Hlaing after less than a year in detention.¹⁴

In June 2018, GoM established the Independent Commission of Enquiry to investigate allegations of human rights violations in Rakhine. The Commission had inadequate capacities to undertake independent investigations, and under its terms of reference, its recommendations were to be directed to enhancing peace and stability and ensuring rule of law.¹⁵ The Commission submitted its final report to the President on 21 January 2020. The President's office released the executive summary, recommendations, and 13 annexes but not the full report. No public information is available on methodology, sources, and basis for legal conclusions.

b. Juvenile justice

The enactment of the Child Rights Law in 2019 represented a significant change from the pre-existing punitive-focused juvenile justice system to a more child-centred, restorative and rehabilitation-oriented one. This law includes provisions on protection and assistance of child victims and witnesses and provides stronger legal protection for children in the context of armed conflict. Minimum age for criminal responsibility was raised from eight to 10 years, still below the recommended age set by international standards. It also established juvenile courts with jurisdiction over all offences, irrespective of the nature of the offence. Juvenile courts have been constituted in township courts in Yangon and Mandalay Regions.¹⁶ Where juvenile courts do not exist, the presiding judge of the township court serves as the juvenile judge.¹⁷

5. Economic and Social rights

a. Right to Education

Under the revised 2015 National Education Law (NEL), all citizens have the right to access education and opportunities for lifelong learning. Section 17 stipulates that free compulsory primary education shall be implemented and expanded to other levels in successive stages. NEL refers to citizens, excluding individuals whose citizenship is not recognized.

In February 2017, the Ministry of Education (MoE) launched the National Education Strategic Plan 2016-2021, as Myanmar's first policy framework to guide education investments. MoE is undertaking basic education reform as part of the NESP implementation, establishing a new Kindergarten (KG) +12¹⁸ Basic Education system. A new curriculum for KG was introduced in the 2016-2017 school year, followed by new textbooks for Grade 1 in 2017-2018, Grade 2 in 2018-2019, and Grade 3 and Grade 6 in the 2019-2020 school years.

The Government budget allocation to education has increased steadily from 6.8 per cent in 2015-2016 to 8.41 per cent for the 2019-2020 fiscal year. According to NEL, budget allocations to the education sector should be 20 per cent of public expenditure.

School enrollments increased. Net enrollment rate for primary school increased from 88 per cent in 2010 to 94 per cent in 2017; 52 per cent to 71 per cent for middle school; and 26 per cent to 44 per cent for high school.¹⁹ Still, many children remain out of school. Economic hardship, poor quality and relevance of education, are among the reasons for school dropouts. This is compounded with rural-urban, State and Region disparities.²⁰ Children in Myanmar have lower rates of enrolment and low completion of primary education compared

to other South-East Asian countries. More than two million children aged 5-17 remain out of school, and an estimated 232,000 children with disabilities do not attend school.

In conflict-affected areas, restrictions on mobility, increasing insecurity, and attacks on schools, including use of schools by security force, have also obstructed access to education. While military use of schools is usually of temporary nature, it disrupts education and puts children and school personnel at risk.

Access to primary, secondary and tertiary education for Rohingya is particularly challenging mostly due to the absence of accredited schools or teachers in their communities, combined with movement restrictions. These have led to the denial of access to education beyond primary school for Rohingya, including those displaced in central Rakhine since 2012. In 2018, only 892 Muslim students were enrolled in two high schools across Rakhine State.²¹

b. Poverty and sanitation

Despite rapid economic growth and a reduction in poverty between 2005 and 2017, the portion of population classified as vulnerable to poverty is expanding.²² Between 2005 and 2017, the number of people living in poverty was halved from 48.2 per cent to 24.8 per cent and in 2017, the number of poor people declined from 18.7 million in 2005 to 11.8 million.²³ Despite this progress, many households live just above the poverty line and shocks could push them back into poverty.

Economic and development disparities among States and Regions increase vulnerability to poverty. Chin and Rakhine have poverty rates twice the national average. Rakhine had the second highest percentage of people in the lowest wealth group after Ayeyarwady Region.²⁴ Poverty is predominant in rural areas and people living in urban areas are 6.7 per cent less at risk of destitution.²⁵ Poverty is magnified by natural disasters and many rural areas continue to be affected by long-standing conflicts. In 2019, 55 per cent of children lived under poverty with an estimated 460,000 children requiring humanitarian assistance. Chin and Rakhine have the highest number of children living in poverty (63.4 per cent and 49.1 per cent respectively). Due to lack of adequate water and sanitation facilities, five million children lack access to an improved water supply and 1.4 million children are without access to toilet facilities.

c. Child and maternal mortality

Despite a nine-fold increase in investment by GoM in health care between 2012 and 2016, children continue to suffer from high levels of mortality. Children under five have a mortality ratio of 50 per 1000 live births.²⁶ Only 51 per cent of children under six months are exclusively breastfed and only 16 per cent under two years receive the minimum acceptable diet. Pregnancy-related mortality is 227 per 100,000 live births. Only 37 per cent of women deliver in health facilities with numbers as low as 14.7 per cent in Chin State; 60.2 per cent are assisted by skilled providers while giving birth (29.7 per cent in Rakhine; 35.6 per cent in Chin). About 47 per cent of women aged 15-49 are anemic.

As a result, 29 per cent of children under five continue to be stunted and 8 per cent severely stunted (chronic undernourishment) while 7 per cent are wasted, and 1 per cent severely wasted (acute under-nutrition).²⁷ In Chin State 41 per cent of children are stunted, while rates for Kayah are at 39.7 per cent, in Rakhine 37.5 per cent, Ayeyarwady 37.2 per cent, and Shan 36.5 per cent.

d. Birth registration

Over a million children under the age of five are not registered at birth. In Kachin and Shan, almost 70 per cent of children lack birth certificates. In Rakhine, the situation of Rohingya has been exacerbated by continued movement restrictions, challenges to access medical services²⁸ and recording the ethnicity of the parents of the child on the birth certificate as

“Bengali”. Since 2019, all birth certificates include the statement “this certificate shall not be used to testify for citizenship status.”²⁹ People are unable to access life-saving medical care and pregnant women are forced to deliver babies with traditional birth attendees often in unsafe and unhygienic places.³⁰

e. Land rights

Land grabbing by government and private entities remains a major cause for concern across Myanmar. Estimates place land confiscations in the millions of acres over several decades. Ongoing armed conflicts and ensuing massive displacement allow armed forces, ethnic armed organisations (EAOs), businesses, and civilians to grab vast swathes of lands. In Rakhine, following the October 2016 and August 2017 security operations,³¹ different actors have occupied and/or used housing, land and property of displaced populations.

Myanmar’s legal framework poses additional challenges. GoM adopted a National Land Use Policy in 2016 and committed to a national land law, currently under development. There is no effective land registration system, no system to recognize customary or communal land, and no mechanism to compensate owners for confiscated land. National Land Use Policy addressed the right to land tenure. The 2019 Land Acquisition, Resettlement and Rehabilitation Law increases risks to security of land tenure as it contains overly broad provisions on “public purposes” for confiscation.

Amendments to the Vacant, Fallow and Virgin Land Management Act came into force in September 2018 and concerns are that it may be used to dispossess people of their land without adequate notice. Lacking a conflict-sensitive approach, IDPs and refugees who are not physically present on their land are likely to be disproportionately affected in terms of enjoyment of HLP right and consequent access to sustainable solutions. At least three quarters of the land classified as virgin, vacant or fallow is in ethnic States of Chin, Kachin, and Rakhine.³²

6. Gender equality and women’s empowerment

In 2018, Myanmar ranked 148 of 188 countries on the Gender Inequality Index.³³ Gender inequality remains entrenched in legal, economic, and social frameworks. The 2008 Constitution broadly enshrines the principle of non-discrimination against any citizens on several grounds.³⁴ It promotes equal rights to work and salary for women and men but recognizes that certain positions are suitable to men only.³⁵

Lacking a comprehensive legal definition of discrimination against women, gender-based discrimination pervades existing laws and policies reinforcing stereotypical roles of men and women in family and society. This is particularly evident in legislation relating to family law, marriage, divorce, distribution of marital assets, inheritance rights, custody and guardianship and citizenship. No policy changes have been made since the last UPR.

Women are largely absent from decision-making positions and governance structures remains male-dominated.³⁶ Only 1.5 per cent women hold senior civil service positions such as director-general. Women’s labor force stands at 50.5 per cent versus 85.2 per cent for men.³⁷ Compared to 77.4 per cent for men, 90.7 per cent of working women are in the informal economy, which is characterised by marginal pay, long hours, and low job security.³⁸ Women representation in the Union Parliament is at 10.2 per cent, 12.7 per cent at State and Regional parliaments,³⁹ only 0.25 per cent of ward/village tract administrators.⁴⁰

The 2018 Myanmar Sustainable Development Plan aims at creating an enabling environment for women and youth to contribute to national prosperity. The National Indicator Framework monitoring its implementation contains 46 gender specific indicators including women’s political participation, violence against women and gender responsive budgeting.

GoM adopted the National Strategic Plan for the Advancement of Women 2013-2022 (NSPAW). Since 2013, significant institutional, coordination, financial, and capacity gaps have emerged. The low budget allocation to NSPAW made its implementation heavily reliant on specific line ministries, CSOs, and development partners. Institutions assigned to operationalize NSPAW lacked the necessary authority, funding, and human resources to effectively carry it out.

GoM did not repeal or amend the four laws collectively as the Protection of Race and Religion Laws. These continue to restrict religious freedom and inter-faith marriages, while imposing discriminatory population control measures. These laws disproportionately impact on women's rights enhancing gender disparity.

The National Sexual and Reproductive Health and Rights Policy covering six key priority areas,⁴¹ finalized in 2019, has not been officially released. The adoption of the Five-Year Strategic Plan for Reproductive Health (2014-2018) and the National Social Protection Strategic Plan and initial roll-out of the maternal and child cash transfer program constitute important steps towards gender equality and women empowerment.

a. Violence against women

Myanmar's legal framework provides inadequate protection for women from violence, despite amendments to the Penal Code increasing sanctions for rape of minors. GoM has yet to adopt the draft law for the prevention and protection of violence against women. Limited consultations with CSOs occurred and concerns remain about the scope of criminal offences covered, and protection and support provided to victims and witnesses of sexual violence, including conflict-related sexual violence.

UN mechanisms documented cases of systematic sexual and gender-based violence, including rape and sexual slavery, against ethnic women and girls by the Tatmadaw.⁴² Many women and girls were raped or subject to other forms of sexual violence in Rakhine during the 2016 and 2017 security operations.

In December 2018, GoM signed the Joint Communiqué on Conflict-Related Sexual Violence but the joint action plan to implement the communiqué is not yet finalized.⁴³ GoM indicated that the action plan will be a national action plan not requiring UN endorsement. While the Government held some consultations with the UN, the plan remains weak on accountability, monitoring and survivor protection.

While violence against women remains pervasive, data are limited. According to Demographic and Health Survey (2015-2016), 21 per cent of ever-married women have experienced physical, sexual, or emotional violence within the family. The UAGO has developed a training curriculum on Effective Prosecution Responses to Violence against Women and Girls. Based on this, 40 prosecutors were trained as trainers and conducted cascading training to 120 prosecutors across three regions. UAGO is currently planning to develop SoPs for prosecutors on effective handling of GBV cases. Additionally, MoHS endorsed GBV Clinical Guidelines in 2018 and Department of Health launched Case Management Standard Operating Procedures for Child Protection and GBV in 2019. Since 2019, police with support from the UN have been strengthening efforts to respond to gender-based violence through contextualized and multi-sectoral training programmes to cases of violence involving women and children. In 2019, the Ministry of Social Welfare, Relief and Resettlement (MoSWRR) agreed to implement a national prevalence survey on violence against women with technical support from UN. A national steering committee under the leadership of MoSWRR was established.

7. Civil and political rights

a. Freedoms of expression and of assembly

The Myanmar Press Council in consultation with journalists, CSOs, UN, and international organizations submitted a revised version of the News Media Law in 2019 and a draft Right to Information law in 2018 to the Government for consideration. GoM and Parliament have yet to consider the revised laws. This package of proposed reforms is intended to address the current laws limiting access to information. Of further concerns is the systematic use of Article 66(d) of the 2013 Telecommunications Law, suppressing freedom of expression and curtailing investigative reporting. Journalists, artists, and civil society continue to face prosecutions for defamation for online or offline criticisms of the military or GoM.⁴⁴ The 2017 amendments to the law reduce imprisonment for online defamation from three to two years.⁴⁵ In 2017, the Parliament passed the Law Protecting the Privacy and Security of Citizens, which provides for further criminalization of defamation. The 2020 National Records and Archives Law includes a weak presumption that information should be accessible to the public after its secrecy classification has ended but gives the government the power to arbitrarily refuse access.

On 20 June 2019, GoM ordered all mobile network providers to suspend internet services in nine townships in Rakhine and Chin States.⁴⁶ On 1 September, the order was partially lifted in five townships⁴⁷ but imposed again on 3 February 2020. The internet shutdown has significant humanitarian and public health implications given the intensification of the conflict between the Tatmadaw and the Arakan Army (AA) and the COVID19 pandemic.

A draft law on hate speech remains pending in Parliament. In January 2020, the Ministry of Foreign Affairs indicated that the Ministry of Home Affairs (MoHA) is pushing through the law for adoption by the Parliament. MoHA has not carried out public consultations. The draft law relies heavily on censorship and criminal penalties as means of countering hate speech. Calls for replacing it with positive actions in accordance with the Rabat Plan of Action have increasingly surfaced due to lack of public consultations in the drafting process and fear that the law will further contribute to limit freedom of expression. The use of social media, notably Facebook, to incite violence, discrimination and hatred remains pervasive across the country.

Ongoing restrictions on peaceful assembly and prosecutions of many activists under the Right to Peaceful Procession and Peaceful Assembly Law continue to curb civic space⁴⁸ creating serious concerns in view of the upcoming elections.

b. Statelessness and citizenship

Based on the 2008 Constitution and 1982 Citizenship Law, the citizenship process fails to comply with international standards, discriminates on the basis of race, does not contain adequate safeguards to ensure the acquisition of citizenship by foundlings and children who would otherwise be stateless. The 1982 Law also introduced a hierarchy of citizenship categories that effectively prescribes different categories of citizens, who have access to different rights, including in terms of political participation.⁴⁹ An arbitrary and discriminatory application of the Law has been used to erode citizenship rights of Rohingya leading to their statelessness.⁵⁰ Other ethnic and religious minority or marginalized groups, as well as people defined by the authorities as being of mixed blood⁵¹ are also affected by this situation.

In 2017, the Rakhine Advisory Commission made several recommendations⁵² on which GoM has not yet acted. In 2014, GoM introduced National Verification Cards (NVCs) indicating it was a first step in the process to apply for citizenship. However, these cards are not linked to a process to restore or acquire citizenship rights and have instead been linked to a deterioration of pre-existing rights. Rohingya largely refuse NVCs because the process requires them to record as “Bengali” and is disconnected from acquisition of citizenship.

GoM has increasingly linked the possession of NVCs to activities that were previously undertaken without the document, such as movement, access to livelihoods and basic services.⁵³

c. Elections

Under the Constitution, 25 percent of parliamentary seats are reserved for representatives of the Tatmadaw. As constitutional amendments require a majority over 75 percent, the military has a de facto veto.

These are concerns in terms of the prospects for free and fair elections. Election laws contain discrepancies in relation to the rights to vote, stand for elections, form and participate political parties result in different classes of citizens having different political rights. The 2014 amendments to the Political Parties Registration law require leaders of political parties to be “full” citizens and members of parties to be “full” or “naturalized” citizens. Some groups including members of ethnic and religious minority groups, individuals serving prison sentences, declared of unsound mind and insolvent are ineligible to vote. This disproportionately affects members of unrecognized religious and ethnic minorities, notably Rohingya, as they lack citizenship rights. Voting procedures for IDPs, migrant workers abroad, and of people in conflict-affected areas represent additional serious concerns. Electoral activities, including campaign rallies and voting, may also be disrupted by the ongoing violence, especially in Rakhine and Chin, undermining the credibility of the process.

8. Right to life, liberty and security of the persons

a. Death Penalty

Myanmar retains the death penalty but has not executed individuals since 1988. Nine individuals are currently sentenced to death.⁵⁴ In 2019, two persons were sentenced to death for the murder of lawyer Ko Ni in January 2017.

b. Internally displaced persons

Approximately 274,000 people are internally displaced in Kachin, Shan, Rakhine, Chin, and Kayah. Over 106,000 persons are in a situation of protracted displacement in Kachin and Shan, with an estimated 40,000 in areas under EAOs’ control in eastern Kachin.⁵⁵ Over 855,000 Rohingya sought refuge in Bangladesh following the 2016 and 2017 security operations. Around 600,000 stateless Rohingya remain in Rakhine, including approximately 130,000 living in poor conditions in IDP camps in central Rakhine since 2012. As of July 2020, more than 77,000 people were reported to be displaced in sites due to ongoing conflict between the AA and Tatmadaw in Rakhine and Chin states.

Key protection risks include threats to life and physical integrity from shooting and shelling prior to and during displacement, loss of property, landmine and UXO contamination, limited freedom of movement, forced recruitment by armed actors, heightened risk of trafficking, violations of their HLP rights in places of origin, difficulties in accessing civil documentation and lack of access to livelihoods and health services. In November 2019, GoM launched a National Strategy on IDP Resettlement and IDP Camp Closure. UNCT welcomed the launch of the strategy, which reflects important international standards around durable solutions, including voluntariness, dignity and safety. Serious concerns remain regarding the approach, predating the Strategy, to camp closure in central Rakhine. GoM has declared three camps closed⁵⁶ having constructed new housing in or beside these sites without consultations with IDPs or without taking steps to enable freedom of movement and access to services and livelihoods.⁵⁷ IDPs in camps declared closed continue to face heavy constraints on freedom of movement, limiting their access to livelihoods, healthcare, and education outside the so-called “closed” camps, increasing their reliance on humanitarian

assistance.⁵⁸ Concerns arose about steps taken since early 2020 to close a fourth IDP camp in central Rakhine, Kyauk Ta Lone with a population of around 1,000, displaced from nearby Kyaukpyu town in 2012. IDPs publicly objected to their proposed relocation to a flood-prone site adjacent to the current IDP camp, where they expect to remain cut off from livelihoods and services.

In Kachin, de-escalation in armed conflict since 2018 has created space for discussions on potential solutions for IDPs. Dialogue between the UNCT, civil society, and government interlocutors on possible support in this regard continues. However, serious obstacles persist, including landmine and UXO contamination, complex housing, land and property rights issues, and lack of basic services in potential return or resettlement areas.

c. Humanitarian access

Humanitarian access has declined. In Rakhine, as of March 2020, humanitarian organizations estimated they could reach roughly half of sites hosting persons displaced due to ongoing conflict between the Tatmadaw and the AA. Even in accessible sites, restrictions on the duration of travel authorization and the types of support that can be provided continue to undermine the ability of humanitarian organizations to fully cover needs. Township-level restrictions on access to conflict-affected rural areas have been in place for a large majority of humanitarian organizations since early 2019. The introduction of additional requirements for travel authorization in late 2019 resulted in interruptions in ongoing programming for a large number of Sittwe-based organizations for several months.

In Shan and Kachin, movement by humanitarian personnel outside main towns has remained extremely challenging, with the situation in northern Shan further complicated by the volatility of the security environment. Despite the absence of major conflict incidents in Kachin since 2018, UN and INGOs have not received government authorization to access areas under EAO control since mid-2016.

d. Repatriation

On 23 November 2017, Myanmar and Bangladesh signed a bilateral arrangement for the repatriation of displaced persons from Rakhine in Bangladesh and established a Joint Working Group on repatriation.⁵⁹ On 6 June 2018, UNHCR and UNDP signed a memorandum of understanding with GoM to support creation of conditions conducive for voluntary, safe, dignified and sustainable repatriation of refugees.

Myanmar and Bangladesh announced two attempts to repatriate refugees in November 2018 and August 2019 neither of which materialized. There has been an absence of progress in addressing the root causes of forced displacement, as Rohingya in Rakhine continue to face restrictions on citizenship, freedom of movement⁶⁰ and access to services.

At the end of 2019, 93,333 verified refugees resided in nine temporary camps along the Thai-Myanmar border. Under a joint programme of the governments of Thailand and Myanmar, 1,039 refugees returned to Myanmar since 2016, with 875 returning in 2019. These repatriation processes are ongoing however the presence of armed groups, ongoing armed conflicts in Myanmar, limited access to fundamental services, presence of landmines, and recognition of HLP rights are some of the main barriers to return.⁶¹

e. Forced labour

The Constitution⁶² stipulates exceptions to the prohibition of forced labour and both Penal Code provisions and the Ward or Village Tract Administration Act criminalizing forced labour have not been adequately enforced. Tatmadaw, and some EAOs, continue largely to enjoy impunity for using civilians for forced labour. According to the ILO Committee on the Application of Standards, perpetrators among the Tatmadaw soldiers only faced internal disciplinary action with the single exception of a punishment under section 374 of the Penal

Code.⁶³

f. Children in armed conflict

Children continue to suffer amid ongoing conflicts with the Tatmadaw and other EAOs listed for recruitment and use of children.⁶⁴ In 2017, Tatmadaw was listed also for killing and maiming; and rape and other forms of sexual violence against children. Women and child victims represent almost half of casualties from landmines and improvised explosive devices.⁶⁵ Protracted forced displacement in Kachin, Rakhine, and northern Shan also puts children at further risk of violence and abuse. In January 2019, the President established the Inter-ministerial Committee for Preventing Grave Violations against Children in Armed Conflict and a subsidiary working group to spearhead its efforts to prevent the six grave violations against children. GoM developed a plan however the plan is not a joint action plan with the UN as required under the SC 1612. 2019's Child Rights Law outlines specific rights of children during armed conflict, including the right to protection from physical, psychological and sexual violence, neglect or exploitation,⁶⁶ and criminalizes any violation.⁶⁷ Notably, military courts maintain jurisdiction over any Tatmadaw violation.⁶⁸ Minimum age for conscripting or enlisting a person into armed forces is now at 18. The Law also calls for rehabilitation measures and provides that children shall be provided appropriate assistance to ensure their proper reintegration into society.

GoM's engagement with the UN on children and armed conflict resulted in two visits – in 2018 and 2020 – by the SRSG on Children and Armed Conflict. Two trainings for Tatmadaw on the six grave violations in 2018 and 2019 were delivered. GoM received the SRSG on Sexual Violence in Conflict in 2017 and 2019.

Since the signing in 2012 of the Joint Action Plan (JAP) between the Government and the UN to end and prevent recruitment and use of children, nearly 1,000 children and young people have been identified and released from the ranks of the Tatmadaw and at least 738 of them have received support for their reintegration into civilian life.⁶⁹ In the 2019 Annual Report of the UN Secretary-General on Children and Armed Conflict, the Tatmadaw was delisted for recruitment and use of children.

g. Peace process

On 15 October 2015, GoM and eight EAOs signed the Nationwide Ceasefire Agreement (NCA) and two EAOs signed in 2017. Signatories created the Joint Ceasefire Monitoring Committee (JMC) and agreed to hold the Union Peace Conference (UPC), supported by the Union Peace Dialogue Joint Committee. Both the JMC and UPDJC have been criticized for not being inclusive.⁷⁰ Since late 2018, the work of JMC and UPDJC have been severely hampered when two EAOs⁷¹ withdrew their participation due to disagreements with the Tatmadaw. Since then, formal peace talks have stalled, and negotiations are to resume in August 2020. Since October 2015, three rounds of UPC were organized with a total of 51 agreements reached in July 2018.

Between December 2018 and September 2019 Tatmadaw declared unilateral ceasefires,⁷² excluding a conflict between the AA and the Tatmadaw in Rakhine State which is intensifying.⁷³ Since 2015, conflicts continued in Kachin and Shan and at lower intensity in other ethnic States. Between 2017 and 2018, thousands of civilians in Tanai Township in Kachin were caught between the Tatmadaw and the Kachin Independent Army without sufficient food or water. Casualties from the fighting, landmines, UXOs, and inadequate living conditions continue to be counted in some ethnic minority areas.

h. Protection of civilians

In Rakhine, security operations by the Tatmadaw against the Rohingya in 2016 and 2017 resulted in thousands of deaths and the displacement of over 850,000 civilians. UN found

that over 300 villages were burnt down and of houses, schools, marketplaces, and mosques systematically destroyed.⁷⁴ Sexual and gender-based violence was documented to an extent that may constitute the gravest crimes under international law.

The escalation of armed conflict between the Tatmadaw and the AA since January 2019 has displaced tens of thousands and resulted in hundreds of civilian casualties.⁷⁵ The first quarter of 2020 saw an intensification in fighting, with a marked increase in clashes involving artillery shelling and air strikes in populated areas. Local sources reported more than 300 casualties during March and April 2020, including 16 children.

Violence against humanitarian personnel was also confirmed, with a WHO driver killed by gunfire in Minbya Township in Rakhine on 21 April 2020 and a WFP-contracted truck coming under fire in Paletwa Township in southern Chin the following month.

Civilians in northern Shan have continued to be affected by sporadic armed conflicts between the Tatmadaw and EAOs, and among EAOs. An estimated 26,000 people in northern Shan were temporarily displaced due to conflict over the course of 2019. Landmines and UXO contamination are a major problem in Shan, Kachin and Kayin as well as, increasingly since early 2019, in Rakhine and southern Chin.

Destruction of houses and civilian infrastructure, displacement, loss of livelihood opportunities, denial of humanitarian access, food insecurity due to disruption of markets and commercial activities, widespread landmine and UXO contamination and limited access to fundamental services are among the major concerns related to protection of civilians.

i. Arbitrary arrest and detention

Since 2015, a number of political prisoners were released. However, as of January 2020 at least 647 political prisoners remain detained, of whom 73 are serving prison sentences.⁷⁶ GoM continues to detain and prosecute individuals under politically motivated charges by seemingly arbitrarily applying provisions on defamation and national security. Two Reuters journalists who reported on a massacre in Rakhine in 2017 were sentenced to seven years' imprisonment before receiving a Presidential pardon after serving 18 months.

During the 2016 and 2017 security operations in Rakhine, numerous individuals were allegedly arrested and their whereabouts remains unknown. Young ethnic minority men are routinely arrested and detained based on their perceived association or support of EAOs. In 2019, in Rakhine hundreds of men were detained, several died in detention, and dozens were charged with unlawful association with the AA. On 23 March 2020, GoM declared the United League of Arakan and AA as a terrorist group, with the President declaring them unlawful association under Section 16 of the Unlawful Associations Act.

Endnotes

¹ Covenant on Economic, Social and Cultural Rights was ratified by Myanmar on 6 October 2017.

² Convention on the Rights of the Child Optional Protocol on Children in Armed Conflict was ratified by Myanmar on 27 September 2019.

³ Convention on the Elimination of Discrimination against Women was ratified by Myanmar on 27 July 1997.

⁴ In June 2019, the Special Rapporteur on freedom of expression requested a country visit for the first half of 2020, which was postponed by the Government. In November 2019, the Working Group on Arbitrary Detention request for a country visit was declined.

⁵ MNHRC has a "B status", meaning that it is partially compliant with the United Nations Paris Principles.

⁶ A/HRC/43/59.

⁷ <https://www.icj.org/cijlcountryprofiles/myanmar-introduction/judges/independence-and-impartiality-judicial-integrity-and-accountability/>, Report of the Fact-Finding Mission on Myanmar, A/HRC/39/CRP.2, Para

1585-1590

⁸ A/HRC/39/CRP.2

⁹ A/HRC/43/59.

¹⁰ A national strategic framework on improving health in prisons coupled with the development of peer education manual for health in prisons will contribute to better health care through effective application of the SOPs.

¹¹ Report of the Fact-Finding Mission on Myanmar, A/HRC/42/50, Para 27.

¹² Defence Services Act.

¹³ The case refers to the execution of 10 civilians captured by the Tatmadaw in Inn Din village, Maungdaw Township, Rakhine State.

¹⁴ See A/HRC/42/50, Para 97.

¹⁵ A/HRC/42/50, Para 99.

¹⁶ <https://cacj-ajp.org/web/myanmar/juvenile-courts>.

¹⁷ <http://www.apcjj.org/sites/default/files/paper.pdf>.

¹⁸ KG refers to Kindergarten.

¹⁹ 2017 Myanmar Living Condition Survey (MCLS), <https://reliefweb.int/sites/reliefweb.int/files/resources/Myanmar-Living-Conditions-Survey-2017-Socio-Economic-Report.pdf>.

²⁰ For example, the net middle school enrollment in urban areas was 81 per cent, compared to 68 per cent in rural areas. Shan and Rakhine States had the lowest rates, with 54 per cent and 58 per cent, while Mandalay, Yangon and Kachin had over 80 per cent. Gender gaps exist with boys' enrollment rates falling behind girls at these levels, both in rural and urban areas.

²¹ A/HRC/42/50.

²² MCLS, 2017.

²³ CSO, UNDP and WB 2019.

²⁴ <http://www.fao.org/3/ca5330en/ca5330en.pdf>.

²⁵ MLCS, 2017.

²⁶ This ration is the highest in South-East Asia where the average is 27, see DHS 2015/16.

²⁷ DHS 2015/16 figures for nutrition.

²⁸ Rohingya families have additional hurdles and fees to register children.

²⁹ As proof of filiation is crucial to determine Myanmar nationality, there are concerns that this statement may lead to challenges in acquisition of citizenship documents later in life, particularly among children of minority or marginalized groups.

³⁰ A/HRC/42/CRP.5, Para 152-155.

³¹ A/HRC/42/CRP.5.

³² <https://www.newsdeeply.com/refugees/articles/2019/03/15/land-confiscation-is-latest-barrier-to-return-for-myanmars-displaced>.

³³ <https://myanmar.unfpa.org/en/node/15284>.

³⁴ Article 348.

³⁵ Article 352.

³⁶ Women held less than 30% of Director-General positions in all but three ministries and only 10% of gazette roles in the General Administration Department are women. Women's representation in the Union Parliament is only 4.6%. <https://www.mm.undp.org/content/myanmar/en/home/presscenter/articles/2020/international-womens-day.html>, <https://www.mm.undp.org/content/myanmar/en/home.html>

³⁷ ADB, UNDP, UNFPA and UN Women, Gender Equality and Women's Rights in Myanmar. A Situation Analysis, 2016, p. 221.

³⁸ 2015 Myanmar Labor Force Survey.

³⁹ Asia Foundation 2016.

⁴⁰ Asia Development Bank (2016). Gender Equality and Women's Rights in Myanmar: A Situation Analysis. The 2012 Ward or Village Tract Administration Law requires that ward/village tract administrators be elected by heads of households, meaning that many women are denied that right because men are most commonly the head of the household.

⁴¹ The priority areas are maternal, newborn, and child health; family planning; adolescents' sexual and reproductive health and rights; gender and gender-based violence; special groups; and reproductive health morbidities.

⁴² A/HRC/43/18, A/HRC/42/50.

⁴³ <https://www.un.org/sexualviolenceinconflict/press-release/joint-communique-signed-between-the-united-nations-and-the-government-of-myanmar-to-prevent-and-respond-to-conflict-related-sexual-violence-in-myanmar/>

⁴⁴ <https://rsf.org/en/myanmar>, <https://cpj.org/blog/2019/07/myanmar-press-freedom-restricted-laws-conflict.php>.

⁴⁵ In August 2017, the parliament adopted minor amendments to the 2013 Telecommunications Law. The amended Law "permits judges to release people on bail, allows only those directly affected, or with permission from those directly affected, by the offense to press charges, and reduces the maximum prison sentence to two

years” for a range of offenses under article 66, but with no amendments to article 66(d) that restricts freedom of speech. <https://www.loc.gov/law/foreign-news/article/burma-telecom-law-amended-but-key-defamation-provision-remains-unchanged/>.

⁴⁶ The townships are Mrauk-U, Minbya, Kyauktaw, Ponnagyun, Rathedaung, Buthidaung, Maungdaw, and Myebon townships in Rakhine State and in Paletwa in Chin State.

⁴⁷ The township in which the order was lifted and then imposed again are Buthidaung, Maungdaw, Rathedaung, and Myebon townships in northern Rakhine, and Paletwa Township in Chin State.

⁴⁸ In January 2020, Ohn Hla, Karen environmental and land rights defender was sentenced to one month in jail, along with three others for protesting without authorization under article 19 of the law. <https://www.hrw.org/news/2020/02/28/myanmar-release-four-activists-jailed-peaceful-protest>

⁴⁹ Section 3 of the 1982 Citizenship Law defines “Nationals” as “the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period prior to 1185 B.E, 1823 AD are “Burma citizens”. Section 4 of the 1982 Citizenship Law provides that the “Council of the State may decide whether any ethnic group is a national or not”. The list of 135 regularly features in State publication, including for example “The Working People’s Daily” issue of 26 September 1990 (“Our Union of Myanmar where 135 national races reside”).

⁵⁰ https://www.unhcr.org/rohingya-emergency.html?gclid=EA1aIQobChMlO-UUqNOC6AIVRoWPCh3Eow5iEAAYASAAEgJTxD_BwE

⁵¹ It is worth mentioning that from 1948 up to the 1980s the term “indigenous races” was only partly defined in legislation. After the entry into force of the 1982 Citizenship Law and its 1983 Procedures, the Government released a list of 135 recognized “national ethnic groups”, which, according to the 1982 Citizenship Law, automatically acquire citizenship at birth.

⁵² The recommendations suggested reviewing the 1982 Citizenship Law, acknowledging the arbitrary deprivation of citizenship of the Rohingya community, and restoring their citizenship rights through a speedy administrative process developed through meaningful consultation with the Rohingya community. Advisory Commission on Rakhine State, Final Report, *Towards a peaceful, fair and prosperous future for the people of Rakhine* (August 2017), pp. 26-28.

⁵³ Despite Government claims, holding an NVC does not facilitate the recognition of citizenship, enjoyment of fundamental rights such as freedom of movement, and it does not appear to result in Rohingya being granted citizenship.

⁵⁴ <http://www.worldcoalition.org/Myanmar>.

⁵⁵ In Kachin State, over 97,000 IDPs reside in 138 camp or camp like settings and another 9,634 are staying with host families, boarding schools or rented accommodation. Approximately 40,000 are in areas under the control of EAOs.

⁵⁶ The three camps are Nidin (Kyauktaw Township), Kyein Ni Pyin (Pauktaw Township) and Taung Paw (Myebon Township).

⁵⁷ Majority of IDPs in these sites continue to express a preference to return to their areas of origin.

⁵⁸ The UNCT has reiterated its readiness to work with authorities to bridge the gap between what the National Strategy seeks to achieve and the approach to camp closure to date. There is a concrete risk that a similar approach will be replicated for the closure of other IDP camps in Myanmar in 2020 and measures taken by the Government to close the Kyauk Ta Lone IDP camp in Kyaupyu confirms these risks.

⁵⁹ Dhaka Tribune, Rohingya repatriation: Joint working group formed, repatriation process to begin by January 23, 19 December 2017.

⁶⁰ Between November 2019 and February 2020, around 570 Rohingya were arrested while travelling within Myanmar and charged for traveling without documents. Of these, 64, including 23 children, were convicted to up to two years imprisonment with hard labour, while 221 await conclusion of their trial.

⁶¹ In Kayin, both national and international staff have limited access to Hpa-pun Township, east of Kyaukkyi Township in Bago Region, where most IDPs are residing, due to challenges in obtaining travel authorizations from both government and EAOs. In Kachin, increasing restrictions on humanitarian access in 2017, 2018 and 2019 pose serious operational obstacles with international staff having access to 40% of the population, while national staff can reach 60% in the government-controlled areas.

⁶² Article 359.

⁶³ International Labour Organization, Observation (CEACR), available from https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3957004

⁶⁴ Tatmadaw were delisted in June 2020 for recruitment and use of children. Other listed parties include KNU/KNLA; DKBA, KNU/KNLA-PC, KNPP-KA, USWA, KIO/KIA, RCSS-SSA. See, https://www.un.org/ga/search/view_doc.asp?symbol=S/2019/509&Lang=E&Area=UNDOC.

⁶⁵ In 2018, seven children were recruited and 64 were used by Tatmadaw in 2018. In addition, 32 incidents, involving the killing and maiming of children were confirmed the same, resulting in the death of 16 children and injury to 39 children, mainly caused by landmines, explosive remnants of war and improvised explosive devices, crossfire, air strikes by the Tatmadaw, gunshots by Border Guard Police.

⁶⁶ CRL s. 62(a).

⁶⁷ CRL s. 61.

⁶⁸ CRL s. 60 (d).

⁶⁹ In August 2017, Aung Ko Htwe was arrested for giving a media interview, in which he described his experiences as a child soldier. He was charged under Section 505(b) of Penal Code and sentence to 30 months in prison.

⁷⁰ EAOs and civil society organizations play a marginal role and can carry out certain activities only after approval by the Tatmadaw. The lack of an inclusive process is particularly evident when looking at women's participation. The number of women participants in the UPC has also been unsatisfactory. In January 2016, only 2 women served on the 48-member Union Peace Dialogue Joint Committee (UPDJC) and women comprised merely 7 per cent of the 700 participants at the UPC when it first convened. However, by the end of January 2016 UPC, pressure from civil society organizations to remedy this severe under-representation of women resulted in the decision to "strive to achieve 30 percent women's participation in political dialogue." The subsequent years have witnessed an increase in women's participation in the UPC, but the minimum target threshold of 30 per cent has not yet been achieved. To illustrate, women comprised 13 per cent of the 663 participants at the August 2016 UPC; 17 per cent of the 910 participants at the May 2017 UPC; and 22 per cent of the 1,112 attendees at the July 2018 UPC.

⁷¹ The Karen National Union (KNU) and the Restoration Council of Shan State (RCSS).

⁷² The unilateral ceasefire included the the Northern Command in Kachin State, the Northeastern, Eastern and Central Eastern commands, and the Triangle Command in Shan State.

⁷³ <https://www.irrawaddy.com/news/burma/myanmar-military-abandons-truce-citing-eaos-lack-interest-peace.html>

⁷⁴ A/HRC/39/64, paras 36-42.

⁷⁵ This conflict has had a significant impact on all communities, including the imposition of a curfew in many townships (in addition to those already in place), further restrictions on humanitarian access, the shutdown of mobile data in many locations, villagers have been injured or killed in the context of clashes or due to landmines/IEDs, and there have been ongoing reports of intimidation, harassment, forced labour and forced recruitment

⁷⁶ <https://aappb.org/>.