



# MYANMAR: IN REVERSE: DETERIORATING HUMAN RIGHTS SITUATION

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC  
REVIEW, 37<sup>TH</sup> SESSION OF THE UPR WORKING GROUP, JANUARY-FEBRUARY 2021

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# INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of Myanmar due to take place in January-February 2021. In it, Amnesty International evaluates the implementation of recommendations made to Myanmar in its previous UPR, assesses the situation of human rights on the ground, and makes a number of recommendations to Myanmar to strengthen the protection of human rights and put an end to human rights violations and abuses in the country.

This information in this submission draws on Amnesty International's ongoing research on Myanmar, which involves regular contact with local and international non-governmental organizations, victims and their families, lawyers, journalists, and other individuals, as well as in country field-missions. It highlights serious concerns with regard to the legal framework; ongoing and serious violations by the security forces, including the commission of crimes under international law; discrimination in law, policy and practice; restrictions on the rights to freedom of expression, association and peaceful assembly; and impunity for abuses, both past and present.

# FOLLOW UP TO THE PREVIOUS REVIEW

Since Myanmar's last UPR in November 2015, the country has witnessed some of the gravest human rights violations in its recent history, including atrocities against the Rohingya population in Rakhine State and war crimes against ethnic minorities in many parts of the country. These crimes have taken place against a backdrop of discrimination, pervasive restrictions on the rights to freedom of expression, association, and peaceful assembly, and entrenched impunity – for both past and ongoing violations.

At its last review, Myanmar initially accepted 124 recommendations.<sup>1</sup> These included recommendations for Myanmar to “consider” ratifying international treaties,<sup>2</sup> and a specific commitment to ratify the International Covenant on Economic, Social and Cultural Rights,<sup>3</sup> which it did in 2017, and to consider ratifying the Optional Protocol on the involvement of children in armed conflict,<sup>4</sup> which it did in 2019. Myanmar also accepted several general recommendations to protect freedom of expression.<sup>5</sup> While it rejected specific calls to repeal or amend repressive laws, the civilian-led administration did repeal two such laws – the State Protection Act and the Emergency Provisions Act – soon after coming to power in April 2016. However, as described below, efforts to amend other repressive laws have been inadequate.

Many other accepted recommendations have yet to be implemented. Although Myanmar accepted three recommendations to cooperate with UN human rights mechanisms,<sup>6</sup> in December 2016 the government announced it had banned the Special Rapporteur on the situation of human rights in Myanmar from visiting the country. The government also refused to cooperate with the UN-established Fact-Finding Mission on Myanmar. As detailed below, Myanmar has also failed to implement recommendations to combat impunity through independent investigations of human rights violations.<sup>7</sup>

Amnesty International is disappointed that Myanmar initially rejected 69 recommendations – including all 27 recommendations relating specifically to the human rights and humanitarian situation of the Rohingya community.<sup>8</sup> Myanmar subsequently rejected a further 46 recommendations, including to establish an Office of the High Commissioner for Human Rights (OHCHR),<sup>9</sup> to ensure effective birth registration,<sup>10</sup> to abolish the death penalty,<sup>11</sup> and to release prisoners of conscience and political prisoners.<sup>12</sup> These and many other rejected recommendations remain relevant and are in urgent need of attention.

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<sup>1</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Myanmar*, UN Doc. A/HRC/31/13, 20 November 2015, para 143.

<sup>2</sup> A/HRC/31/13, recommendations 143.1, 143.2, 143.3, 143.4, 5, 143.6, 143.7, 143.9, 143.13 (Belarus, Japan, Nicaragua, Viet Nam, Philippines, Namibia, United States of America, and Egypt). Myanmar subsequently accepted in principle 27 further recommendations to ratify international treaties.

<sup>3</sup> A/HRC/31/13, recommendation 143.8 (Ghana).

<sup>4</sup> A/HRC/31/13, recommendations 143.11, 143.12, 143.13 (Croatia, Luxembourg, and Panama).

<sup>5</sup> A/HRC/31/13, recommendations 143.98-99, 144.80- (New Zealand, Italy, Belgium, Ghana)

<sup>6</sup> A/HRC/31/13, recommendations 143.50, 143.51, 143.52 (Turkey, Republic of Korea, and Chile).

<sup>7</sup> A/HRC/31/13, recommendations 143.77-143.82 (Finland, Iceland, Senegal, Lithuania, and Argentina).

<sup>8</sup> A/HRC/31/13, recommendations 145.8. (Guatemala); 145.27 (Saudi Arabia); 145.30 (Slovenia); 145.39-145.53 (Sudan, Luxembourg, Pakistan, Sudan, Senegal, Costa Rica, Argentina, Libya, Oman, Belgium, Malaysia, Djibouti, Egypt, Luxembourg, and Saudi Arabia), 145.55-145.56 (Iceland and Saudi Arabia), 145.60-145.66 (Malaysia, Saudi Arabia, Australia, Netherlands, United Kingdom of Great Britain and Northern Ireland, Sweden, and United States of America).

<sup>9</sup> A/HRC/31/13, recommendations 144.39-144.45 (United States of America, Turkey, Croatia, Czech Republic, Hungary, Ukraine, and Belgium).

<sup>10</sup> A/HRC/31/13, recommendations 144.52-144.54 (Albania, Paraguay, and Canada).

<sup>11</sup> A/HRC/31/13, recommendations 144.56-144.64 (Holy See, Poland, Slovenia, Spain, Portugal, Sierra Leone, Switzerland, Luxembourg, France, Australia, Croatia, and Lithuania).

<sup>12</sup> A/HRC/31/13, recommendations 144.65-144.71 (Germany, Greece, Spain, Czech Republic, United States of America, Croatia, and Norway).

# THE NATIONAL HUMAN RIGHTS FRAMEWORK

## THE 2008 CONSTITUTION

Amnesty International remains deeply concerned about many aspects of Myanmar's 2008 Constitution which undermine respect for and protection of human rights. The Constitution plays a key role in perpetuating a culture of impunity for military violations as it establishes military control over military judicial processes.<sup>13</sup> In addition, it protects state officials, including security force personnel, from prosecution for human rights violations and crimes under international law committed while the country was under military rule.<sup>14</sup> Although the Constitution grants the liberty to exercise the rights to freedom of expression, association, and peaceful assembly, these rights are only guaranteed as long as they are not contrary to vague conditions such as “community peace and tranquility”, and are only granted to “citizens”, thus denying protection to non-citizens on a discriminatory basis.<sup>15</sup> Moreover, it contains no provisions guaranteeing freedom from torture and other ill-treatment, while crucial fair trial safeguards are missing.<sup>16</sup> In February 2019, the government established a new committee tasked with proposing amendments to the Constitution;<sup>17</sup> however at the time of writing no substantive amendments had been made.<sup>18</sup>

## LAWS RELATING TO FREEDOM OF EXPRESSION, ASSOCIATION, AND PEACEFUL ASSEMBLY

A number of laws continue to be regularly used to arrest, prosecute, detain, and imprison human rights defenders, political activists, and others peacefully exercising their rights. These include provisions in the Penal Code – including Sections 499-500,<sup>19</sup> 505(a),<sup>20</sup> 505(b)<sup>21</sup>, and 295(a);<sup>22</sup> the Unlawful Associations

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<sup>13</sup> When adjudicating military justice, the decision of the Commander-in-Chief of the Defence Services is “final and conclusive”. Constitution of the Republic of the Union of Myanmar, Section 343(b).

<sup>14</sup> Constitution of the Republic of the Union of Myanmar, Section 445.

<sup>15</sup> Constitution of the Republic of the Union of Myanmar, Section 354.

<sup>16</sup> For example, there are no provisions for the rights of persons being arrested to be informed promptly of the nature and cause of the charge against them or to a fair and public hearing, and the right of those arrested to be brought before a court within 24 hours does not extend to “matters on precautionary measures” taken on security and similar grounds.

<sup>17</sup> *Frontier Myanmar*, “Parliament approves committee to amend constitution”, 19 February 2019, <https://frontiermyanmar.net/en/parliament-approves-committee-to-amend-constitution>.

<sup>18</sup> In March 2020, Parliament voted on a series of proposed amendments to the Constitution. These included proposals to reduce the political role of the Myanmar military, which under the Constitution holds 25 per cent of Parliamentary seats and retains a veto over Constitutional change. Most proposed amendments were rejected – the only accepted alterations were around terminology relating to people with disabilities and older people.

<sup>19</sup> Section 499 of the Penal Code criminalizes defamation, which under Section 500 carries a maximum sentence of two years' imprisonment.

<sup>20</sup> Under Section 505(a) it is an offence to make, publish or circulate any statement, rumour or report with intent to cause, or which is likely to cause “any officer, soldier, sailor or airman, in the Army, Navy or Air Force to mutiny or otherwise disregard or fail in his duty as such”. The charge carries a maximum two-year prison sentence. The law has increasingly been used by members of the armed forces to target activists criticizing the military and its role in politics.

<sup>21</sup> Section 505(b) has been frequently used to arrest and imprison activists peacefully exercising their right to freedom of expression. It provides up to two years in prison for any person who makes, publishes or circulates any statement, rumour or report with intent to cause, or which is likely to cause “fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility”.

<sup>22</sup> Under Section 295(a) of the Penal Code, “[w]hoever, with deliberate and malicious intention of outraging the religious feelings of any class of [persons resident in the Union], by words, either spoken or written, or by visible representations insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

Act;<sup>23</sup> the Official Secrets Act;<sup>24</sup> the Peaceful Assembly and Peaceful Procession Law;<sup>25</sup> the Telecommunications Law;<sup>26</sup> and the Law Protecting the Privacy and Security of Citizens.<sup>27</sup> While the authorities have made some efforts to amend these laws – for example by revising provisions in the Peaceful Assembly and Peaceful Procession Law and the Telecommunications Law – these have fallen short of bringing the laws in line with international human rights law and standards. In addition, there has been very limited transparency or consultation with civil society, legal experts, and others when drafting, reviewing, and amending legislation.

## THE CITIZENSHIP LAW

The discriminatory 1982 Citizenship Law creates three categories of citizens: “citizens” (more commonly referred to as “full citizens”), “associate citizens”, and “naturalised citizens”, each of which affords different rights and entitlements. People belonging to one of the officially recognized “national races” are considered to be full citizens by birth, as are people belonging to ethnic groups that are considered to have settled in the country prior to 1823.<sup>28</sup> The law denies citizenship to an individual on racial and ethnic grounds, and thus clearly violates international law. The discriminatory and arbitrary way in which the Law has been applied has been central to the persecution of the Rohingya community.<sup>29</sup>

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<sup>23</sup> The Unlawful Associations Act requires associations to register with the government and contains sweeping provisions to arbitrarily outlaw peaceful associations. It is often used to arrest and detain ethnic minority civilians in conflict-affected areas, in particular men and boys perceived to be of fighting age, who are then accused of links to an ethnic armed group.

<sup>24</sup> Under this Act it is an offence to possess, control, receive or communicate any document or information which, if disclosed, could be “prejudicial to the safety or interests of the state”. The law is broadly worded, and therefore grants wide powers to the government to determine what is classified as a “secret”.

<sup>25</sup> The law has often been used to arrest and prosecute peaceful activists. It was most recently amended in October 2016, removing the requirement for police permission to assemble, and replacing it with a requirement to notify police 48 hours in advance of an assembly. However, in practice authorities treat the notification requirement as a request for permission. Further amendments proposed by the government in February 2018 are deeply problematic and retrogressive and include a requirement for assembly organizers to provide information about the amount and source of funds used to hold a demonstration.

<sup>26</sup> Section 66(d) of the Telecommunications Law criminalizes “online defamation” and provides for up to two years in prison for “extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening any person using a telecommunications network.” Since October 2015, this provision has opened the door to a wave of criminal prosecutions of individuals for peaceful communications on social media and has increasingly been used to stifle criticism of the authorities. Section 77 of the Law, which grants the Myanmar authorities broad and arbitrary powers to suspend telecommunications networks, was invoked to justify the shutdown of mobile internet in townships in conflict-affected Rakhine and Chin States from June 2019. Amnesty International, *Myanmar: End internet shutdown in Rakhine, Chin States* (Index: ASA 16/0604/2019), 25 June 2019, <https://www.amnesty.org/en/documents/asa16/0604/2019/en/>.

<sup>27</sup> The Law Protecting the Privacy and Security of Citizens (also known as the Privacy Law), enacted by the current NLD-led Parliament in March 2017, criminalizes defamation. Section 8(f) states that: “No one shall unlawfully interfere with a citizen’s personal or family matters or act in any way to slander or harm their reputation.” Under Section 10, such “offences” carry a sentence of between six months and three years in prison, as well as a fine.

<sup>28</sup> Section 3 of the 1982 Citizenship Law provides that citizens are: “Nationals such 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 anterior to 1185 B.E., 1823 A.D.”

<sup>29</sup> For more information on the denial of the right to a nationality for the Rohingya, see Amnesty International “Caged without a roof”: Apartheid in Myanmar’s Rakhine State (Index: ASA 16/7484/2017), 21 November 2017, Chapter 2, pp. 28-41, <https://www.amnesty.org/en/documents/asa16/7484/2017/en/>.

# HUMAN RIGHTS SITUATION ON THE GROUND

## WAR CRIMES

The years since Myanmar's last UPR have seen serious escalations of fighting in Rakhine, Shan, and Kachin States. The military has committed serious violations there, such as indiscriminate attacks killing or injuring civilians; extra-judicial executions; enforced disappearances; arbitrary arrest and detention; torture and other ill-treatment – in particular of ethnic minority men and boys; forced labour; and looting and confiscation of property. Many of these violations constitute war crimes. The Myanmar military has also failed to respect the civilian nature of buildings like schools, using them as temporary barracks to cook and sleep in. Ethnic armed groups also commit abuses against civilians amounting to war crimes, including abductions; killings; arbitrary deprivation of liberty; forced and child recruitment, including forced guiding and portering; and extortion.<sup>30</sup>

Both the Myanmar military and many ethnic armed groups continue to lay antipersonnel landmines or landmine-like weapons such as improvised explosive devices (IEDs), all of which are inherently indiscriminate and negatively affect the civilian population. The situation is compounded by decades of prior landmine contamination, and the presence of other explosive remnants of war. Many displaced people are afraid to return to their homes or farmland because of landmines.<sup>31</sup>

## ATROCITIES AGAINST THE ROHINGYA

The situation of the Rohingya community, who predominantly live in Rakhine State in western Myanmar, has deteriorated dramatically since Myanmar's last review. From August 2017, the Myanmar security forces waged a devastating campaign of killings, rape, and torture, burning hundreds of Rohingya villages to the ground, ostensibly in response to attacks by the armed Rohingya group the Arakan Rohingya Salvation Army (ARSA).<sup>32</sup> Hundreds of thousands of Rohingya were forced to flee to neighbouring Bangladesh, where they joined hundreds of thousands of others expelled during previous waves of violence, including those who fled a campaign triggered by ARSA attacks in October 2016.<sup>33</sup> These crimes amount to crimes against humanity under international law. A UN Fact-Finding Mission has called for senior military officials to be investigated and prosecuted for genocide.<sup>34</sup>

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<sup>30</sup> Amnesty International, *“Caught in the middle”: Abuses against civilians amid conflict in Myanmar’s northern Shan State* (Index: ASA 16/1142/2019), 24 October 2019, <https://www.amnesty.org/en/documents/asa16/1142/2019/en/>; *“No one can protect us”: War crimes and abuses in Myanmar’s Rakhine State* (Index: ASA 16/0417/2019), 29 May 2019, <https://www.amnesty.org/en/documents/asa16/0417/2019/en/>; and *“All the civilians suffer”: Conflict, displacement and abuse* (Index: ASA 16/6429/2017), 14 June 2017, <https://www.amnesty.org/en/documents/asa16/6429/2017/en/>.

<sup>31</sup> Amnesty International, *“Caught in the middle”: Abuses against civilians amid conflict in Myanmar’s northern Shan State*, pp. 35-36, <https://www.amnesty.org/en/documents/asa16/1142/2019/en/>; *Myanmar Army landmines along border with Bangladesh pose deadly threat to fleeing Rohingya*, 9 September 2017, <https://www.amnesty.org/en/latest/news/2017/09/myanmar-army-landmines-along-border-with-bangladesh-pose-deadly-threat-to-fleeing-rohingya/>; and *“All the civilians suffer”: Conflict, displacement and abuse*, pp. 43.46, <https://www.amnesty.org/en/documents/asa16/6429/2017/en/>.

<sup>32</sup> Amnesty International, *“We will destroy everything”: Military responsibility for crimes against humanity in Rakhine State, Myanmar* (Index: ASA 16/8630/2018), 27 June 2018, <https://www.amnesty.org/en/documents/asa16/8630/2018/en/>.

<sup>33</sup> Amnesty International, *“We are at breaking point”: Rohingya persecuted in Myanmar, neglected in Bangladesh* (Index: ASA 16/5362/2016), 19 December 2016, <https://www.amnesty.org/en/documents/asa16/5362/2016/en/>. OHCHR, *Flash report: Report of OHCHR mission to Bangladesh Interviews with Rohingyas fleeing from Myanmar since 9 October 2016*, 3 February 2017, <https://www.ohchr.org/Documents/Countries/MM/FlashReport3Feb2017.pdf>.

<sup>34</sup> Independent International Fact-Finding Mission on Myanmar, *Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar*, UN Doc: A/HRC/39/CRP.2, 17 September 2018.

The violence took place against a backdrop of decades of state-sponsored discrimination and segregation of the Rohingya. Although the Myanmar authorities often frame the situation in Rakhine State in terms of inter-communal violence, in reality it is the state that routinely and systematically restricts virtually every aspect of the Rohingya's lives. Through a range of laws, policies – often “local orders” issued by authorities in Rakhine State – and practices, the authorities deny the Rohingya's rights to nationality; to freedom of movement; to access to healthcare, education, and an adequate standard of living; to participate in public life; and to exercise their right to freedom of thought, conscience and religion, under a system that legally constitutes the crime against humanity of apartheid.<sup>35</sup> Around 126,000 Rohingya remain confined to ethnic detention centres across Rakhine State where they rely on humanitarian support for their survival.<sup>36</sup> The Myanmar authorities claim to be implementing 81 of 88 recommendations made by the Advisory Commission on Rakhine State; however the reality on the ground is markedly different. The authorities continue to severely restrict humanitarian access in Rakhine State,<sup>37</sup> and do not allow meaningful access to independent media and other human rights monitors.<sup>38</sup>

## DISPLACEMENT AND RESTRICTIONS ON HUMANITARIAN ACCESS

Since Myanmar's last review, tens of thousands of women, men, and children have been or remain internally displaced as a result of armed conflicts in Rakhine, Shan, and Kachin States. Civilians are often displaced multiple times, affecting their access to livelihoods and their short and long-term food security. Despite this, the authorities – both civilian and military – have imposed severe restrictions on humanitarian access, in particular in non-government-controlled areas.<sup>39</sup> Amnesty International's research has found that older people are specifically impacted by conflict and displacement, in particular with regard to their rights to healthcare and to livelihoods.<sup>40</sup>

## FREEDOMS OF EXPRESSION, ASSOCIATION, AND PEACEFUL ASSEMBLY

The Myanmar government continues to restrict the rights to freedom of expression, association, and peaceful assembly. Since Myanmar's last review, there has been a marked increase in the number of people arrested and prosecuted for peacefully expressing their opinions online,<sup>41</sup> and for criticising the military and its role in politics.<sup>42</sup>

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<sup>35</sup> Amnesty International has mapped in detail the violations, in particular discrimination and racially-based restrictions in law, policy, and practice that Rohingya living in Rakhine State have faced for decades. Amnesty International, “*Caged without a roof: Apartheid in Myanmar's Rakhine State*”, <https://www.amnesty.org/en/documents/asa16/7484/2017/en/>.

<sup>36</sup> UN Humanitarian Country Team, *Humanitarian Response Plan January – December 2020*, December 2019, p. 11, <https://reliefweb.int/node/3451853>.

<sup>37</sup> Recommendation 27, Final Report of the Advisory Commission on Rakhine State, August 2017, [http://www.rakhinecommission.org/app/uploads/2017/08/FinalReport\\_Eng.pdf](http://www.rakhinecommission.org/app/uploads/2017/08/FinalReport_Eng.pdf).

<sup>38</sup> Recommendation 31, Final Report of the Advisory Commission on Rakhine State, August 2017, [http://www.rakhinecommission.org/app/uploads/2017/08/FinalReport\\_Eng.pdf](http://www.rakhinecommission.org/app/uploads/2017/08/FinalReport_Eng.pdf).

<sup>39</sup> Amnesty International, “*Caught in the middle: Abuses against civilians amid conflict in Myanmar's northern Shan State*”, pp. 37-39, <https://www.amnesty.org/en/documents/asa16/1142/2019/en/>; “*No one can protect us: War crimes and abuses in Myanmar's Rakhine State*”, pp. 31-33, <https://www.amnesty.org/en/documents/asa16/0417/2019/en/>; and “*All the civilians suffer: Conflict, displacement and abuse*”, pp.34-36, <https://www.amnesty.org/en/documents/asa16/6429/2017/en/>.

<sup>40</sup> Amnesty International, “*Fleeing my whole life: Older people's experience of conflict and displacement in Myanmar*” (Index: ASA 16/0446/2019) 18 June 2019, <https://www.amnesty.org/en/documents/asa16/0446/2019/en/>.

<sup>41</sup> Amnesty International, “*New expression meets old repression: Ending the cycle of political arrests and imprisonment in Myanmar*” (Index: ASA 16/3430/2016), 24 March 2016, pp. 40-41, <https://www.amnesty.org/en/documents/asa16/3430/2016/en/>;

Athan – Freedom of expression activist organization, *Mid-Term Report on Freedom of Expression*, October 2018, <https://drive.google.com/file/d/1Mwbw55iv3SDGiVamWvjvmbGg4D32CRCf/view>.

<sup>42</sup> For example, filmmaker Min Htin Ko Ko Gyi, who was arrested in April 2019, was sentenced to one year in prison under Section 505(a) for social media posts critical of the military. He was released in February 2020 after completing his sentence. Amnesty International, *Myanmar: Filmmaker sentenced to one year in prison for Facebook post*, 29 August 2019, <https://www.amnesty.org/en/latest/news/2019/08/myanmar-filmmaker-jailed-facebook-post/>. In April and May 2019, police arrested six members of the Peacock Generation, a satirical poetry troupe, and charged them under Section 505(a) for performances which mocked the Myanmar military. At the time of writing all six members had been sentenced to between two and three years in prison. Amnesty International, *Myanmar: More 'outrageous' convictions for satire performers*, 17 February 2020, <https://www.amnesty.org/en/latest/news/2020/02/myanmar-more-outrageous-convictions->

In addition, human rights defenders, lawyers, and journalists continued to face intimidation, harassment and surveillance by the authorities. Many reported being followed and photographed when attending events and meetings; women human rights defenders are particularly at risk of sexual harassment.<sup>43</sup> Threats also emanate from non-state actors but activists are often reluctant to report them to the police, as they do not believe effective action will be taken.<sup>44</sup>

## DEATH PENALTY

Although Myanmar is considered to be abolitionist in practice, the death penalty remains part of the legislative framework and courts continue to impose death sentences. In a positive move, in October 2016, Parliament repealed the Emergency Provisions Act which provided for the death penalty. However it remains in place for other offences, including murder.

## IMPUNITY

Myanmar security forces, in particular the military, continue to enjoy widespread impunity. Investigations into allegations of human rights violations are rare, and perpetrators are seldom – if ever – held to account. Amnesty International has implicated soldiers from specific units and divisions in violations in Rakhine, Shan, and Kachin States, underscoring the institutionalized and systemic nature of the military's abuses.<sup>45</sup> When victims of human rights violations, their families, and representatives do try to lodge formal complaints with the authorities, they may be subjected to harassment and intimidation. The Myanmar National Human Rights Commission, which was reconstituted with new members in January 2020 following a process which lacked transparency, has been characterized by inaction and a lack of independence, and remains ineffective to deal with allegations of human rights violations.<sup>46</sup>

Domestic attempts to investigate atrocities against the Rohingya have been deeply flawed. A government-established Independent Commission of Enquiry into violations from August 2017 lacked credibility and failed to meet basic standards of independence and impartiality, while an earlier investigation examining violations from October 2016 was similarly inadequate.<sup>47</sup> Military-announced initiatives are clearly not independent or impartial. There are virtually no initiatives to investigate serious violations and abuses in the

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*for-satire-performers/*. At the time of writing, three other activists were facing prison sentences under Section 505(a) for giving speeches criticizing the military and calling for constitutional reform at a peaceful rally in April 2019. Amnesty International. *Myanmar: Three activists face prison for peaceful rally* (Index: ASA 16/1790/2020), 14 February 2020, <https://www.amnesty.org/en/documents/asa16/1790/2020/en/>; Athan – Freedom of expression activist organization, *The Military's Complaints Violating Freedom of Expression Under Current Government*, 2 July 2019, [https://drive.google.com/file/d/1CekorMNQGLnwFRD3tswsx289LKvF\\_TrU/view](https://drive.google.com/file/d/1CekorMNQGLnwFRD3tswsx289LKvF_TrU/view); Amnesty International, *"I will not surrender": The criminalization of human rights defenders and activists in Myanmar* (Index: ASA 16/2041/2020), 13 April 2020, pp. 4;

<sup>43</sup> Amnesty International, *"New expression meets old repression": Ending the cycle of political arrests and imprisonment in Myanmar*, <https://www.amnesty.org/en/documents/asa16/3430/2016/en/>.

<sup>44</sup> Amnesty International, *"New expression meets old repression": Ending the cycle of political arrests and imprisonment in Myanmar*, <https://www.amnesty.org/en/documents/asa16/3430/2016/en/>.

<sup>45</sup> Amnesty International, *"Caught in the middle": Abuses against civilians amid conflict in Myanmar's northern Shan State*, <https://www.amnesty.org/en/documents/asa16/1142/2019/en/>; *"No one can protect us": War crimes and abuses in Myanmar's Rakhine State*, <https://www.amnesty.org/en/documents/asa16/0417/2019/en/>; and *"We will destroy everything": Military responsibility for crimes against humanity in Rakhine State*, <https://www.amnesty.org/en/documents/asa16/8630/2018/en/>; and *"All the civilians suffer": Conflict, displacement and abuse*, <https://www.amnesty.org/en/documents/asa16/6429/2017/en/>.

<sup>46</sup> The new Commission is made up of former civil servants, government officials, and members of the security forces. It lacks the mandate, independence, and resources to act on allegations on human rights violations. Asian NGOs Network on National Human Rights Institutions (ANNI), *Myanmar: A little less conversation, a little more action please: Analysis on the Performance of the Myanmar National Human Rights Commission in the context of Protection of Human Rights Defenders and Shrinking Civil Society Space in Myanmar*, December 2019, <https://progressivevoicemyanmar.org/wp-content/uploads/2019/12/20191119-Myanmar-A-little-Less-Conversation-A-Little-More-Action-Please-FINAL-Web-ready.pdf>.

<sup>47</sup> Amnesty International, *Myanmar: National efforts to investigate Rakhine State violence are inadequate* (Index: ASA 16/5758/2017/2017), 21 February 2017, <https://www.amnesty.org/en/documents/asa16/5758/2017/en/>; and *"We will destroy everything": Military responsibility for crimes against humanity in Rakhine State*, pp. 149-151, <https://www.amnesty.org/en/documents/asa16/8630/2018/en/>. See also the International Commission of Jurists, *Achieving justice for gross human rights violations in Myanmar: Baseline study*, 16 January 2018, <https://www.ici.org/wp-content/uploads/2018/01/Myanmar-GRA-Baseline-Study-Publications-Reports-Thematic-reports-2018-ENG.pdf>.

context of the conflict with the Arakan Army, or in other parts of the country such as Shan and Kachin States.

# RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW

## AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF MYANMAR TO:

### COOPERATION WITH THE UN

- Cooperate fully with UN human rights mechanisms, including by granting access to the UN Special Rapporteur on the situation of human rights in Myanmar and the Independent Investigative Mechanism for Myanmar, ensuring they have full access to all parts of the country;
- Facilitate the establishment of an OHCHR Office at the earliest opportunity, with a full protection and promotion mandate and access throughout the country.

### THE NATIONAL HUMAN RIGHTS FRAMEWORK

- Amend the 2008 Constitution to bring it into line with international human rights law and standards, including by bringing the Myanmar military and Myanmar Police Force under the oversight of civilian courts; ensuring it explicitly prohibits torture and other-ill-treatment in all circumstances; and removing all provisions which enable impunity for perpetrators of human rights violations;
- Review and repeal or amend all laws that violate the rights to freedom of expression, association and peaceful assembly – in particular Sections 500, 505 and 295 of the Penal Code, the Peaceful Assembly and Peaceful Procession Law, the Unlawful Associations Act, the Official Secrets Act, the Telecommunications Act, and the Law protecting the Privacy and Security of Citizens – to bring them in line with international human rights law and standards. Pending the amendment of these laws, ensure that no one is arrested, detained, or prosecuted under their provisions;
- Amend the 1982 Citizenship Law to ensure that citizenship is granted free of any discrimination on the bases of race, colour, ethnic origin, sex/gender, language, or religion or other prohibited grounds and ensure that this principle is implemented in practice;
- Ensure broad and transparent consultation with civil society, legal experts, and others when drafting, reviewing, and amending legislation;
- Ratify and effectively implement the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Rome Statute of the International Criminal Court, and implement their provisions in law, policy, and practice.

### ABUSES BY THE SECURITY FORCES

- Ensure prompt, independent, impartial, and effective investigations into allegations of human rights violations by members of the security forces; ensure that those suspected of responsibility – including those with command responsibility – are brought to justice in fair trials in an independent, civilian court; and that victims receive reparations;
- Suspend from active duty any military or police personnel suspected of ordering or committing violations of international law pending the completion of investigations;
- Cooperate fully with international efforts to investigate and prosecute individuals suspected of involvement in crimes under international law and other human rights violations, including those with command or other superior responsibility.

### ATROCITIES AGAINST THE ROHINGYA

**MYANMAR: IN REVERSE: DETERIORATING HUMAN RIGHTS SITUATION**  
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37<sup>TH</sup> SESSION OF THE UPR WORKING GROUP, JANUARY-FEBRUARY 2021  
PUBLISHED: JULY 2020

- Take immediate steps to restore citizenship rights to holders of formerly valid identity cards, and their children, ensuring they are not required to undergo any further citizenship determination process;
- Revoke all local orders and policies which place arbitrary and discriminatory restrictions on Rohingya, in particular on their freedom of movement, and ensure Rohingya can access healthcare, education, and livelihood opportunities without discrimination;
- Guarantee the safe, voluntary, and dignified return of refugees, displaced individuals, and communities to their prior places of residence or, in exceptional circumstances, to adequate alternative housing elsewhere, while ensuring the full participation of refugees and internally displaced persons, including women, older people, and persons with disabilities, in the planning and management of their return or resettlement and reintegration and overall development of the region, and ensure the right of all refugees and displaced persons not to be subjected to forcible return to or resettlement in any place where their life, safety, liberty, or health would be at risk;
- Remove all indicators of ethnicity and religion from national identification cards and from any supplementary or supporting documentation required to apply for or to renew such cards;
- Publicly and unequivocally condemn any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence, take effective action to end its dissemination and provide protection for those targeted by it, in accordance with international human rights law.

#### **HUMANITARIAN ACCESS AND DISPLACEMENT**

- Provide immediate, unfettered, and sustained humanitarian access throughout the country, including in Rakhine, Kachin, and Shan States, including by allowing UN, international, and national humanitarian organizations to assess and monitor the needs of displaced persons and others in need and to deliver assistance to them;
- Immediately lift internet restrictions in Rakhine and southern Chin States;
- End the use of antipersonnel landmines and IEDs. Support the expansion of mine clearance programmes and, in the meantime, take all necessary measures to warn civilians about areas with landmines or landmine-like devices, including through signs and public announcements in both Burmese and in the language of ethnic minorities in the area.

#### **THE RIGHTS TO FREEDOM OF EXPRESSION, ASSOCIATION, AND PEACEFUL ASSEMBLY**

- Immediately and unconditionally release all those detained solely for the peaceful exercise of their human rights; drop charges pending against those who are facing imprisonment simply for the peaceful exercise of these rights, and expunge the criminal records of all those convicted solely for the peaceful exercise of their rights;
- Ensure that human rights defenders and peaceful activists are free from harassment, discrimination, and the threat of criminalization through the application of repressive laws; and that they are able to conduct their important and legitimate work in a safe environment.

#### **DEATH PENALTY**

- Commute all death sentences to prison terms;
- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
- Abolish the death penalty for all crimes.

# ANNEX

## AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE<sup>48</sup>

### REPORTS AND BRIEFINGS

*"I will not surrender": The criminalization of human rights defenders and activists in Myanmar* (Index: ASA 16/2041/2020), 13 April 2020.

*"Caught in the middle": Abuses against civilians amid conflict in Myanmar's northern Shan State* (Index: ASA 16/1142/2019), 24 October 2019.

*"Fleeing my whole life": Older people's experience of conflict and displacement in Myanmar* (Index: ASA 16/0446/2019) 18 June 2019.

*"No one can protect us": War crimes and abuses in Myanmar's Rakhine State* (Index: ASA 16/0417/2019), 29 May 2019.

*"We will destroy everything": Military responsibility for crimes against humanity in Rakhine State, Myanmar* (Index: ASA 16/8630/2018), 27 June 2018.

*Remaking Rakhine State* (Index 16/8018/2018), 12 March 2018.

*"Caged without a roof": Apartheid in Myanmar's Rakhine State* (Index: ASA 16/7484/2017), 21 November 2017.

*"My world is finished": Rohingya targeted by crimes against humanity in Myanmar* (Index: ASA 16/7288/2017), 18 October 2017.

*"All the civilians suffer": Conflict, displacement and abuse* (Index: ASA 16/6429/2017), 14 June 2017.

*Mountain of trouble: Human rights abuses continue at Myanmar's Letpadaung mine* (Index: ASA 16/5564/2017), 10 February 2017.

*"We are at breaking point": Rohingya persecuted in Myanmar, neglected in Bangladesh* (Index: ASA 16/5362/2016), 19 December 2016.

*Bring rights to prisons: Amnesty International's recommendations on the draft Prisons Law* (Index: ASA 16/4788/2016), 10 November 2016.

*Myanmar: Briefing to the UN Committee on the Elimination of Discrimination against Women* (Index: ASA 16/4240/2016), 4 July 2016.

*"New expression meets old repression": Ending the cycle of political arrests and imprisonment in Myanmar* (Index: ASA 16/3430/2016), 24 March 2016.

### OPEN LETTERS

*Open letter to President U Win Myint* (ASA 16/2088/2020), 9 April 2020.

*Joint open letter to the UN Secretary General on the inquiry into UN operations in Myanmar* (ASA 16/1003/2019), 5 September 2019.

*Joint open letter: Myanmar – Repeal Section 66(d) of the 2013 Telecommunications Law* (ASA 16/6617/2017), 29 June 2017.

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<sup>48</sup> All these documents are available on Amnesty International's website: [www.amnesty.org](http://www.amnesty.org)

## PRESS RELEASES AND PUBLIC STATEMENTS

*Myanmar: Indiscriminate airstrikes kill civilians as Rakhine conflict worsens, 8 July 2020,*  
<https://www.amnesty.org/en/latest/news/2020/07/myanmar-indiscriminate-airstrikes-kill-civilians-rakhine/>

*Myanmar: Censorship harms COVID-19 response, (Index: ASA 16/2184/2020), 27 April 2020.*

*Myanmar: Release four activists jailed for peaceful protest (Index: 16/1880/2020), 28 February 2020.*

*Myanmar: Fears for safety of Member of Parliament abducted by the Arakan Army in Chin State (Index: ASA 16/1440/2019), 21 November 2019.*

*Myanmar: Civilians at risk in northern Shan State fighting (Index: ASA 16/0975/2019), 3 September 2019.*

*Myanmar: End internet shutdown in Rakhine, Chin States (Index: ASA 16/0604/2019), 25 June 2019.*

*Myanmar: Fresh evidence of violations amid ongoing military operation in Rakhine State, 11 February 2019,*  
<https://www.amnesty.org/en/latest/news/2019/02/myanmar-fresh-evidence-violations-military-operation-rakhine-state/>

*Myanmar: Rohingya returns plan puts thousands at risk, 14 November 2018,*  
<https://www.amnesty.org/en/latest/news/2018/11/myanmar-rohingya-returns-plan-puts-thousands-at-risk/>

*Japan: Investigate brewer Kirin over payment to Myanmar military amid ethnic cleansing of Rohingya, 14 June 2018,*  
<https://www.amnesty.org/en/latest/news/2018/06/japan-investigate-brewer-kirin-over-payments-to-myanmar-military-amid-ethnic-cleansing-of-rohingya/>

*Myanmar: Independent investigation into military killing of four Karenni men essential for truth and justice (Index: ASA 16/7918/2018), 20 February 2018*

*Myanmar: Investigate police killings of Rakhine State protesters, 17 January 2018,*  
<https://www.amnesty.org/en/latest/news/2018/01/myanmar-investigate-police-killings-of-rakhine-state-protesters/>

*Myanmar: 'Outrageous' denial of access to top UN official, 20 December 2017,*  
<https://www.amnesty.org/en/latest/news/2017/12/myanmar-outrageous-denial-of-access-to-top-un-official/>

*Myanmar / Bangladesh: Rohingya refugees must not be forced home to abuse and discrimination, 4 October 2017,*  
<https://www.amnesty.org/en/latest/news/2017/10/myanmar-bangladesh-rohingya-refugees-must-not-be-forced-home-to-abuses-and-discrimination/>

*Myanmar Army landmines along border with Bangladesh pose deadly threat to fleeing Rohingya, 9 September 2017,*  
<https://www.amnesty.org/en/latest/news/2017/09/myanmar-army-landmines-along-border-with-bangladesh-pose-deadly-threat-to-fleeing-rohingya/>

*Myanmar: Restrictions on international aid putting thousands at risk, 4 September 2017,*  
<https://www.amnesty.org/en/latest/news/2017/09/myanmar-restrictions-on-international-aid-putting-thousands-at-risk/>

*Myanmar: Release journalists immediately, 26 June 2017,*  
<https://www.amnesty.org/en/latest/news/2017/06/myanmar-release-journalists-immediately/>

*Myanmar: Lift restrictions immediately on humanitarian aid, 20 October 2016,*  
<https://www.amnesty.org/en/latest/news/2016/10/myanmar-lift-restrictions-immediately-on-humanitarian-aid/>

*Myanmar: Sulphuric acid factory behind health fears must be relocated, 20 July 2016,*  
<https://www.amnesty.org/en/latest/news/2016/07/myanmar-relocate-sulphuric-acid-factory/>

*Myanmar: Investigate violent destruction of mosque buildings, 24 June 2016,*  
<https://www.amnesty.org/en/latest/news/2016/06/myanmar-investigate-violent-destruction-of-mosque-buildings/>

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[info@amnesty.org](mailto:info@amnesty.org)



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