

**Human Rights Council****Fortieth session**

25 February–22 March 2019

Agenda item 2

**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General****Situation of human rights of Rohingya in Rakhine State,
Myanmar*****Report of the United Nations High Commissioner for Human Rights***Summary*

In its resolution S-27/1, the Human Rights Council requested the United Nations High Commissioner for Human Rights to report on the situation of human rights of Rohingya at its fortieth session, including on the level of cooperation and access given to the independent international fact-finding mission on Myanmar and other United Nations human rights mechanisms, the implementation of recommendations of the United Nations human rights system, including those made by the Council in resolution S-27/1, and to make recommendations for future actions.

The report is based on a comprehensive review of 402 recommendations made by various United Nations entities and by the Advisory Commission on Rakhine State, appointed by the Government of Myanmar in 2016. The High Commissioner assesses the progress made in the level of cooperation with United Nations human rights mechanisms and in five main thematic areas: citizenship; participation in public life; fundamental rights and freedoms; displacement and the right to return; and accountability for human rights violations.

The Government of Myanmar has taken initial steps to implement some of the recommendations, particularly those made by the Advisory Commission. The overarching objectives of the recommendations, however, remain largely unaddressed, with no significant progress observed on human rights concerns raised in previous reports submitted to the Human Rights Council. The High Commissioner recommends that the Government of Myanmar take action to ensure compliance with its international human rights obligations.

* The present report was submitted after the deadline in order to reflect recent developments.



I. Introduction

1. At its twenty-seventh special session, held on 5 December 2017, the Human Rights Council adopted resolution S-27/1, in which the Council, *inter alia*, requested the United Nations High Commissioner for Human Rights to prepare a comprehensive report on the situation of human rights of Rohingya in Rakhine State, including on the level of cooperation and access given by the Government of Myanmar to the independent international fact-finding mission on Myanmar and other United Nations human rights mechanisms, on the implementation of resolution S-27/1, and the recommendations of the United Nations system, and to make recommendations on a future course of action. The High Commissioner submits the present report to the Council pursuant to that request.

2. The Office of the United Nations High Commissioner for Human Rights (OHCHR) reviewed 402 recommendations made by various United Nations entities and by the Advisory Commission on Rakhine State, appointed by the Government of Myanmar in September 2016. After analysing the degree of cooperation witnessed with United Nations human rights mechanisms, OHCHR identified five main thematic areas: citizenship; participation in public life; fundamental rights and freedoms; displacement and right to return; and accountability for human rights violations. It assessed the progress made and the remaining deficiencies with regard to respect for and the protection of human rights of the Rohingya community.

3. The Government of Myanmar has taken initial steps to implement some of the recommendations, particularly those made by the Advisory Commission on Rakhine State. The overarching objectives of the recommendations, however, remain largely unaddressed, with no significant progress observed on human rights concerns previously brought to the attention of the Human Rights Council, including by the Special Rapporteur on the situation of human rights in Myanmar, the independent international fact-finding mission on Myanmar and the High Commissioner. OHCHR urges the Government of Myanmar to take the political, legal and policy measures necessary to address critical issues preventing the Rohingya from enjoying a wide range of human rights, including by restoring their citizenship rights; revoking discriminatory laws and local orders and ceasing their discriminatory implementation; ensuring participation in public life; creating the of conditions for the voluntary, sustainable, dignified and safe return of refugees and internally displaced persons; and ensuring accountability for past and present human rights violations. OHCHR recommends that the Government of Myanmar take specific measures to ensure compliance with the State's international human rights obligations.

II. Methodology

4. Pursuant to Human Rights Council resolution S-27/1, OHCHR reviewed and further analysed recommendations on the situation of human rights of the Rohingya made by OHCHR (see A/HRC/32/18) and various United Nations human rights mechanisms and other relevant entities, including in the context of the universal periodic review (see A/HRC/31/13), the Special Rapporteur on the situation of human rights in Myanmar (see A/HRC/34/67, A/HRC/37/70 and A/72/382), the Committee on the Elimination of Discrimination against Women (see CEDAW/C/MMR/CO/4-5), the Special Representative of the Secretary-General for Children and Armed Conflict (see S/2017/1099) and the Special Representative of the Secretary-General on Sexual Violence in Conflict (see S/2018/250). OHCHR also reviewed the recommendations contained in the final report of the Advisory Commission on Rakhine State,¹ given that they are widely recognized by the Government of Myanmar and the international community as constituting the main framework for sustainable and human rights-sensitive solutions to the situation in Rakhine State.

¹ Advisory Commission on Rakhine State, "Towards a peaceful, fair and prosperous future for the people of Rakhine", August 2017.

5. In the present report, OHCHR does not consider the recommendations made in the most recent reports of the independent international fact-finding mission on Myanmar (A/HRC/39/64) and the Special Rapporteur on the situation of human rights in Myanmar (A/73/332), both released in the last quarter of 2018. At the time of preparation of the present report, the Government of Myanmar had not had sufficient time for their implementation. Furthermore, most recommendations considered in the present report were made before the violence on 25 August 2017, which significantly exacerbated human rights concerns throughout Rakhine, particularly in the three northern townships of Maungdaw, Buthidaung and Rathedaung.

6. In the present report, OHCHR attempts to reflect the situation of human rights in conflict-affected areas, specifically central and northern Rakhine, and the impact of the violence on communities in both areas. Owing to protection concerns, the names of some locations are not disclosed.

7. The analysis of the implementation of recommendations, which focused on their overarching objectives rather than on the content of each one, was based on research from multiple sources, including primary, secondary and open sources. The present report is based on a comprehensive review of 402 recommendations made by various United Nations entities and by the Advisory Commission on Rakhine State. OHCHR assesses the progress made in the degree of cooperation with the United Nations human rights mechanisms and in five thematic areas (see para. 2 above).

8. The findings described are based on monitoring conducted by OHCHR from Thailand and Bangladesh, including in Cox's Bazar; in-person and remote interviews with members of the Rohingya community and representatives of other communities in Rakhine; information gathered from the United Nations country teams in Myanmar and Bangladesh; local and international non-governmental human rights and humanitarian organizations; discussions with members of the diplomatic community, experts, journalists and the media; and desk reviews of reports that were publicly available. On 9 November 2018, OHCHR submitted to the Permanent Mission of Myanmar in Geneva a detailed list of questions on actions undertaken by the Government to implement the recommendations in the thematic areas identified. OHCHR received a reply from the Permanent Mission on 15 January 2019.

9. Since access granted to OHCHR to Myanmar was extremely restricted, its ability to independently corroborate information on the actions taken by the Government to implement the recommendations was also limited. OHCHR was therefore forced to rely on other means of verification to determine the reliability of information received. All information was subject to rigorous verification on the grounds of relevance, veracity and accuracy.

III. Situation of human rights of the Rohingya community

10. No positive progress has been made since the High Commissioner presented his previous report (A/HRC/32/18) to the Human Rights Council in June 2016. Following the forced exodus of more than 730,000 members of the Rohingya community since August 2017,² an estimated 200,000 Rohingya remain in northern Rakhine,³ although people continued to flee to Bangladesh up until the time of finalization of the present report, in January 2019. The Office of the United Nations High Commissioner for Refugees (UNHCR) reported that, in 2018, on average, approximately 1,300 people arrived in Bangladesh every month.⁴

11. Rohingya refugees in Bangladesh reported to OHCHR that discrimination against their community, limitations to fundamental freedoms, including freedom of movement, violence by Rakhine community members, impunity for perpetrators of crimes against

² <https://data2.unhcr.org/en/documents/download/67447>.

³ See Office for the Coordination of Humanitarian Affairs, 2019 Myanmar Humanitarian Response Plan (available from www.unocha.org/myanmar), p. 48.

⁴ See <https://data2.unhcr.org/en/documents/download/67486>.

Rohingya, threats and pressure by public officials to accept national verification cards and lack of access to health-care services and livelihood opportunities were among the main factors leading to displacement.

12. According to figures provided by the Office for the Coordination of Humanitarian Affairs, as at September 2018, approximately 330,000 Rohingya and Kaman were still in central Rakhine, including some 130,000 internally displaced persons who have been living in temporary shelters and camps since the violence in 2012.⁵ Non-governmental human rights organizations have consistently reported that internally displaced persons in the camps claim that they were subjected to a systematic policy of arbitrary and discriminatory deprivation of liberty.⁶ Although the camps constructed following the violence in 2012 to house ethnic Rakhine have since been closed and ethnic Rakhine have been returned to their places of origin, no concrete measures have been taken to ensure the sustainable return of internally displaced Rohingya and Kaman to their places of origin.

13. Statelessness remains the main human rights concern for Rohingya in Myanmar, severely affecting every aspect of their lives. The measures adopted by the Government, such as the introduction of national verification cards, are rejected by large parts of the Rohingya community. Most refugees view the cards as a tool of repression because they do not recognize the Rohingya ethnic identity (“Bengali” is the only option for registration), and strengthen barriers to the reinstatement of their citizenship by, inter alia, requiring applicants to indicate the date in which they entered the country, thereby implicitly stating they have immigrated into Myanmar and therefore are not citizens.

14. Rohingya consistently reported that lack of access to fundamental services, including health care, represents one of the most significant challenges to the enjoyment of human rights. Interviewees residing in Rakhine stressed that, because of the restrictions on movement, fear for their personal safety, discriminatory practices at health-care facilities, including segregation and refusals by doctors and nurses to treat Muslim patients, and extortion at checkpoints and medical centres, Rohingya do not have access to health centres to seek treatment, including in cases of emergency. Limited capacity in dealing with cases of sexual and gender-based violence and minimal presence of psychosocial counselling services further aggravate the plight of victims of such violence. Limitations imposed on non-governmental humanitarian organizations to travel to villages in northern Rakhine further undermine the community’s access to services and humanitarian aid.

15. Serious concerns persist regarding rampant impunity for serious violations committed by security forces. In particular, the systematic use of sexual and gender-based violence by the Tatmadaw (the armed forces of Myanmar) in northern Rakhine has been extensively documented and appears to be a continuation of the pattern of abuse observed since the outbreak of violence in 2016 (see S/2018/250).

16. According to UNHCR, approximately 900,000 Rohingya refugees live in 34 camps and settlements in Cox’s Bazar, Bangladesh.⁷ Despite the enormous efforts of the Government of Bangladesh and the international community to assist Rohingya fleeing violence, the need for sustainable solutions allowing them to voluntarily return to their places of origin in safety and dignity is more urgent than ever. Although the responsibility for creating the essential political, legal and economic conditions for return lies with the Government of Myanmar, there are no indications that it has any step taken to genuinely address these issues.⁸

⁵ See <https://reliefweb.int/map/myanmar/myanmar-idp-sites-rakhine-state-30-november-2018>.

⁶ See “‘Caged without a roof’: apartheid in Myanmar’s Rakhine State”, Amnesty International (available at www.amnesty.org/en/latest/news/2017/11/myanmar-apartheid-in-rakhine-state/); and Phil Robertson, “Burma’s Rohingya Plan is a ‘Blueprint for Segregation’”, Human Rights Watch, 5 October 2014.

⁷ See <https://data2.unhcr.org/en/documents/download/67447>.

⁸ The Rohingya community is also dispersed across numerous other countries, including Saudi Arabia, India, Malaysia, Pakistan and Indonesia. Being mostly stateless, Rohingya everywhere are exposed to a range of discriminatory practices. Recent deportations of Rohingya to either Bangladesh or

IV. Cooperation with United Nations human rights mechanisms

17. The authors of many of the reports reviewed by OHCHR called upon Myanmar to ratify the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention on the Elimination of All Forms of Racial Discrimination and the Optional Protocol to the Convention of the Rights of the Child on the involvement of children in armed conflict. In all cases they urged the Government to cooperate with United Nations human rights entities, and to consider the establishment of an OHCHR office in the country, to ensure continuous cooperation with the Special Rapporteur on the situation of human rights in Myanmar, to grant unfettered access to the independent international fact-finding mission on Myanmar and to report regularly to the treaty bodies.

18. While Myanmar ratified the International Covenant on Economic, Social and Cultural Rights in October 2017, it has not fulfilled its reporting obligations to the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women.

19. OHCHR has not been able to establish a presence in Myanmar. The Government did not grant access to the independent international fact-finding mission, despite multiple requests. On 18 December 2017, the Government informed the Special Rapporteur on the situation of human rights in Myanmar that her access to the country was denied, before formalizing the State's withdrawal from cooperation on 2 January 2018. Myanmar has not issued a standing invitation to the special procedures of the Human Rights Council, and requests for country visits by eight thematic mandate holders remain pending.

20. Other forms of cooperation with other parts of the United Nations system have included the opening of an office for the Special Envoy of the Secretary-General on Myanmar in Nay Pyi Taw in July 2018. In June 2018, the Government signed a memorandum of understanding with the United Nations Development Programme (UNDP) and UNHCR to support the creation of conditions for the return of Rohingya refugees from Bangladesh. On 7 December 2018, it signed a joint communiqué with the Special Representative of the Secretary-General on Sexual Violence in Conflict to address the issue of conflict-related sexual violence in Myanmar. On 7 January 2019, the Government established, pursuant to Security Council resolution 1612 (2005), a committee for the prevention of the gravest forms of violations perpetrated during armed conflict.

V. Thematic analysis of recommendations

A. Citizenship

21. Citizenship is quintessential to the enjoyment of a range of rights, and remains a sensitive and critical issue for the Rohingya in Myanmar. Several recommendations have called for legal amendments to be made to the citizenship law of 1982, the implementation of transparent measures and strategies to verify citizenship status and address statelessness, and the removal of any policy, practice or provision that is discriminatory on any grounds, including race and religion.

22. Under the current legal framework, Myanmar has systematically denied the right of citizenship to members of the Rohingya community, effectively rendering them stateless. This statelessness is the consequence of several factors, including the adoption and discriminatory implementation of the citizenship law of 1982. According to refugees interviewed by OHCHR, when the law came into force, arbitrary State practices, including the withdrawal of national registration cards – which de facto gave access to certain citizenship rights – effectively deprived Rohingya of their citizenship status. Refugees also

Myanmar from third countries raise serious concerns with regard to their protection and safety upon repatriation. These deportations may also contravene the principle of non-refoulement.

reported that the authorities refused to register their newborn children and arbitrarily removed community members from household lists.⁹ They added that these discriminatory acts have been consistently carried out by Myanmar authorities for the past 30 years.

23. The Government has replaced national registration cards with a plethora of registration documents, including temporary registration cards and national verification cards, which have an unclear legal status. In 2014 and 2015, the Government initiated the distribution of national verification cards, the holding of which was a requirement before certain categories of people, including Rohingya, could be eligible for assessment in view of citizenship. The refugees interviewed by OHCHR unanimously rejected these other forms of registration on various grounds. They maintained that undergoing such processes undermined their demand for the restoration of their citizenship status as former holders of national registration cards, to which they were entitled under the non-discriminatory implementation of the citizenship law of 1982. They also expressed dissatisfaction that these registration processes compelled them to be registered as “Bengali”, thereby denying their self-identification as ethnic Rohingya and denying their recognition as Myanmar citizens. Members of the Rohingya community also complained that the application process for national verification cards required individuals to indicate the date on which they first entered Myanmar, clearly inferring that they were foreigners and therefore not entitled to citizenship.

24. While the Government reported the delivery of 13,172 national verification cards as at October 2018 as progress, Rohingya interviewed by OHCHR in Bangladesh claimed that, in most cases, the cards had been imposed on them, while policies that effectively deprived them of their citizenship rights and rendered them stateless remained mostly unchanged. Some Rohingya refugees explained that, in principle, obtaining a national verification card and citizenship verification were unrelated processes given that the citizenship law of 1982 did not provide for national verification cards. Holders of such cards are required to submit a separate request to claim citizenship. Applicants must submit numerous documents, including personal documents dating back three generations, to prove residence and citizenship of Myanmar. As many Rohingya were forced to flee their homes, and because the homes of many were destroyed, most lost their documentation, which was destroyed or became inaccessible to them. Government policies that place the onus on the Rohingya themselves to produce the requisite documentation to prove their citizenship status effectively render them stateless. Furthermore, there appears to be no independent, effective or accessible appeal process in the event that citizenship verification or an application for citizenship is denied.

25. There are growing concerns about Rohingya in Rakhine State being forced to accept national verification cards through administrative pressure, threats or acts of violence. Many refugees arriving in Bangladesh in the last quarter of 2018 consistently reported to OHCHR that a major factor in their decision to flee northern Rakhine was the pressure or violence brought to bear against them to accept the cards. Interviewees reported that the Government has made the cards mandatory for exercising basic activities and for access to basic services and activities relating to their livelihoods, particularly to move within Rakhine, to be released from prison or to obtain a fishing licence. National verification cards are required for persons transiting through temporary reception centres during return processes or deportations. Refugees stressed that conditioning access to aid, services and livelihood opportunities on holding a national verification card forced potential returnees to accept it even though the card – and the classification of Rohingya as “Bengalis” – entailed the implicit renunciation of any claim to citizenship and rendered them extremely vulnerable upon return. They also claimed that the Government’s insistence that Rohingya be issued the cards was evidence of its discriminatory policies towards the community. Rohingya interviewed by OHCHR clearly stated that, without a satisfactory solution concerning the citizenship issue, including the possibility to identify themselves as Rohingya and guaranteeing their access to the same rights as other communities that enjoy Myanmar citizenship, voluntary returns are not likely.

⁹ Documents listing all members of a household, which often serve as the only official record confirming the residence of a Rohingya in Myanmar.

26. One refugee recalled that, in October 2018, his village administrator called a meeting at which he instructed the villagers to accept the national verification cards. Given that they refused, a group of soldiers took the witness and 14 other people away to an open field, where they tied their hands and feet with rope and beat them until they lost consciousness. When the witness woke up, the soldiers had left. With the help of another victim, he managed to free himself and walk to the closest village. He stated that other victims were still lying on the ground when he left and did not know about their fate. He reportedly fled the country shortly after the incident.

27. The Government has demonstrated its unwillingness to amend the citizenship law of 1982 despite its discriminatory impact on the Rohingya and other communities. Amendments to the law alone will not, however, guarantee respect for or protection of the rights of the Rohingya community, or put an end to discriminatory policies and practices towards its members. The Kaman, an officially recognized national ethnic group with full citizenship rights, are exposed to human rights violations because of their ethnicity and religion, such as restrictions on freedom of movement (including confinement to camps for displaced persons or villages, and violations of the right to return to places of origin), arbitrary arrests, harassment and extortion. A Kaman interviewed by OHCHR stated that the renewal of his citizenship card took more than two years and more than 50 visits to the immigration office.

28. In one potentially positive development, a refugee who arrived in Bangladesh towards the end of 2018 informed OHCHR that the Government had recently repealed a 1994 order imposing cumbersome and costly procedures on Rohingya wishing to obtain a marriage certificate. The order stated that Rohingya families were permitted to have a maximum of two children, with the consequence that any subsequent children would be unregistered. A community-based organization estimated that, before August 2017, there were at least 37,000 unregistered children in northern Rakhine because of the order. According to Rohingya representatives, the figure may be higher, given that the registration of children (including first- and second-born children) has not been regularly carried out by the authorities since 2012. Unregistered children, being legally non-existent, have no access to many basic services.

B. Participation in public life

29. Statelessness and lack of citizenship rights directly prevent the Rohingya community from effectively participating in public life, including their representation in public institutions. In various reports reviewed by OHCHR, authors have called upon the Government of Myanmar to take measures to ensure that the Rohingya community, including underrepresented groups – such as women – is allowed to participate and be effectively represented in all decision-making processes. They also recommended that the authorities consult refugees and internally displaced persons on all phases of return processes.

30. OHCHR found that no significant progress had been made in enhancing the effective participation of Rohingya in public life. Statelessness and entrenched discriminatory practices have effectively deprived Rohingya of their basic political rights, such as the ability to participate in electoral processes, such as the parliamentary election held in 2015. As non-citizens, Rohingya are also prevented from establishing political parties¹⁰ and banned from applying for positions in the civil service. There are no Rohingya within the General Administration Department, the police, the judiciary or the education or health systems. Reportedly, there are Rohingya village administrators in mono-ethnic villages, but they are mostly perceived by the community as powerless vis-à-vis the other authorities. In ethnically mixed villages, ethnic Rakhine are appointed as administrators. Consultations with the Rohingya at the local level on issues affecting them, such as returns and relocations, have been reported as minimal or purely formal.

¹⁰ Law on Political Parties Registration, sect. 4 (a); see www.asianlii.org/mm/legis/laws/pprlpadcln22010696.pdf.

31. Refugees interviewed by OHCHR observed that the exclusion of Rohingya from public life was not a recent phenomenon, but rather the result of exclusionary policies implemented since the 1990s. For example, former Rohingya civil servants explained that applications by Rohingya for teaching positions were blocked from the early 1990s and that only those who already had a job were allowed to exercise it. Retirements and the ban on recruitment of new Rohingya teachers led to their complete absence from the education system by 2015. Refugees reported that the same pattern applied to other public sectors, adding that educated and more affluent members of the community who were not killed in the violence since 2012 had left Myanmar to protect their families. They claimed that such persecution had left the community without leadership, with no voice at any level of government administration.

32. A number of refugees interviewed by OHCHR expressed their concern that the lack of representation of the Rohingya had had a devastating impact on the future of the community at various levels, particularly on education. The absence of Rohingya teachers forced families to send children to ethnic Rakhine schools, where they were marginalized and ignored. To mitigate such circumstances, Rohingya families in Rakhine State bore the economic burden of subsidizing salaries of community members to provide some form of education to their children. Such education, however, was not recognized by the Government. In the long term, the lack of formal accreditation further aggravated the marginalization of the community.

33. Lack of consultation and of participation in decision-making processes was particularly evident in the case of the announced, and then halted, repatriation of 2,260 refugees from Bangladesh in November 2018. In October, a senior official from the Ministry of Foreign Affairs of Myanmar visited the camps in Cox's Bazar to announce the beginning of a repatriation process by 15 November, following the reported security clearance of 8,000 names provided by the Government of Bangladesh. The announcement of the imminent repatriation caused fear and consternation among Rohingya refugees in Cox's Bazar,¹¹ who reported they had not been informed of those who had been placed on the repatriation list. OHCHR received consistent reports that those listed were merely told they would be repatriated, without their consent, and that in a number of instances refugees self-harmed rather than face imminent forced return. Despite logistical arrangements that were in place on 15 November, not a single Rohingya volunteered to return to Myanmar.

C. Fundamental rights and freedoms

34. The recommendations made in some reports highlighted the fact that respect for and the protection and fulfilment of fundamental rights and freedoms of the Rohingya community were a non-negotiable obligation of the Government of Myanmar. Refugees and Rohingya in Rakhine State consistently expressed concern for their enjoyment of the rights to life, personal security and access to health, and for the freedoms of assembly, association and religion. All such rights are directly affected by two intersecting and overarching factors: discrimination and severe restrictions on freedom of movement.

35. Laws, local orders and informal restrictions selectively applied to the Rohingya community in Rakhine significantly limit the ability of the Rohingya to move freely and safely. In central Rakhine State, Rohingya community members reported that internally displaced persons were unable to leave the camps without applying and paying for authorizations, which were difficult to obtain and which many could not afford, thereby effectively creating conditions comparable to arbitrary detention. When authorizations were issued, refugees confirmed they had a limited validity – up to a maximum of 14 days – and had a restricted scope, permitting movement only within predetermined areas. In northern Rakhine, people were unable to move beyond the confines of their village or location, and authorizations were required even to perform basic economic activities, like fishing. Refugees consistently stated that where there were no markets in their village, and that

¹¹ See OHCHR, “Bachelet: Returning Rohingya refugees to Myanmar would place them at serious risk of human rights violations”, press statement, 13 November 2018.

village administrators and security forces at checkpoints demanded payment to allow travel to the closest markets. Authorizations were even required in cases of medical emergency. Refugees reported that additional challenges arose when an emergency occurred at night, since most Rohingya villages were subject to a curfew, and extra payments for police escorts were required. Even Rohingya holding a national verification card stated that, despite statements to the contrary by the Government,¹² they remain subject to movement restrictions.

36. The Government of Myanmar publicly announced the adoption of a policy road map with timelines and milestones to ensure freedom of movement for all people in Rakhine, irrespective of race and religion.¹³ The terms of the policy do not appear, however, to be publicly available. Similarly, no information was available concerning whether the Government had implemented the recommendations made on mapping and publishing all formal and informal movement restrictions.

37. In addition to the restrictions imposed by the Government, members of the Rohingya community imposed limits on their own movement owing to security concerns. An interviewee from central Rakhine explained that it was impossible for Rohingya to travel to ethnic Rakhine villages alone or even in small groups because ethnic Rakhine extremists would follow, harass, beat or even kill any Rohingya travelling outside their own village, and that little or no action was taken by the authorities to ensure the accountability of perpetrators. Another interviewee from northern Rakhine recounted the details of the murder of a 60-year-old man who had taken his goats out of the village to graze. Ethnic Rakhine reportedly surrounded the man and took him away. The following morning, his corpse was found floating in a canal. The witness reported that the military went to the area, examined the corpse, and left without taking any action. While other witnesses identified the perpetrators and reported them to the police, the latter told the Rohingya to bury the victim. The witness added that, while performing the ritual washing, they noticed that the victim's body had been mutilated, including the genitalia.

38. Limitations on freedom of movement affect the ability of the Rohingya community to have access to health services. According to one refugee, the hospital in his village was located in the Rakhine neighbourhood, and that the doctors were all ethnic Rakhine. Rohingya did not seek treatment there because ethnic Rakhine from neighbouring villages threatened to kill them if they entered the hospital. The refugee explained that, in order to receive medical care, Rohingya had to bribe the police to obtain an authorization to travel by boat to a hospital located in Sittwe (a considerable distance away) in which Muslim doctors worked. The interviewee estimated the entire cost at 50,000 Kyat (approximately \$30), an unaffordable amount for many Rohingya.

39. A person in northern Rakhine suffering from hepatitis C and requiring urgent treatment told OHCHR that, in his village alone, some 30 people suffering from the same condition had no access to treatment. He described cases of malnutrition in his village, while many residents have diseases that are not diagnosed because of their lack of access to doctors. Some international organizations had access to a hospital in a nearby urban area but not to Rohingya villages, and could only provide care for certain conditions (but not for hepatitis C). People from his community had no access to the main township hospital owing to restrictions on movement and the formal and informal payments demanded in order to be able to travel and obtain medical care. Several people had died in his village because of lack of access to medical care and by humanitarian service providers.

40. Limitations on freedom of movement also significantly affect international and national humanitarian organizations, with a detrimental impact on access to basic services by the Rohingya community. Representatives of international organizations were unanimous in stating that, since the crisis in October 2016, humanitarian access in Rakhine, particularly in northern Rakhine, has been severely restricted and unpredictable, despite the

¹² See Radio Free Asia, "Myanmar Lifts Travel Restrictions on Rohingyas with 'Verification Cards'", 19 April 2018.

¹³ See https://reliefweb.int/sites/reliefweb.int/files/resources/Report-to-the-People-on-the-Progress-of-the-Implementation-of-Recommendations-on-Rakhine-State-January-to-April-2018_.pdf.

essential need for humanitarian aid. Central Rakhine was described as more accessible, although travel authorizations and lengthy bureaucratic processes were still in place, hindering the provision of humanitarian assistance. Since mid-2018, the Government has issued authorizations for northern Rakhine for periods of up to 30 days, extending their temporal scope. Organizations pointed out, however, the imposition of stricter criteria, including detailed information on staff, places and dates of visits. Moreover, authorizations from both State and township authorities have become mandatory. In northern Rakhine, humanitarians can only conduct day trips, without overnight stays, while formal monitoring, assessments, verification exercises and data collection are not allowed. Special authorization procedures are required for Rohingya staff. Non-governmental organizations have virtually no access to northern Rakhine.

41. Humanitarian organizations stressed that, even when access was granted, significant geographic limitations and bureaucratic hurdles still impeded life-saving services and the planning and implementation of protection and monitoring programmes. They pointed out that, as at November 2018, only 169¹⁴ of 989 villages in northern Rakhine¹⁵ had received some assistance, with activities being mostly restricted to the urban areas of Maungdaw and Buthidaung towns. They expressed their concern that such a situation prevented planning for scale-up activities at short notice, hiring and the retention of qualified staff, and building local capacities, which in turn hampered the development of medium- to long-term sustainable solutions.

42. Refugees reported to OHCHR that the freedoms of association, assembly and religion had been severely limited by a regulation introduced in 2012 providing that no more than five people could gather together at one time. Experts confirmed that the regulation applied only to Rohingya and Muslims, and prevented them from holding congregational prayers on Friday or during religious festivities. Rohingya refugees reported having been unable to freely celebrate Eid or other religious holidays for the past six years. Penalties varied, from arrest to a fine, and extortion was widespread. Refugees reported that exceptions to the five-person regulation applied only to market places and schools.

43. Refugees and residents of Rakhine reported that, since 2012, many mosques had been closed, destroyed or looted. Loudspeakers could not be used to broadcast the call to prayer, while mosques could not be refurbished without written permission. One witness reported that people carrying out small reparations in mosques in secret risked fines, arrest or harassment. A member of the Kaman community reported that mosques in Kyaukpyu had been bulldozed and looted.

44. Rohingya reported that members of their community found in possession of mobile phones were regularly harassed and punished. Interviewees consistently reported that it was extremely dangerous for Rohingya to attempt to take photographs documenting violations. Journalists and media actors reported that, when granted access to Rakhine, the visits were highly orchestrated by the Government, and they were not permitted to gather information independently.

D. Displacement and the right to return

45. In many recommendations reviewed, authors requested the Government of Myanmar to undertake concrete actions to realize conditions for the voluntary, sustainable, dignified and safe return of refugees and internally displaced persons. Emphasis had been placed on the organization of genuine and meaningful consultations with the affected communities and on prioritizing organized returns to places of origin. They also called for the implementation of temporary measures to provide dignified living conditions in camps for internally displaced persons that should in no way be construed as a renunciation of the right to return. Myanmar has largely failed to implement any of these recommendations.

¹⁴ See https://reliefweb.int/sites/reliefweb.int/files/resources/myanmar_nov18.pdf.

¹⁵ See <http://themimu.info/place-codes>.

46. Between 2012 and October 2016, up to 168,000 Rohingya had fled Myanmar owing to violence and security concerns.¹⁶ Following the violence in August 2017, another 738,196 people have sought refuge in Bangladesh, with new arrivals reported throughout 2018 and continuing up until the time of the preparation of the present report, in January 2019. In central Rakhine, 127,433 internally displaced persons have been living in 23 camps or in camp-like settings since 2012.¹⁷ Violence and displacement are not unique to Rakhine State, and have been endured by other minority communities throughout the country. In Myanmar, 116,342 internally displaced persons live in camp or camp-like settings: 97,227 in Kachin, 8,815 in Shan and 10,300 in Kayin. Moreover, nearly 100,000 refugees from different ethnic groups live in Thailand.¹⁸

47. No returns of Rohingya to their places of origin, either from Bangladesh or from camps for displaced persons, have been organized. In anticipation of the announced repatriation of November 2018, UNHCR stated that conditions in Myanmar for the voluntary, safe, dignified and sustainable return of refugees were not in place.¹⁹

48. On 6 June 2018, the Government, UNHCR and UNDP signed a memorandum of understanding to support the creation of conditions for returns to take place. Within this framework, UNHCR and UNDP conducted two rounds of assessment in 49 villages in northern Rakhine.

49. Several refugees expressed to OHCHR their wish to return home to Rakhine. Some stressed that Rohingya had been repeatedly forced to flee to Bangladesh owing to violence by the Tatmadaw since 1978, and that any decision to return depended on the realization of conditions to prevent the recurrence of crimes and new cycles of displacement. Individuals and Rohingya civil society organizations indicated that an end to the national verification card regime and the restoration of citizenship rights were essential before returns could take place. They also saw measures to ensure safety and security as critical, including the deployment of peacekeeping forces, owing to a lack of trust in the Myanmar security forces. Many also insisted that returns to their place of origin must be guaranteed. Some refugees added that accountability for the perpetrators of crimes against Rohingya and an end to the pervasive anti-Muslim and anti-Rohingya rhetoric were also preconditions for their return.

50. Refugees and members of the international community pointed out that the lack of any solution to the six-year-long displacement of Rohingya in central Rakhine clearly reflected the absence of conditions for return or any will of the Government of Myanmar to facilitate them. In November 2018, the Government held a consultation on a draft strategy on the closure of camps for internally displaced persons with United Nations agencies and civil society organizations. No final strategy had been approved at the time of writing.

51. Meanwhile, the announced closure of some camps by the Government²⁰ has been questioned. Humanitarian interlocutors explained that, in most cases, internally displaced persons were informed but not consulted on the process and their views, and that decisions were not taken into account. They added that such persons were not offered the choice of returning to their places of origin, but were resettled either to other areas or in the proximity of the camp.

52. Moreover, while the Government of Myanmar has focused exclusively on establishing physical infrastructure by building facilities, it has failed to address major concerns that perpetuate segregation and bar access to basic services, including limited freedom of movement and access to health services and livelihood opportunities. An

¹⁶ Vivian Tan, "Over 168,000 Rohingya likely fled Myanmar since 2012 – UNHCR report", UNHCR, 3 May 2017.

¹⁷ See <https://reliefweb.int/map/myanmar/myanmar-idp-sites-rakhine-state-30-november-2018>.

¹⁸ See <https://reliefweb.int/map/thailand/thailand-border-operation-rtgmoi-unhcr-verified-refugee-population-31-december-2018>.

¹⁹ UNHCR, "Statement by UN High Commissioner for Refugees on the repatriation of Rohingya refugees to Myanmar", 11 November 2018.

²⁰ See "IDP camps closed; resettlement underway in Rakhine", Republic of the Union of Myanmar, President Office, 9 April 2018.

example is Taung Paw camp, in Myebon township, where, according to representatives of the international community, the reported closure of the camp led to a worsening in the living conditions for inhabitants. They reported that the Government had decided to build the new houses on rice paddies adjacent to the closed camp, even though the land was subject to flooding. The decision was taken in response to the demands of local communities, which refused to permit the Rohingya to be relocated to areas closer to them.

53. Newly arrived refugees interviewed by OHCHR in Bangladesh towards the end of 2018 claimed that the Government of Myanmar was taking steps to forcibly displace Rohingya communities remaining in northern Rakhine into camps. Interviewees from various locations in northern Rakhine reported that the military had forced men and children as young as 12 years of age to perform unpaid work on 12-hour shifts to build houses in camp-like facilities in different locations in northern Rakhine. Construction work was reportedly carried out on agricultural land and next to military bases. One interviewee stated that the inhabitants of his village, which was largely untouched by the violence in 2017, were informed by the village administrator that they would be removed from their homes to a newly constructed camp. They described the camps as closed areas, with only one entry gate, surrounded by barbed wire and watchtowers. One interviewee expressed fears that the camps had been built with the objective of forcing the Rohingya to live in miserable conditions, and the eventual intention of exterminating them.

54. Several organizations documented, through the analysis of satellite images, a number of cases of land grabbing, bulldozing and reconstruction over land formerly inhabited by the Rohingya community before the violence in August 2017 (A/HRC/39/64, paras. 42).²¹ The Government has justified these actions by invoking the national law on management of natural disasters.²² In addition to destroying critical evidence of crimes committed in Rakhine, the acts constitute a critical obstacle to the fulfilment of the right of refugees to return to their places of origin.

E. Accountability

55. Several United Nations authorities, including the United Nations High Commissioner for Human Rights, the Special Rapporteur on the situation of human rights in Myanmar and the independent international fact-finding mission on Myanmar, have requested the Government of Myanmar to independently investigate human rights violations and to bring perpetrators to justice. The Government has not, however, taken any serious action to address impunity. No information was available to OHCHR on the prosecution of high-ranking Tatmadaw officials for the violence perpetrated in 2012 and 2016, and no criminal investigation has been undertaken for the violence perpetrated after August 2017. The only exception to total impunity appears to be the reported prosecution and conviction to 10 years of imprisonment of seven Tatmadaw officers in relation to the Inn Din massacre of 2 September 2018. No information is available, however, on the identity of the perpetrators or the actual execution of the sentences other than an announcement made by the Tatmadaw Commander-in-Chief on his Facebook page. OHCHR received unconfirmed information on the reported demotion, reassignment and forced retirement of Tatmadaw officers involved in the violence in Rakhine after August 2017. While further corroboration would be required from the Tatmadaw, these actions remain inadequate in the light of the gravity of the crimes alleged.

56. In July 2018, the Government of Myanmar established the Independent Commission of Enquiry, a non-judicial body, to investigate allegations of human rights violations committed in Rakhine after 25 August 2017. Chaired by Rosario Manalo, a former

²¹ See Amnesty International, *“We will destroy everything”: Military Responsibility for Crimes against Humanity in Rakhine State, Myanmar* (London, Amnesty International, 2018); Human Rights Watch, *“Burma: Scores of Rohingya Villages Bulldozed”*, 23 February 2018; and Poppy McPherson et al., *“Special Report: Myanmar’s moves could mean the Rohingya never go home”*, Reuters, 18 December 2018.

²² See www.burmalibrary.org/docs23/GNLM2017-09-27-red.pdf.

diplomat from the Philippines, the commission was mandated to report within one year of its establishment on its investigations and findings. Following discussions with the chair of the commission during official meetings, OHCHR is seriously concerned about the impartiality of the mechanism and whether it can implement its mandate independently.²³ A further concern is that an earlier inquiry conducted by the Tatmadaw excluded any criminal responsibility on its part, and the fact that, in March 2018, prior to the establishment of the commission, one of the current members of the commission publicly ruled out the possibility that international crimes had been committed.²⁴

57. The establishment of commissions of inquiry has become routine after cyclical episodes of violence in Myanmar, with eight such commissions having been established since 2012 (A/HRC/39/64).²⁵ None of the previous commissions has led to the prosecution of any Tatmadaw official; all have indeed exonerated the army of any criminal responsibility for violations of human rights that may have been perpetrated.

58. Furthermore, the establishment of the commission in July 2018 has delayed the initiation of criminal investigations by the formal justice system, pending the publication of the commission's findings – and has also generated the risk that critical or perishable evidence may be destroyed or lost. The documented bulldozing of several villages in northern Rakhine, including alleged sites of mass graves, reinforces such concerns.

59. Impunity is almost absolute for killings, disappearances, sexual violence, beatings, extortion, arbitrary arrest, corruption and land grabbing, all of which are still being reported. Witnesses informed OHCHR that the Tatmadaw, law enforcement officials, border guard police, local militias and members of the Rakhine community continued to regularly perpetrate such crimes against the Rohingya with impunity. They consistently stated that reporting such crimes may result in further punishment of victims.

60. One refugee recounted to OHCHR how he had a shop in his house where he would sell tea and betel nuts. Rakhine people would visit his shop, but regularly took goods without paying. He recalled that he once told a young Rakhine he had to pay for items taken from his shop. The man responded that if he asked for money again, he would burn down his shop, since the Rohingya shopkeeper lived in the country of the Rakhine. The same man returned a few days later and attacked the shopkeeper with a knife, causing injuries to his forehead (a scar consistent with the account was clearly visible). The victim added that, a few days later, more ethnic Rakhine came to his shop. One man asked him for cigarettes; when he refused, the group set fire to his house and shop. The shopkeeper managed to save his family, who were asleep inside the house. He subsequently reported the events to the Rakhine village administrator, who immediately dismissed the story and blamed “Bengalis” (namely, Rohingya), not any ethnic Rakhine.

VI. Conclusions and recommendations

61. **On the basis of the analysis of the information gathered from primary and other available sources, the High Commissioner concludes that the situation of human rights of the Rohingya community remaining in Myanmar is cause for grave concern, and that the action taken by the Government of Myanmar to implement recommendations made by various United Nations entities has been largely inadequate to promote and protect the rights of Rohingya.**

62. **Although the Government of Myanmar reported progress in various areas, the Rohingya community continues to be systematically subjected to discriminatory policies that affect their enjoyment of fundamental rights and freedoms. In addition to the findings on the violence since August 2017 by several United Nations entities, including the independent international fact-finding mission on Myanmar, consistent**

²³ See www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=23324&LangID=E.

²⁴ Hannah Beech and Saw Nang, “Myanmar Rejects U.N. Findings: ‘No Ethnic Cleansing or Genocide in Our Country’”, *New York Times*, 14 March 2018.

²⁵ See also A/HRC/39/CRP.2, paras. 1601–1609.

reports confirm that the Government is failing to protect the Rohingya in Rakhine from threats to their lives, safety and security.

63. While the Tatmadaw is alleged to have committed most of the grave violations documented in 2016 and since August 2017, killings and other crimes against Rohingya in late 2018 have been attributed by survivors and United Nations entities to ethnic Rakhine extremists. The continuation of impunity for the commission of such crimes highlights the inability or unwillingness of the Government of Myanmar to fulfil its obligations to the Rohingya, to ensure their protection and to hold perpetrators to account.

64. Without committed action by the Government of Myanmar to end impunity, particularly by the Tatmadaw, the recurrence of gross human rights violations and other violations under international law cannot be excluded. Reiterating the calls made in previous reports by the High Commissioner, the Special Rapporteur on the situation of human rights in Myanmar and the independent international fact-finding mission on Myanmar, the Government must also address discrimination and persecution on ethnic and religious grounds of the Rohingya community, including the stripping of citizenship rights and the imposition of other discriminatory and harmful legal and administrative measures; the periodic mass killings and the destruction of Rohingya property; persecution; widespread rape and other forms of sexual violence; forced displacement; segregation; exclusion from civil and political life; extensive restrictions on movement; the denial of access to humanitarian aid and basic services; the limitations on personal life, including marriages and the number of children who can be legally registered; and the prevalence of hate speech aimed at dehumanizing members of the community and characterizing them as aliens.

65. The High Commissioner notes with grave concern that some of the above-mentioned restrictions, including the limitations on freedom of movement, forced displacement and the denial of humanitarian aid, are also being applied to other minority communities across the country.

66. Accordingly, with regard to the situation of the Rohingya, the High Commissioner calls upon the Government of Myanmar, as a matter of priority:

(a) To ensure respect for the right to life, safety and security of all Rohingya who remain in Rakhine State and of all other minority ethnic and religious communities in Myanmar;

(b) To identify and hold accountable perpetrators of violations and crimes through credible and independent judicial processes, and to inform the public at large of their outcome;

(c) Irrespective of any measures being taken by the independent commission of inquiry, to initiate criminal investigations by the formal justice system into crimes committed during the clearance operations following the violence on 25 August 2017 and during previous episodes of violence;

(d) To grant unrestricted and unhindered access to human rights entities, including the independent international fact-finding mission, to assess the compliance of national institutions with the State's international human rights obligations;

(e) To end the issuance of national verification cards, to hold perpetrators of violence or intimidation aimed at forcing the imposition of the cards accountable, and to remove immediately the requirement for possession of a card as a precondition for access to essential services;

(f) To take steps to recognize and restore the citizenship of Rohingya by revising the citizenship law of 1982 to remove provisions linking ethnicity to citizenship, and to ensure it is implemented without discrimination;

(g) To take measures to simplify the citizenship verification process, given that more than one million Rohingya have fled violence since the 1990s and that documentation attesting to their citizenship may have been destroyed;

(h) **In full compliance with humanitarian principles, to ensure and facilitate unrestricted access to humanitarian actors to conduct needs assessments and life-saving activities, and to distribute aid to all persons in need, without discrimination;**

(i) **To put an end to all discriminatory practices, both de jure and de facto, that have a negative impact on the enjoyment of fundamental rights and freedoms of the Rohingya community;**

(j) **To remove all formal and informal restrictions on freedom of movement, including authorizations, permits and fees relating thereto, and to eliminate all measures that result in the segregation of the Rohingya and inhibit their free and unfettered access to basic services and livelihood opportunities; and to take steps to ensure that basic services, as enjoyed by other Myanmar citizens, are available and accessible to the Rohingya, without discrimination;**

(k) **To refrain from building on land that was previously inhabited by Rohingya, and to halt immediately the construction of camps, including those by forced labour;**

(l) **To prevent any rhetoric dehumanizing or denigrating the Rohingya community and genuinely to work towards reconciliation and a transitional justice process, in accordance with the culture and traditions of Myanmar.**

67. **The High Commissioner also recommends that the Myanmar authorities:**

(a) **Accept the jurisdiction of the International Criminal Court by signing the Rome Statute;**

(b) **Ratify the core human rights treaties and amend national laws to ensure full compliance with international human rights law;**

(c) **Permit the establishment of an OHCHR office, with a full monitoring mandate and unhindered access to all areas of the country;**

(d) **In cooperation with the international community, ensure dignified living conditions for all internally displaced persons in camps while developing sustainable solutions for return to their places of origin or alternative locations of their choice; and ensure that any returns are conducted only in full compliance with international humanitarian standards;**

(e) **Promote full and effective participation of Rohingya in all aspects of political and civil life and in all decision-making processes that relate to their status and rights;**

(f) **Take measures aimed at ensuring adequate representation of the Rohingya community in the civil service, including by setting quota systems to facilitate their access, and overcome the challenges resulting from their long-term exclusion.**

68. **To support the advancement of human rights in Myanmar, the High Commissioner recommends that the Human Rights Council:**

(a) **Support the investigative work of the independent international fact-finding mission on Myanmar by extending its mandate and calling for its full and unimpeded access to Myanmar;**

(b) **Advocate for the establishment of an OHCHR office in Myanmar, with a full monitoring mandate and field presences across the country;**

(c) **Mandate OHCHR to continue the monitoring of the actions of the Government of Myanmar to implement the recommendations made by United Nations human rights entities, including those made by the independent international fact-finding mission on Myanmar in its report (A/HRC/39/64);**

(d) **Continue to demand accountability for gross violations of human rights and of international humanitarian law perpetrated in Myanmar.**