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Submission to the Universal Periodic Review of Myanmar

Human Rights Watch

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Introduction

1. In Myanmar's report to the Universal Periodic Review (UPR) in November 2015,¹ the government emphasized that it was making every effort to become a democratic society and would engage with the international community to do so. But in the ensuing five years, Myanmar has refused to cooperate with a Human Rights Council-established Fact-Finding Mission to investigate atrocity crimes in ethnic states, barred the Special Rapporteur on the situation of human rights in Myanmar from the country, and left unfulfilled the pledge by former President Thein Sein to establish a permanent office of the High Commissioner for Human Rights in the country.

2. Despite UPR 2015 commitments to establish democratic institutions, make justice sector reforms, and promote and protect the rights of women, Myanmar has failed to achieve real progress in these and other areas. Rights violations by Myanmar security forces against minority groups, including ethnic Rohingya, Rakhine, Kachin, Shan, Karen and others, have significantly worsened since 2015.

3. Myanmar has failed to undertake reforms to bring its many rights-abusing laws into compliance with international human rights standards. Examples of such laws that need revocation or revision include the 1982 Citizenship Law, the 2013 Telecommunications Law, and the 2011 Peaceful Procession and Assembly Law.

4. In August and September 2017, Myanmar's military conducted a renewed campaign of ethnic cleansing, committing widespread killings, sexual violence, and torching of villages against the Rohingya minority in Rakhine State that sent more than 740,000 people fleeing to Bangladesh, where they now live in the world's largest refugee camp. The Fact-Finding Mission [reported](#) in 2018 that atrocities by Myanmar's armed forces against ethnic minorities "rise to the level of both war crimes and crimes against humanity" and in late 2019 [warned](#) that the Rohingya faced an increased risk of genocide.

5. There have been bold steps to hold Myanmar and individuals responsible for the crimes to account. Gambia, the African continent's smallest country, brought a case against Myanmar before the International Court of Justice alleging violations of the Genocide Convention. In January, the court unanimously directed Myanmar to prevent genocide against the Rohingya and to preserve evidence as the case continues on the merits.

6. Last November, the International Criminal Court authorized the court's prosecutor to investigate alleged crimes against humanity against the Rohingya where at least one element took place in Bangladesh, including deportation and other inhumane acts.

7. Myanmar's recent court-martial conviction of three military personnel for crimes against ethnic Rohingya reflects ongoing government efforts to evade meaningful accountability, scapegoating a few soldiers rather than seriously investigating the military leadership who oversaw the atrocity crimes.

Rakhine State Detention Camps

8. Myanmar has failed to implement the UPR recommendation it accepted in 2015 to "ensure the safe and voluntary return of all internally displaced persons to their place of origin." The government has likewise failed to fulfill the recommendation it accepted to "allow access to humanitarian aid to all groups who need it, including internally displaced persons in Rakhine State" and to "adopt and implement all the necessary measures to continue improving health care, food and education services in camps for internally displaced persons." Myanmar's discriminatory framework targeting the Rohingya, which underlies the continuing dismal

¹ United Nations Office of the High Commissioner for Human Rights, Universal Periodic Review, Report of the Working Group on the Universal Periodic Review, with paragraph 11, A/HRC/31/13, p. 4.

conditions endured by the Rohingya in Rakhine State, indicates that Myanmar is in violation of [the International Court of Justice's January provisional measures order](#) to prevent genocide.

9. In central Rakhine State, 128,000 Rohingya and Kaman Muslims have been confined in what are effectively open-air detention camps since being displaced by an ethnic cleansing campaign in 2012. They are denied freedom of movement in what amounts to arbitrary and discriminatory deprivation of liberty. Living conditions in the camps are squalid, described as “beyond the dignity of any people” by Ursula Mueller, the UN deputy emergency relief chief. Blocks on humanitarian relief, including health, education, and food; decrepit housing; restrictions on livelihoods; and highly restricted access to emergency health procedures are direct causes of increased morbidity and mortality in the camps.

10. Rohingya in the camps have consistently called for return to their places of origin, but the Myanmar government has continued this extensive internment. In response to the Rakhine Advisory Commission's recommendations, the government announced it would begin closing the camps, but its plans entail constructing permanent structures in the current camp locations, further entrenching segregation and denying the Rohingya the right to return to their land, reconstruct their homes, regain work, or reintegrate into Myanmar society. In 2019, Myanmar finalized a national strategy for closing the camps. The document has not been made public, and the ongoing camp closures continue to be carried out contrary to the UN Guiding Principles on Internal Displacement.

11. *Myanmar should:*

- Respect the rights of Rohingya to return voluntarily to their place of origin in safety and dignity, or to a place of choice, and to the return of their property or adequate compensation.
- Lift all arbitrary restrictions on freedom of movement for Rohingya, repeal discriminatory regulations and local orders, and cease all practices that restrict their movement and livelihoods.
- Immediately halt the fundamentally flawed “camp closure” process in central Rakhine State, and work with Rohingya and Kaman communities, the UN, and international agencies to develop a strategy that provides for durable solutions for residents of all camps, with clear timelines and procedures.
- Immediately grant sustained and unfettered access to Rakhine State and other ethnic minority areas for UN agencies and humanitarian groups.
- Rescind or revise the 1982 Citizenship Law to ensure it is in line with international human rights law, and that citizenship extends to ethnic Rohingya.

Freedom of Expression and Assembly

12. Although Myanmar accepted recommendations in 2015 to protect freedom of expression and assembly, and create a safe and enabling environment for civil society,² criminalization of peaceful expression and assembly has continued as documented in our 2019 report [“Dashed Hopes: The Criminalization of Peaceful Expression in Myanmar.”](#) Authorities still use overly broad and vaguely worded laws to arrest and imprison human rights defenders, activists, journalists and ordinary citizens for criticizing the government or military, and engaging in peaceful protest.

13. Press freedom has steadily declined with a rise in prosecutions having a chilling effect on the country's media. The government has prosecuted journalists using a range of laws. In September 2018, a Yangon court sentenced Reuters journalists Wa Lone and Kyaw Soe Oo to seven years in prison under the colonial-era Official Secrets Act for their reporting on a military massacre of Rohingya in Rakhine State's Inn Din village. They were released from prison on a presidential amnesty after serving eight months in prison. Journalists have also been prosecuted using Myanmar's various criminal defamation laws, and the colonial-era Unlawful Associations Act.

14. Prosecutions for criminal defamation soared since 2015. Section 66(d) of the 2013 Telecommunications Act, which criminalizes online defamation, is most frequently used to restrict freedom of expression online and curtail criticism of government officials and the military. In May 2018, a human rights defender from the Ayeyarwady Region was sentenced to three months in prison for streaming live on Facebook, a video of a satirical play about armed conflict. Journalist Ko Swe Win spent more than two years fighting charges that he defamed ultra-nationalist monk Wirathu online before [the case was dismissed](#) in June 2019. Three months later, the charges were [reinstated on appeal](#).

² Recommendations 143.88, 143.98, 143.99 and 143.100 from Myanmar's Second Periodic Review.

15. The criminal defamation provisions of the penal code are also used against critics of the government. Three Kachin human rights defenders were sentenced to six months in prison in December 2018 for “defaming” the military during protests in Myitkyina calling for the rescue of civilians trapped by renewed fighting in Kachin State.
16. Article 8(f) of the Law Protecting the Privacy and Security of Citizens also contributed to the rise in defamation charges against ordinary citizens. According to local group Athan, in the first two years after the law was enacted, at least 28 cases were filed since the law was passed in March 2017, with [21 of those filed during the first six months of 2019](#).
17. Penal code article 505(a), barring speech that may cause members of the military to “disregard or fail” in their duties, is wielded against critics of the military. On August 29, 2019, the prominent filmmaker, [Min Htin Ko Ko Gyi](#), was sentenced to one year in prison with hard labor under article 505(a) for criticizing the military on Facebook, despite suffering from liver cancer and being visibly unwell during his trial. The military used the law against members of the Peacock Generation, a traditional theatre group, for a satirical performance deemed critical of the military. Five troupe members were sentenced to one year in prison for violating section 505(a) in October 2019. A different court imposed an [additional one-year sentence](#) under the same law in November 2019. The military filed cases [against troupe members](#) in multiple jurisdictions, resulting in cumulative sentences of more than three years in prison for troupe members, with cases still pending.
18. Penal Code section 505(b), which prohibits speech that may cause “fear or alarm in the public” that may “upset public tranquility” has also been used against critics. In March 2018, [Aung Ko Htwe, a former child soldier](#), was sentenced to two years in prison with hard labor for giving an interview to journalists detailing his forced recruitment into the army at age 14. Two supporters who protested the prosecution were sentenced to one year in prison in September 2018.
19. In September 2018, [Ngar Min Swe was sentenced to seven years in prison](#) under Myanmar’s broadly worded sedition law, section 124A of the penal code, for social media posts critical of state counsellor Aung San Suu Kyi.
20. Protesters were often targeted under the Peaceful Assembly and Peaceful Procession Law, which requires organizers to seek approval from authorities 48 hours prior to holding an event. [Two Kachin activists](#) were sentenced in September 2019 to 15 days in prison for a street performance marking the eighth anniversary of the end of a 17-year ceasefire in Kachin State. In January 2020, activist Naw Ohn Hla and three of her colleagues were sentenced to one month in prison for protesting the destruction of villagers’ homes, and in March 2020, police arrested five youths for holding a protest in Yangon about the ongoing internet shutdown in Rakhine State.
20. *Myanmar should:*
- Amend section 66(d) of the Telecommunications Act to remove references to “defaming” or “disturbing” individuals.
 - Repeal section 8(f) of the Law Protecting Privacy and Security of Citizens to eliminate the offense of criminal defamation.
 - Repeal sections 499-502 of the Penal Code to eliminate the offense of criminal defamation.
 - Repeal section 124A of the Penal Code to abolish the offense of sedition.
 - Repeal section 505(a) of the Penal Code to end use of that provision against critics of the military.
 - Amend section 505(b) of the Penal Code to criminalize only speech that is intended to incite violence or serious public disorder, and clearly define those terms to ensure that they conform to international standards.
 - Repeal the Official Secrets Act.
 - Ensure that any amendments proposed to the Peaceful Assembly and Peaceful Procession Law specifically recognize the government’s obligation to facilitate peaceful assemblies even if prior notification has not been given. Provide an explicit exception to the notice requirements where giving such notice is impracticable due to the spontaneous nature of the assembly and eliminate criminal penalties for organizing or participating in a peaceful assembly.

Human Trafficking

21. In Kachin and northern Shan States, bordering China, longstanding armed conflicts between the government and ethnic armed groups have facilitated human trafficking, as Human Rights Watch documented in a 2019 [report](#). The mass displacement of over 100,000 people to displaced persons camps has left many struggling to survive. Women are often the sole breadwinners for their families because many men are involved in the armed conflict. Few local employment opportunities mean that many feel they have no choice but to seek work in China.

22. Traffickers prey on their desperation. There is no system of formal employment recruitment from Kachin and northern Shan States to work in China, but informal networks offer women and girls the prospect of better paid jobs across the border. While these jobs may be real, other proposals are enticements by traffickers to trap and sell women and girls as “brides” into a life of sexual slavery. Traffickers sell women and girls for between US\$3000 to \$13,000 to Chinese families struggling to find brides for their sons. The demand for trafficked “brides” is fed by China’s gender imbalance, leaving 30 to 40 million more men than women. Once purchased, women and girls are typically locked in a room and raped repeatedly, with the goal of getting them pregnant quickly so they can provide a baby. After giving birth, some are allowed to escape—but forced to leave their children behind with no prospect of recovering them. Survivors who sought justice rarely received it, and traffickers remained free, often continuing their trafficking activities. In the few cases in which Myanmar authorities did make arrests, they targeted only the initial, often low-level brokers in Myanmar.

23. Myanmar should:

- Act to prevent trafficking, identify and rescue victims, hold perpetrators accountable for abuses, and devise and implement systems and programs to assist survivors.
- Assist law enforcement officers in cooperating with Chinese authorities to ensure the recovery of trafficked women and girls and assist families to locate missing relatives.

Rakhine State Conflict

24. Fighting between the Myanmar military and ethnic armed groups intensified between 2015 and 2020. The government barred rights monitors and journalists from conflict areas and denied access to UN and international humanitarian agencies seeking to provide food, medicine, and other essential aid. Starting in November 2018, fighting increased between the ethnic-Rakhine Arakan Army and government forces in Rakhine and Chin States. The government ordered [an internet blackout](#) that began on June 21, 2019 across eight townships in Rakhine State – Mrauk U, Buthidaung, Rathedaung, Ponnangyun, Myebon, Maungdaw, Minbya, Kyauktaw – and Paletwa township in Chin State, making it very difficult to verify reports of attacks on civilians and arbitrary detention, torture, and deaths in military custody. The internet ban was [lifted from Chin State and four townships](#) in Rakhine State on September 1, only to be [reinstated a few months later](#). Rakhine State is now [facing its second year of internet restrictions](#), with the Myanmar military announcing it has [no intention of lifting restrictions](#).

25. Myanmar should:

- Amend the broadly worded article 77 of the Telecommunications Act to bring it in line with international standards on freedom of expression.
- The Myanmar military and the Arakan Army should abide by international humanitarian law, which applies to both national armed forces and non-state armed groups.
- Allow humanitarian agencies access to provide aid for civilians in need and ensure [freedom of movement for humanitarian workers](#).

Labor

25. The frequency of worker unrest and strikes around Yangon’s industrial zones has increased significantly since 2019 and the looming crisis in the industrial zones has further deepened during the Covid-19 pandemic. Myanmar’s labor laws and associated dispute resolution systems are failing to protect worker rights. Violations of freedom of association, the right to collectively bargain, and other labor rights, are widespread. Recent amendments to the Settlement of Labor Dispute Law 2012 failed to adequately protect freedom of association or support processes to enshrine collective bargaining agreements in law. Child labor also remains a serious problem but the government failed to issue a comprehensive list of what constitutes hazardous child labor, and

subsequent instructions on preventing hazardous child labor in up to 20 industries, as is called for under the law.

26. *Myanmar should:*

- Ratify International Labour Organization (ILO) Convention No. 190 on violence and harassment in the world of work.
- Eliminate child labor by improving laws, targeting sectors with hazardous work done by children, and strengthening the reach and capacity of labor inspectors.
- Ensure that any proposed amendments to laws and regulations governing freedom of association and collective bargaining are in line with international labor standards and introduced after genuine and meaningful consultation with all stakeholders, including workers, trade unions and employers' associations, with sufficient transparency throughout the process.
- Ensure that further legislative reform efforts around the draft Labor Organization Law are aligned with all relevant ILO conventions, and the law, if passed, is done after genuine and meaningful consultations with all stakeholders.
- Publish a list of all companies that are fully or partly owned by the military owned Myanmar Economic Holdings Limited and Myanmar Economic Corporation.