

Burma/Myanmar
Joint Submission to the UN Universal Periodic Review
37th Session of the Working Group

Hate Speech and Shrinking Democratic and Civil Society Space

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This submission is a joint submission by the below Burma/Myanmar civil society organizations that work on the issue of hate speech and/or are directly impacted by it.

1. Action Committee for Democracy Development
2. Athan – Freedom of Expression Activist Organization
3. Burma Monitor (Research and Monitoring)
4. Generation Wave
5. Karen Human Rights Group
6. Kachin Women's Association Thailand
7. Mandalay Community Center
8. Myanmar Cultural Research Society
9. Myanmar People Alliance (Shan State)
10. Olive Organization
11. Progressive Voice
12. Pon Yate
13. Reliable Organization
14. Synergy - Social Harmony Organization
15. Thint Myat Lo Thu Myar (Peace Seekers and Multiculturalist Movement)
16. Ta'ang Women's Organization

Overview

1. Since the previous Universal Periodic Review (UPR), hate speech has escalated to dangerous heights due to growing and deepening divisions created by discrimination of ethnic and religious minorities, which remain unchallenged by the government. Throughout the reporting period, hate speech has incited violence and been a catalyst for violence against Rohingya and other religious and ethnic minorities, contributed to a shrinking democratic space and to the erosion of fundamental rights and freedoms.

2. This submission highlights some of the key human rights implications related to hate speech, and analyzes Myanmar's progress on recommendations from member states during the UPR 2nd Cycle, and presents recommendations for the 3rd Cycle. It will cover the impact on targets of hate speech, including, against human rights defenders (HRDs), Civil Society Organizations (CSOs), activists and women. Additionally, there is a deeper analysis of driving forces and narratives that underly the persecution of ethnic and religious minorities and the entrenchment of hate speech within society, government structures and the education system.

3. Unfortunately, many of the recommendations put forward in previous cycles of the UPR, by States and some of the co-authored organizations, have not been addressed and have in many instances resulted in a deterioration of the human rights. Additionally, waves of new human rights concerns have emerged stemming from the widespread and unmitigated proliferation of hate speech, and many indicators point to this sharp decline. An Independent International Fact-Finding Mission on Myanmar (IIFMM), mandated by the UN Human Rights Council, investigated allegations of human rights violations and grave international crimes in Rakhine, Kachin and Shan States from 2011.¹ The information gathered by the IIFMM highlighted how the Myanmar military ("*Tatmadaw*") perpetrated war crimes and crimes against humanity against ethnic minorities in Kachin and Shan States, and that the information warrants the investigation and prosecution of senior generals of the Myanmar military for genocide against Rohingya in Rakhine State.² Additionally, the Prosecutor of the International Criminal Court (ICC) announced the commission of preliminary investigation into forced deportation of Rohingya from Myanmar to Bangladesh, after the Pre-Trial Chamber found that the Court would have jurisdiction over that crime, since Bangladesh is a State Party to the ICC.³ Most recently, in December 2019, Myanmar participated in oral hearings regarding the charges of genocide brought to the International Court of Justice (ICJ) by the State of Gambia on behalf of the Office of Islamic Cooperation (OIC). The ICJ ruled to impose emergency "provisional measures" on Myanmar to prevent further genocidal acts and to preserve evidence, finding that there was enough evidence that the Convention on the Prevention and Punishment of the Crime of Genocide had been breached during the Myanmar military's 'clearance operations' in 2016 and 2017, which forced nearly one million Rohingyas out of their homeland.⁴ Myanmar ratified the Genocide Convention in 1956.⁵

Engagement with Special Procedures

4. Since the 2nd Cycle, there has been a significant deterioration with the engagement of the Myanmar government with UN Special Procedures, international mechanisms, institutions, and the mandate of the Special Rapporteurs - who have been threatened, attacked, and barred from entering Myanmar. The Myanmar government has similarly refused to cooperate with the IIFMM and blocked its investigators from entering Myanmar. Yet, Myanmar supported recommendations from Turkey and Chile, respectively to "*Engage closely with the United Nations human rights system, including treaty bodies and special procedures mandate holders*"⁶ and to "*Ensure ongoing cooperation with the special rapporteur for Myanmar of the Human Rights Council and with other Special Procedures.*"⁷ Additionally, Myanmar supported a recommendation from the Republic of

Korea to “Continue to cooperate with human rights mechanisms, including the special rapporteur on Myanmar.”⁸

Hate Speech

International Law

5. Myanmar has ratified international instruments including the Genocide Convention, Convention on the Rights of the Child (“CRC”),⁹ the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”),¹⁰ International Covenant on Economic, Cultural and Social Rights (“ICESCR”)¹¹ and the Convention on the Rights of Persons with Disabilities (“CRPD”)¹² requiring it to prohibit discrimination and hatred. Additionally, Myanmar supported the Universal Declaration of Human Rights (“UDHR”),¹³ and is bound by United Nations Charter and accompanying customary international law. The international legal norms inherent in these instruments and custom, include: freedom from discrimination, freedom of religion, freedom of expression, right to life, right to nationality, access to justice and freedom of movement. Similarly, Article 22 of the ASEAN Human Rights Declaration states that “[a]ll forms of intolerance, discrimination and incitement of hatred based on religion and beliefs shall be eliminated.”¹⁴

6. Myanmar also has an obligation under the Genocide Convention to enact effective penalties for persons convicted of “direct and public incitement to commit genocide.” Hate speech against ethnic and religious minorities that is severe, pervasive, and incites violence against the targeted communities can constitute incitement to genocide. As such, when considering the atrocities against the Rohingya communities from Rakhine State in 2017, the IFFMM found that statements by prominent members of the Myanmar government, ultranationalists and the military leaders raised an inference, on reasonable grounds, that the violence that occurred was accompanied with genocidal intent.¹⁵ It is clear that hate speech, both online and offline, present in Myanmar during the reporting period has contributed to genocide of Rohingyas and discrimination against other ethnic and religious minorities.

7. A continuing and repeated recommendations from States during the 1st and 2nd Cycles of the UPR, is that Myanmar should continue to ratify human rights treaties, such as, International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”), the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (“CAT”), International Covenant on Civil and Political Rights (“ICCPR”) and the Rome Statute of the International Criminal Court (“the Rome Statute”). A clear commitment to these instruments would ensure progress towards respecting the rights of religious and ethnic minorities. Since the 2nd UPR Cycle, it is encouraging to note that Myanmar has ratified the ICESCR, but continued conflict waged against ethnic and religious minorities is antithetical to the application, without discrimination, of the rights to housing, cultural life, education, food and health.¹⁶

Domestic Law

8. There is significant body of domestic law in Myanmar that interacts with hate speech. The 2008 Constitution guarantees freedom of expression, the right to equality and non-discrimination, the right to “freely profess and practice religion” and the right to “freely develop literature, culture, arts, customs and traditions.”¹⁷ Yet, since the 2nd Cycle UPR, the ability for ethnic and religious minorities to freely exercise these rights has been severely curtailed through hate speech and by limitations to and inconsistent application of constitutional guarantees, by both state and non-state actors. For instance, the Race and Religion Protection Laws 2015 were enacted after ultranationalist groups petitioned the government to restrict inter-faith marriages, religious conversions of Buddhist women

to Islam through marriage and adopted population control measures, all of which are based upon stereotypes and intended to discriminate against non-Buddhists, Rohingyas and Muslims.¹⁸

9. Current law that touches upon issues of hate speech has been ineffectual, enforced inconsistently and used to target human rights defenders, civil society, and ethnic and religious minorities. Section 505(b) of the Penal Code and Section 66(d) of the Telecommunications Law are two examples of broad and vague legislation levied against human rights defenders and ethnic and religious minorities, whilst impunity for hate speech continues.¹⁹ One human rights defender laments the inconsistency of laws application, stating *“there is nothing to prevent hate speech. If anyone attack or criticize them, they will sue those people with Article 66(d) [Telecommunications Law].”*²⁰

10. During the 2nd Cycle UPR, Myanmar supported a recommendation by Italy to *“Further ensure that those who legitimately exercise their rights to freedom of expression and peaceful assembly be not subject to reprisals.”*²¹ Yet since 2015, legitimate expression has come under increasing attack and impunity for hate speech continues unchecked by the government.²² A recent report on the freedom of expression, shows the past four years saw 229 prosecutions under the Telecommunications Law and 40 under Section 505(b) of the Penal Code.²³

11. Currently being proposed is a hate speech legislation initially developed by the Ministry of Religious Affairs and Culture and later transferred to a committee chaired by the Ministry of Home Affairs.²⁴ In 2016 and 2017, drafts under the name ‘Interfaith Harmonious Coexistence Bill’ and later ‘Bill for Protection Against Hate Speech’ were proposed. Within these versions, hate speech is defined as speech that may cause ‘conflict’ or ‘dissension’ among religious peoples, which is extremely broad. Additionally, these drafts relied heavily on censorship and criminal penalties as means of addressing ‘hate speech’, an approach that violates international human rights law (ICCPR) and the Rabat Plan of Action.²⁵ Any restrictions on hate speech should be narrowly framed to protect legitimate expression and must incorporate the principles of legality, legitimacy, necessity and proportionality. Additionally, the focus should be on promoting of tolerance through dialogue, conflict mediation and celebrating diversity, with criminalization and penalties in only the most severe cases – including direct and public incitement to genocide and other discriminatory violations of international criminal law.²⁶

The Current Situation of Hate Speech in Myanmar

12. In the 2nd Cycle of the UPR, Myanmar supported a recommendation by Ecuador to *“Consider the possibility of adopting adequate measures to promote social cohesion, with a view to the elimination of all forms of discrimination, including against minority, ethnic and cultural groups.”*²⁷ In spite of this, there has been a significant shift away from the promise of national reconciliation and cohesion within Myanmar’s diverse population, in favor of divisiveness, hatred and violence towards ethnic and religious minorities. This is most prominently evidenced in the patterns of hate speech inciting violence against the Rohingya in the buildup to violence in 2012 and ‘clearance operations’ in 2016 and 2017.²⁸

13. From 2015 to the present day, there has been a significant backward step in the realization of human rights. The rise in hate speech has been unbridled, caused in part by the Myanmar government’s unwillingness to adequately address hate speech through domestic law, in line with international human rights standards.²⁹ Many CSOs describe hate speech, not simply as a product of individual bigotry and intolerance, but rather systematically promoted and disseminated by powerful interests, such as the military, religious leaders, businesses and ultranationalists that the government has been unable and unwilling to combat.

14. Instead, the government has to a degree, contributed to the ethnic and religious minorities as the central targets of discrimination and hate speech. Institutionalized state policies are aimed at advancing a unified Buddhist-Burman cultural identity, and furthering distrust and discrimination of anyone designated as 'other' based upon identity, religion, and ethnicity. Thereby, systematically suppressing the culture and identity of minorities and using any traits of 'otherness' as fodder for hate speech and discrimination.

15. Non-state actors, such as ultranationalist groups – including monks affiliated with the ultranationalist 969 Movement ("969"), such as Wirathu and the *Ma Ba Tha*, the Association for the Protection of Race and Religion³⁰ – rally to fuel xenophobia and incite violence against ethnic and religious minorities.³¹ Additionally, poverty, stress and scarcity of jobs creates a fertile environment for ultranationalist groups to spread hate speech and gain traction with the wider public. The ultranationalist agenda incorporates decades of nationalist propaganda by the Myanmar military, which is replicated narratives and stereotypes against ethnic and religious minorities, sowing the seeds of division and fear as tool to advance the military goals. This is executed through the use of social media platforms, such as Facebook, in coordinated campaigns of hate speech and to incite violence toward ethnic and religious minorities.³² These draw heavily upon already deep-rooted prejudice, which effects many ethnic and religious minorities in their everyday life.³³

Key Narratives and Drivers

16. Myanmar supported a recommendation from the Russian Federation during the 2nd Cycle of the UPR, to *"Continue to point special attention to the prevention of the emergence of the situation which might lead to conflicts on ethnic and religious basis."*³⁴ In the same vein, Myanmar supported a recommendation by Slovenia to make definitive strides to *"Adopt legislation ensuring protection of human rights of ethnic communities, including their participation in government decisions."*³⁵ Yet deeply embedded discriminatory narratives have not been met with proactive measures by the Myanmar government, many of which have contributed to further escalate conflict and violence on the basis of ethnicity, race and religion.

17. Given the proliferation of hate speech since 2015, some identifiable constructed narratives permeate Myanmar's culture and society, tearing away at social cohesion. A common narrative pushed by ultranationalist is that race, religion, and country are under threat from both non-*Bamar* ethnic groups and non-Buddhists. Great significance is placed upon a person's race, ethnic background, and religion, which is often exchanged when people are acquainted for the first time. These divides are framed, not only within ultranationalist rhetoric but within the structures of government. One such example is the motto of the Ministry of Labour, Immigration and Population which reads *"the earth will not consume a race, but another race could consume and render one extinct."*³⁶

18. Since 2015, ultranationalists have constructed the narrative that Islam poses an imminent threat to the Union, as a violent foreign religion set to overthrow Buddhism in Myanmar and military strength is needed to protect the nation against such threats. On 11 September 2017, a false chain message circulated around Facebook claiming that Muslims were planning to gather in Yangon, Mandalay, Taunggyi, and Bago to celebrate 9/11 terrorist attacks and to wage attacks on Buddhists in Myanmar. In a similar chain message, an online campaign warned Muslims that Buddhists were coming to destroy their mosques and businesses. CSOs collaborated to ensure violence did not erupt in these cities but many CSOs feel this was a concerted and coordinated effort, by forces with significant resources, engineered to turn people against one another. Even at the highest levels of government, distrust, and discrimination against people of Muslim faith has led to the NLD

Government excluding Muslim members representing their party, and simultaneously allowing electoral officials to strip many citizens of voting rights, based upon ethnicity and religion.³⁷

19. Another key narrative surrounds the necessity for military strength as essential to protection of the nation against threats from Ethnic Armed Organizations (EAO) and religious fundamentalists. In conjunction with the narratives mentioned above, the Myanmar military attempts to justify targeting Rohingyas and Muslims, and other ethnic and religious minorities.³⁸ In January to February 2019, narratives of hate speech and fake news were linked to the Arakan Army (“AA”), in a smear campaign attempted at reducing their support in Rakhine State and among Burmese public more generally.³⁹ Some online posts claimed a link between the AA and the Arakan Rohingya Salvation Army (“ARSA”), aimed at conflating the two groups and the AA as *“unpatriotic terrorists that put Rakhine at risk and threaten the unity of the country”*.⁴⁰ This, by creating public fear and hatred, constructed a case for a strong rebuke against the AA, which the government recently designated a terrorist organization.⁴¹

20. Another narrative driving hate speech is levelled at those who advocate for unity and challenge hate speech, often labelled as “race traitors” to the nation. Similarly, HRDs and activists critical of Aung San Suu Kyi, the NLD or the military are likely to be labelled as foreign-trained traitors, who exaggerate human rights violations and pose a threat to the nation’s sanctity and security. The aim is to delegitimize human rights and advocacy work and the work of civil society by framing it as antithetical to the interest of the nation. Yet, during the 2nd Cycle of the UPR, Myanmar supported the recommendation put forward by Ireland to *“Continue to create a safe and enabling environment for civil society in order to help the country’s ongoing transition to democracy”*.⁴²

Modes and Channels for Hate Speech

21. Since 2015, access to the internet has grown rapidly, but the utilization of the Internet for disseminating hate speech has been extremely troubling. Many actors, particularly the military and ultranationalist groups have been strategically using Facebook to spread hateful rhetoric. By taking advantage of the newly introduced Internet and public’s lack of digital literacy, ultranationalists and the military have incited violence towards ethnic and religious minorities through news feeds and video contents.⁴³ Facebook is their primary source of information for many, with government institutions and major media outlets using the platform to connect with the citizenry, and this has fostered unwarranted trust in information posted to Facebook. For many in Myanmar, Facebook is synonymous with the internet; they use it for many aspects of daily life, including for business purposes, news, information, and socializing.

22. The 2018 IIFFMM report concluded that Facebook had been “powerful platform for hate speech” and in responding to the calls to mitigate hate speech on its platform, it has been “slow and ineffective”.⁴⁴ CSOs are concerned about the lack of nuance and “context sensitivity” in content moderation, as some posts use colloquialisms, fables or allegories to mask messages of hatred or veil threats of violence. Additionally, CSOs are concerned about overt or latent biases of those moderating Facebook’s content against ethnic and religious minorities.⁴⁵ The *Tatmadaw* has initiated online campaigns, using troll accounts, news and celebrity pages on Facebook to post fake news and “lurid photos, false news and inflammatory posts.”⁴⁶ CSO representatives report that artificial patterns in these trolling operations, duplicate comments appearing at regular interval, which are systematically posted.⁴⁷ While the *Tatmadaw*’s Facebook accounts remain active, Facebook decided in February 2019 to ban four EAOs as “dangerous organizations.”⁴⁸ Facebook’s ability to effectively understand the political situation has caused concerns among CSOs and these measures drown out ethnic minorities voicing their views while allowing State security forces to disseminate their narratives.⁴⁹

23. Print media, books, magazines, pamphlets, and direct and private messaging apps, are alternative tools to social media for the dissemination of hate speech. CSOs recognize that ultranationalist groups and *Ma Ba Tha* use these more traditional methods to share directly in the community, with one activist believing these are more effective at reaching people than online alternatives.⁵⁰ One example of print media promoting hatred is the *Ma Ba Tha* magazine, “*Aung Zeyatu*”, one featured article entitled “*the Myanmar race can go extinct due to the Bengali*” attempted to stoke anti-Rohingya and anti-Muslim sentiment.⁵¹ The article which was written by a monk attempts to create a false equivalency between the ARSA “terrorist” attacks and the untrustworthiness of Muslims in Rakhine State, who he argues will use various means to gain citizenship and parliamentary representation to “swallow” up Buddhism in Myanmar.⁵² The reader is led to the inference that all Muslims in Rakhine State are linked to terrorism and are unjustified in claiming citizenship.

24. Myanmar supported the recommendation from New Zealand to “*Increase its efforts to counter hate-speech and incitement to violence.*”⁵³ Yet, since the 2nd Cycle of the UPR, hate speech has increased exponentially online and offline, and in order to achieve meaningful strides, perpetrators of hate speech must be held to account in line with international legal standards thereby thwarting the incitement of violence against the targets of hate speech.

Key Issues

25. Since the 2nd Cycle of the UPR, women, human rights defenders and ethnic and religious minorities have been directly targeted and most acutely affected by hate speech, and this section of the submission will take a closer look at the key issues facing these groups.

Gender and Hate Speech

26. Myanmar supported the recommendation from Sweden to “*Enact and enforce legislation that guarantees comprehensive protection from all forms of violence against women, and that addresses impunity for all perpetrators.*”⁵⁴ In addition, Myanmar supported the recommendation from Cyprus to “*Promote gender equality in all aspects of life and combat violence against women.*”⁵⁵

27. Yet many women, especially women human rights defenders, politicians, leaders, journalists, artists, and activists continue to be targets of hate speech. It is evident that experiences of women in Myanmar differ greatly to those of their male counterparts. Women face threats of physical and sexual violence, sexual harassment online, lurid sexist language, posting of demeaning imagery and morphed sexual images, among other methods of harassment. Often women human rights defenders in Myanmar are taunted if they associate with a man from a different religion or ethnic background, including insinuations of sexual relationships and false judgements.⁵⁶ Journalist Esther Htusan’s critical reporting of the Rohingya crisis and Aung San Suu Kyi, made her a prime target for online hate speech. After a post on Facebook by a prominent ultranationalist, with 300,000 followers calling Htusan a “bitch” advocating for her murder, Htusan reported being stalked and threatened in person following the viral post.⁵⁷ She eventually left Myanmar out of fear for her safety.⁵⁸

28. Myanmar is a party to CEDAW, which guarantees equality before the law, enjoyment of human rights and freedom of expression for all women, and requires States to promote women’s rights through legislative measures to dispel gender stereotypes, and customs and practices of inequality. Attempts to bring Myanmar in line with CEDAW have stagnated, such as the National Strategic Plan for the Advancement of Women, which contains lofty and aspirational language related to eliminating gender-based violence, while the Myanmar military’s ongoing campaign of sexual

violence against ethnic women continues to require action. In addition, the Prevention and Protection of Violence Against Women Bill, which is currently awaiting submission to the Parliament for debate, severely lacked transparency and consultation with women across the country, but significantly, and in particular, with the women from conflict-affected areas. This requires the government to take further active measures to root-out gender discrimination, and to effectively implement law and policy to redress gender discrimination.

Human Rights Defenders

29. Human rights defenders are among the main opponents to hate speech, which results in many of them being threatened with violence, risk legal and judicial harassments, reprisals, and prosecution for advocating for human rights. At the same time, they may be themselves the targets of hate speech. As a result of hate speech, the current social climate is increasingly divisive, with CSOs noting the palpable loss of trust and sense of community.⁵⁹ One human rights defender noted that *“Some people have suffered from this discrimination and the use of kalar to describe Muslims. They have separated from the society, like being alienated. For us who are working to build a diverse community, that’s a big challenge.”*⁶⁰ Another human rights defender noted that during a protest organized by youth against the ongoing civil war in Myanmar, ultranationalist groups like *Ma Ba Tha* used their Facebook page to antagonize protesters, using derogatory language such as ‘*Kalars*’ and calling on their Facebook followers to go to the site of the protest and kill them.⁶¹ This kind of rhetoric is not limited to human rights defenders but directed at CSOs, activists and journalists, for exercising their fundamental freedoms. In addition to being subjected to hateful comments online, many human rights defenders, journalists and activists are closely monitored and subjected to legal reprisals for their work at the hands of the government and the military. For instance, Reuters Journalists Wa Lone and Kyaw Soe Oo, who investigated the killing of a group of ten Rohingya civilians, were charged with “exposing state secrets” under the Official Secrets Act.⁶² This reflects one of the gravest breaches on the right to freedom of expression and press freedom, given that their reporting uncovered heinous human rights abuses.

30. Since the 2nd Cycle of the UPR, such reprisals, coupled with online hate speech against human rights defenders, has further shrunk civic space, making it even more difficult for human rights defenders and activists who hold principled human rights stance and independent journalists who operate inside the country. Myanmar supported the recommendation by Chile to *“Ensure the protection of human rights defenders.”*⁶³ Yet since the 2nd Cycle UPR, there has clearly been severe restrictions placed on civil society activities, protests, and free speech that serve to threaten the rights and the legitimate work of human rights defenders.

Hate Speech Targeting Racial, Ethnic and Religious Minorities

31. Hate speech targeting racial, ethnic and religious minorities is one of the greatest threats to realization of protection of human rights in Myanmar. Differentiating people by race, ethnicity and religion is well entrenched within all facets of Myanmar society, and they often build upon decades of entrenched ignorance and pervasive racism. For instance, it is commonplace for people to exchange their identity upon first meeting and national identity cards require card holders to specify their race and religion.⁶⁴ A *Bamar*-Muslim interviewee reported that, upon renewal of their ID card, if a person lists their religion as Islam then they could not list *Bamar* as their only ethnicity. The officer at the Ministry of Labour, Immigration and Population told the interviewee they would be registered as *“Thwe Hnaw”* (mixed blood), and to additionally select Indian, Bangladeshi or Pakistani, even though they have no connection to these countries.⁶⁵

32. As signaled above, dividing people by their religious and ethnic identity creates segregation and 'otherness'. Muslim minorities, especially the Rohingya, became targets for exclusion and attack by the *Tatmadaw* and ultranationalists who deemed them not to be *taingyintha* ("sons of the native land"), an expression referring to ethnic groups they deem "indigenous" to Myanmar.⁶⁶ Instead of referring to Rohingya by their name, military, ultranationalists and political leaders use derogatory names like "*Bengali*" and "*Kalar*", insinuating they are foreign interlopers from Bangladesh. Despite being present in Rakhine State since the late 18th Century, Rohingya are denied their group identity and citizenship rights under the 1982 Myanmar Citizenship Law, a restriction that is in contravention of international law and standards.⁶⁷ Many states during the 1st and 2nd Cycles of the UPR have recommend Myanmar to make legal reforms, including Iceland, which recommended Myanmar "*Amend the 1982 Citizenship Law to give the Rohingya and all other religious minorities and ethnic groups access to full citizenship rights.*"⁶⁸

33. The Rohingya crisis, a planned "clearance operations" targeting the Rohingya community in Rakhine State, forcibly displaced nearly a million Rohingya refugees to Bangladesh. But this "clearance operations" is not new. It replicates the *Tatmadaw's* past campaigns executed against ethnic civilians in other ethnic regions over the decades: indiscriminate targeting and killing of ethnic civilians; widespread use of sexual violence, paired with dehumanizing, racist rhetoric; extrajudicial killings; land confiscation; torture; and complete impunity for its actions.⁶⁹ The IIFFMM signalled that these clearance operations, and violence in Rakhine State in 2012, were preceded by dehumanizing hate speech by political parties, radical Buddhist organizations (including the 969 movement) and others.⁷⁰ In their findings, the IIFFMM found 150 public social media accounts, pages and groups regularly spread hate speech about Muslims, and Rohingyas in particular.⁷¹ The IIFFMM states that online dehumanizing and violent comments from online forums from September 2017, "*...constitute[d] forms of hate speech that require prohibition and punishment under international law.*"⁷²

34. One CSO leader noted that hatred has been building over time, and that "*before I was born, it wasn't like this. I remember my grandfather said they are systematically creating hate between religions for their benefits.*"⁷³ This is not limited to Rohingya and Muslims, but ethnic and religious minorities in Kachin and Shan States. They have been verbally targeted and denigrated by the *Tatmadaw*, who view ethnic and religious minorities as posing a threat to their ethnocentrism.⁷⁴ One activist notes that Christians and non-*Bamar* ethnic groups are increasingly targeted or labelled 'potential threats' as a consequence of the *Tatmadaw's* offensives in Kachin, Shan, and Rakhine States.⁷⁵

35. Following the recommendation by Iceland, which was supported by Myanmar, meaningful political steps are needed to "*Ensure independent investigations of all cases of violence and discrimination against ethnic and religious minorities.*"⁷⁶ Additionally, resolutions 25/26, 31/24, 34/22, 39/2, 40/29, and 42/3 of the Human Rights Council called on the Government of Myanmar to take further action to address hate speech directed towards Rohingyas and Muslims.⁷⁷

Education

36. Article 13, in conjunction with Article 2 of ICESCR, guarantees the right to education without discrimination based upon race, color, sex, language, religion, political or other opinion. Additionally, Myanmar supported the recommendation by Nigeria to "*Continue to promote and protect the enjoyment of fundamental freedoms and rights of its citizens in the areas of education and health among others without discrimination.*"⁷⁸

37. Yet, systematic discrimination within the education system continues to contribute to hate speech and re-enforces stereotypes and discriminations against ethnic and religious minorities.

Former Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, describes hate speech as “institutionalized” within the education system.⁷⁹ Textbooks and other educational materials repeat and enforce stereotypes and discriminatory rhetoric about ethnic and religious minorities, and conversely, curriculums focus only on homogenous Buddhist *Bamar* experiences. One slogan taught to children for them to repeat is “*Burma [Myanmar] is our country, Burmese is our literature and language. Love our country, cherish our literature and uphold our language.*”⁸⁰ However, this is not reflective of the rich ethnic, cultural, and religious diversity that makes up Myanmar.

2020 Elections

38. The upcoming 2020 elections presents both challenges and opportunities to engage with ethnic and religious minorities in political life, as well as a forum to address systemic discrimination and hate speech. As an indicator of what may evolve, the 2015 elections led to voter intimidation by ultranationalists against religious and ethnic minorities.⁸¹ Instances of voter disenfranchisement also played out during the election cycle, including a sudden decision to cancel voting in Karen State due to security concerns, only to reinstate voting with the presence of the *Tatmadaw*.⁸² Additionally, the NLD government purged hundreds of thousands of Muslim voters from voter rolls, and Muslim candidates were asked not to run or disqualified on the grounds of discriminatory citizenship laws.⁸³ As a result of the citizenship law, Rohingyas are disenfranchised from voting and conflict prevented IDPs from getting to the polling booth.⁸⁴ These instances resulted in the normalizing of discrimination and hate speech, while affirming nationalist rhetoric espoused by *Ma Ba Tha* and the 969 Movement.

39. In October 2018, an independent review commissioned by Facebook warned that “*the 2020 parliamentary elections are likely to be a flashpoint for hate speech, harassment, misinformation, incitement to violence, and other actions designed to undermine the political process.*”⁸⁵ Thus, measures need to be taken to curtail hate speech and enable free political speech. Myanmar supported the recommendation by the Republic of Korea to “*Put forward every effort to ensure that the election process is both free and fair.*”⁸⁶ Yet, without full participation of Rohingyas, other ethnic and religious minorities, refugees and IDPs, elections cannot be claimed a free and fair reflection of Myanmar’s diversity.

Conclusion

40. Myanmar has significant strides to make in order to comply with the recommendations it supported during the 1st and 2nd Cycle of the UPR. The challenges for a future free from the shackles of hate speech requires tackling systemic issues within government, the military and the larger society. A clear repudiation of all forms of discrimination based upon a person’s ethnicity, race, religion and gender is of primary importance in reaching this goal. This must include actions to restore citizenship of those refugees and IDPs left stateless. Additionally, this requires activity fostering a democratic space which includes peoples of all religions, ethnicities and races, and ending impunity for gross violations of human rights to build an inclusive nation.

41. Until concrete steps can be taken on these issues, the problems outlined in this submission will persist and hate speech will continue to fester within Myanmar society. Human rights defenders, activists, journalists, civil society organizations and all others affected by hate speech, must be lifted up and supported through robust measures within state apparatuses, including quelling online hate speech with legislative, inclusive peace-building, addressing and remedying discrimination of all kinds and empowering all people in Myanmar with peace and freedom from violence.

Recommendations:

To the Myanmar Government:

- Take all necessary steps to hold perpetrators of hate speech, who have called for and incited violence against particular groups, accountable through fair and transparent judicial proceedings;
- Enact legislation that protects, rather than endangers, civil society, including activists, students, journalists, political prisoners, lawyers, and HRDs. Include a gendered and human rights-based approach to such legislation;
- Consult with civil society in re-drafting the Bill for Protection Against Hate Speech to ensure the resulting law is transparent, meets international legal standards and definition of hate speech as a component of a broader anti-discrimination legal framework;
- Amend the Telecommunications Law by removing Sections 66(d) and 68(a) and repeal Articles 124A, 295A, 499-500 of the Penal Code, and reform Article 505 in accordance with international law;
- Disband the current government run social media monitoring team and form a third-party independent monitoring team with the participation of independent civil society actors, to counter hate speech, while preserving legitimate online expression and privacy rights, allowing public access to and accountability for monitoring projects;
- Ensure free, fair and inclusive elections, giving all people equal opportunity to participate and run for office, irrespective of their beliefs and backgrounds;
- Make sincere efforts to end hate speech that perpetuates discrimination based on gender, race, ethnicity, religion or other defining characteristic;
- Cooperate with UN human rights and investigative mechanisms and Special Procedures, including the mandate of the Special Rapporteur on the situation of human rights in Myanmar and the Independent Investigative Mechanism on Myanmar and allow immediate and unhindered access to the country;
- Review and reform the education system, both formal and informal, to ensure it respects and reflects the principle of non-discrimination and undertake education reform of the curriculum that celebrates Myanmar's rich ethnic and religious diversity; and
- Include diversity and non-discrimination in political party policies and amend policies and regulations that are discriminatory based on race and religion.

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⁶ Report of the Working Group on the Universal Periodic Review, UN Human Rights Council, A/HRC/31/13 - Para. 143.66. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/290/35/PDF/G1529035.pdf?OpenElement>.

⁷ Report of the Working Group on the Universal Periodic Review, UN Human Rights Council, A/HRC/31/13 - Para. 144.33. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/290/35/PDF/G1529035.pdf?OpenElement>.

⁸ Report of the Working Group on the Universal Periodic Review, UN Human Rights Council, A/HRC/31/13 - Para. 143.51. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/290/35/PDF/G1529035.pdf?OpenElement>.

⁹ CRC, art. 13(1), <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>. “The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice.”

¹⁰ CEDAW, <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article7>.

¹¹ ICESCR, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

¹² CRPD, Article 21. “States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice[.]”

¹³ Articles 1 and 2 UDHR.

¹⁴ ASEAN Human Rights Declaration, Article 22, Nov. 18, 2012. Available at: <https://asean.org/asean-human-rights-declaration/>.

¹⁵ Report of the independent international fact-finding mission on Myanmar (2018), Human Rights Council at p. 360: “In July 2012, then President Thein Sein publicly stated, “the last resort to this issue is to hand in the Rohingya who sneaked in to UNHCR to stay in the refugee camps”. In October 2017, Sitagu Sayadaw, one of Myanmar’s most revered monks, made an address to members of the military at a training school, apparently absolving the military of any guilt or culpability for killing Rohingya. Senior-General Min Aung Hlaing, the Tatmadaw’s Commander-in-Chief since 2011 and the most powerful person in Myanmar, has made numerous public statements that deny the existence of Rohingya; label the group as illegal immigrants, terrorists and extremists; deny any wrongdoing in Tatmadaw operations in Rakhine State; ignore the suffering of Rohingya; and call on the Myanmar “ethnic people” to take patriotic action. At the height of the “clearance operations”, he stated that the “Bengali problem” was an “unfinished job” that the Government was taking great care to solve. These statements were all made in a highly volatile and tense context. The fact that figures of authority chose to mirror hateful narratives spread by ultranationalist movements, rather than combat them, may be revealing of their own sentiments and intent.”

¹⁶ Articles 1, 2, 11, 12, 13 and 15. Myanmar ratified ICESCR on 6 October 2017. Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=en.

¹⁷ Constitution of the Republic of the Union of Myanmar 2008, Article 354(a), <http://www.myanmar-law-library.org/law-library/laws-and-regulations/constitutions/2008-constitution.html>. [Hereinafter “Myanmar Constitution”]. Reflected in Articles 21 (a), 348, 34, 365 and 364.

¹⁸ Report of the independent international fact-finding mission on Myanmar (2018), Human Rights Council, A/HRC/39/64 - Para. 600-601. Available at: <https://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/ReportoftheMyanmarFFM.aspx>.

¹⁹ Human Rights Watch, “Dashed Hopes: The Criminalization of Peaceful Expression in Myanmar.” (31 January 2019). Human Rights Watch, “They Can Arrest You at Any Time: Criminalization of Peaceful Expression in Burma.” (June 29, 2016), p.4, https://www.hrw.org/sites/default/files/report_pdf/burma0616web.pdf. “Amendment made no difference, says report urging repeal of 66(d),” *Frontier Myanmar* (Dec. 11, 2017), <https://frontiermyanmar.net/en/amendment-made-no-difference-says-report-urging-repeal-of-66d>.

²⁰ 001-R2-01. Personal interview.

²¹ Report of the Working Group on the Universal Periodic Review, UN Human Rights Council, A/HRC/31/13 – Para. 143.99. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/290/35/PDF/G1529035.pdf?OpenElement>.

²² Athan ‘Analysis on Freedom of Expression: Situation in Four Years under the Current Regime’, 2 May 2002. Available at <https://www.athanmyanmar.org/analysis-on-freedom-of-expression-situation-in-four-years-under-the-current-regime/>.

²³ Ibid.

²⁴ Article 19 briefing paper entitled ‘Myanmar Briefing Paper: Countering ‘Hate Speech’’, February 2020. Available at: <https://www.article19.org/wp-content/uploads/2020/05/2020.02.04-A19-Hate-Speech-Law-Policy-Paper-final-3.pdf>.

²⁵ Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, UN doc A/74/486 (Oct. 9, 2019), para. 4.

²⁶ Article 19 briefing paper entitled ‘Myanmar Briefing Paper: Countering ‘Hate Speech’’, February 2020. p.2.

²⁷ Report of the Working Group on the Universal Periodic Review, UN Human Rights Council, A/HRC/31/13 – Para. 143.61. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/290/35/PDF/G1529035.pdf?OpenElement>.

²⁸ Report of the independent international fact-finding mission on Myanmar (2018), Human Rights Council, A/HRC/39/64 - Para. 1302, 1318, and 1326. Available at: <https://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/ReportHRC42thSession.aspx>.

²⁹ Progressive Voice et al 2020 (Forthcoming).

³⁰ The Patriotic Association of Myanmar and the Association for the Protection of Race and Religion, *Ma Ba Tha* has been influential in the drafting of discriminatory laws targeting Myanmar’s Muslim population, restricting religious conversion, interfaith marriages, and birth rates. They use hate speech campaigns against the Rohingya minority and while it has officially been disbanded, it continues to be an active and influential player in Buddhist nationalism in Myanmar.

- ³¹ Progressive Voice et al 2020 (Forthcoming).
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- ⁴⁵ Progressive Voice et al 2020 (Forthcoming).
- ⁴⁶ Ibid.
- ⁴⁷ Ibid.
- ⁴⁸ Julia Carrie Wong, “‘Overreacting to failure’: Facebook’s new Myanmar strategy baffles local activists,” *The Guardian*, (Feb. 7, 2019), <https://www.theguardian.com/technology/2019/feb/07/facebook-myanmar-genocide-violence-hate-speech>.
- ⁴⁹ Ibid.
- ⁵⁰ Progressive Voice et al 2020 (Forthcoming).
- ⁵¹ Report of the independent international fact-finding mission on Myanmar (2018), UN Doc. No. A/HRC/39/CRP.2, 18 September, 2018. Para. 1315. Available at: <https://undocs.org/A/HRC/39/CRP.2>.
- ⁵² Ibid.
- ⁵³ Report of the Working Group on the Universal Periodic Review, UN Human Rights Council, A/HRC/31/13 – Para. 143.62. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/290/35/PDF/G1529035.pdf?OpenElement>.
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