

MYANMAR UPR 2020 FACTSHEET

Hate Speech, Incitement to Violence and Closing Democratic and Civil Society Space



Brief Assessment of the Implementation of 1st and 2nd Cycle UPR Recommendations

Since the previous UPR, hate speech has been a catalyst for violence against Rohingya and other religious and ethnic minorities, contributed to closing democratic and civil society space and to the erosion of fundamental rights and freedoms. During the 2nd Cycle UPR, Myanmar supported the recommendation from New Zealand to “*Increase its efforts to counter hate-speech and incitement to violence,*”¹ yet hate speech has increased exponentially. During the reporting period, hate speech has significantly contributed to the genocide of Rohingyas and discrimination against other ethnic and religious minorities. The Myanmar government lacks a genuine political will to combat hate speech, and is complicit in the promoting of racial, ethnic and religious narratives that drive discrimination and tear away at social cohesion. There exists institutionalized state policies aimed at advancing a unified Bamar-Buddhist cultural identity, which encourages distrust and discrimination of anyone designated as ‘others’ based upon identity, religion and ethnicity. Many civil society organizations (CSOs) describe hate speech, not simply as a product of individual bigotry and intolerance, but rather systematically promoted

1 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>

and disseminated by powerful interests, such as the military, religious leaders, businesses and ultranationalists that the government has been unable and unwilling to thwart.

While impunity for hate speech is unchallenged, legitimate expression for journalists, CSOs and human rights defenders has come under increasing attack. Since the 2nd Cycle of the UPR, severe restrictions have been placed on civil society activities, protests and free speech, resulting in a further deterioration of the limited democratic space in Myanmar. Human rights defenders and journalists have been subjected to arbitrary arrests and detention, harassment, hate speech, lawsuits, criminal prosecutions and restrictions on movement.

The below sections outline key challenges, as well as cases, facts, comments and corresponding recommendations for the 3rd Cycle UPR.

Domestic Law



Challenges: Hate speech is not adequately mitigated through domestic law and policy, giving ultranationalist and the other actors to incite violence against ethnic and religious minorities. At the same time, the Penal Code and the Telecommunications Law are used to significantly restrict human rights defenders and religious and ethnic minorities in exercising legitimate expression and to critique the government and military.



Cases, Facts, Comments: Even though there are constitutional guarantees for freedom of expression, the right to equality and non-discrimination, and the right to profess and practice religion, these have been severely curtailed within domestic law and policy. For instance, the Race and Religion Laws 2015 restrict interfaith marriage and adopt population control measures intended to discriminate against non-Buddhists, particularly Rohingyas and Muslims.²

Current law that touches on hate speech has been ineffectual, inconsistently enforced and used to target human rights defenders, civil society and ethnic and religious minorities. While the Myanmar government has proposed a 'Bill for Protection Against Hate Speech,' it relies 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.



Recommendations

- 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.

2 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>.



- Enact legislation that protects, rather than endangers, civil society, including activists, students, journalists, lawyers and HRDs. Include a gendered and human rights-based approach to such legislation.
- Ensure meaningful consultations with HRDs and rights-based civil society organizations in re-drafting the Bill for Protection Against Hate Speech to ensure the resulting law is transparent, meets international human rights and legal standards and the definition of hate speech has 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.

Racial, Ethnic and Religious Minorities



Challenges: The main targets of hate speech are racial, ethnic and religious minorities, which reflects discrimination engrained in Myanmar society. Hate speech is used to stoke fear and legitimize stereotypes and violence against minority groups.



Cases, Facts, Comments: Ultrationalists and the Myanmar military see ethnic and religious minorities as a threat to Bamar-Buddhist hegemony, rather than to be celebrated as valued and equal members of Myanmar's diverse population. The Independent International Fact-Finding Mission on Myanmar investigated allegations of human rights violations and grave international crimes in Rakhine, Kachin and Shan States from 2011. It found 150 public social media accounts, pages and groups regularly spread violent and dehumanizing comments about Muslims, in particular Rohingyas.³ Other ethnic minorities are also targeted with hate speech. One activist notes that Christians and non-*Bamar* ethnic groups are increasingly targeted or labelled 'potential threats' due to the Myanmar military's offensives in Kachin, Shan and Rakhine States.⁴

Many States during the 1st and 2nd Cycles recommended for Myanmar to promote social cohesion and tolerance, including Ecuador, Sudan, Turkey, Indonesia and Czechia.⁵ However, in the past 5 years there has been a considerable backslide in the realization of ethnic and religious freedoms, particularly for Rohingya Muslims. The Myanmar military's 'clearance operations' in 2016 and 2017, forcing nearly one million Rohingyas out of their homeland, exemplifies the unwillingness and inability of the Myanmar government to protect ethnic and religious minorities.

3 Report of the independent international fact-finding mission on Myanmar (2018), UN Doc. No. A/HRC/39/CRP.2, 18 September, 2018. Para. 1301. Available at: <https://www.ohchr.org/EN/HRBodies/HRC/Burma/MyanmarFFM/Pages/ReportoftheMyanmarFFM.aspx>.

4 Progressive Voice et al 2020 (Forthcoming).

5 Report of the Working Group on the Universal Periodic Review, UN Human Rights Council, A/HRC/31/13. Available at: <https://bit.ly/3k5gDro>



Recommendations

- Include diversity and non-discrimination in political party policies and amend policies and regulations that are discriminatory based on race and religion.
- 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.

Gender Discrimination



Challenges: Many women, especially women human rights defenders, politicians, leaders, journalists, artists and activists continue to be targets of hate speech. While their experiences differ from those of their male counterparts, there is little legislative protection against gender discrimination.



Cases, Facts, Comments: During the 2nd Cycle of the UPR, Myanmar supported the recommendation from Cyprus to “*Promote gender equality in all aspects of life and combat violence against women.*”⁶ Yet, 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.

During the reporting period, journalist Esther Htusan was attacked online, stalked, threatened with violence and fled Myanmar, after critical reporting on the Rohingya crisis and Daw Aung Sang Suu Kyi.⁷



Recommendation

- Make sincere efforts to combat hate speech that perpetuates discrimination based on gender, race, ethnicity, religion or other defining characteristic.

6 Report of the Working Group on the Universal Periodic Review, UN Human Rights Council, A/HRC/31/13 – Para. 143.55. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/290/35/PDF/G1529035.pdf?OpenElement>

7 Shawn Crispin, “Threats Arrests and Access Denied as Myanmar Backtracks on Press Freedom,” Committee to Protect Journalists (February 2018), <https://cpj.org/blog/2018/02/threats-arrests-and-access-denied-as-myanmar-backt.php>.

Human Rights Defenders



Challenges: Many human rights defenders are targets of hate speech, which is incredibly detrimental to their ability to advocate for the rights and freedoms of others.



Cases, Facts, Comments: During the 2nd Cycle of the UPR, Myanmar supported a recommendation from Chile to “*Ensure the protection of human rights defenders.*”⁸ Yet during the reporting period, severe restrictions have been placed on civil society activities, protests and free speech. One human rights defender describes being called ‘kalar’, a racial slur directed at Muslims and threatened with his life during a youth protest against the ongoing civil war by ultranationalists.⁹ This is one of countless examples of unchecked hate speech.



Recommendation

- 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 social media monitoring projects.

Education



Challenges: Systematic discrimination of ethnic and religious minorities within the education system, re-enforces stereotypes and hate speech. Myanmar’s history should include the experiences and culture of ethnic and religious minorities.



Cases, Facts, Comments: Within the education system textbooks and other educational materials institutionalize hate speech and focus primarily on homogenous Bamar-Buddhist experiences.¹⁰ Yet, 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.



Recommendation

- Review and reform the education system, both formal and informal, to ensure it respects and reflects the principles of non-discrimination, equality and diversity and undertake education reform of the curriculum that celebrates Myanmar’s rich ethnic and religious diversity.

8 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>

9 001-R1-02. Personal interview.

10 Report of the Special Rapporteur on the situation of human rights in Myanmar, UN Human Rights Council, A/HRC/40/68 -Para. 51 (Fortieth Session 25 February-22 March 2019). Available at <https://undocs.org/A/HRC/40/68>.

Elections



Challenges: The elections in November are set to be a tinderbox for hate speech, with ultranationalists railing against ethnic and religious minorities seeking to have their voices heard.



Cases, Facts, Comments: During the 2015 elections voter disenfranchisement of ethnic and religious minorities was rampant, with hundreds of thousands of Muslim voters purged from voter rolls, and Muslim candidates were asked not to run or disqualified on the grounds of discriminatory citizenship laws.¹¹ Myanmar supported a recommendation from the Republic of Korea to “Put forward every effort to ensure that the election process is both free and fair.”¹² Yet, without full participation of Rohingyas, other ethnic and religious minorities, refugees and IDPs, the 2020 elections cannot be claimed a free and fair reflection of Myanmar’s diversity.



Recommendation

- Ensure free, fair and inclusive elections, giving all people equal opportunity to participate and run for office, irrespective of their religion, beliefs and backgrounds.

This factsheet is based on a joint submission made to the UN Universal Periodic Review, 37th Session of the Working Group entitled “Hate Speech and Shrinking Democratic and Civil Society Space” by the following 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.

11 Poppy McPherson, “No vote, no candidates: Myanmar’s Muslims barred from their own election,” The Guardian (Nov. 2, 2015), <https://www.theguardian.com/world/2015/nov/03/no-vote-no-candidates-myanmars-muslims-barred-from-their-own-election>

12 Report of the Working Group on the Universal Periodic Review, UN Human Rights Council, A/HRC/31/13 - Para. 143.101. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/290/35/PDF/G1529035.pdf?OpenElement>.

For further evidence and data, please access the joint stakeholder submission at the following links: <https://bit.ly/3iuW1IF>

For more information, please contact:

Nang Zun Moe, Executive Director, Progressive Voice, info@progressive-voice.org