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Agenda item 4

Resolution adopted by the Human Rights Council on 22 March 2019

40/29. Situation of human rights in Myanmar

The Human Rights Council,

Guided by the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenants on Human Rights, and reaffirming all relevant Human Rights Council and General Assembly resolutions and decisions on the situation of human rights in Myanmar, the most recent being Assembly resolution 73/264 of 22 December 2018 and Council resolutions S-27/1 of 5 December 2017, 37/32 of 9 April 2018 and 39/2 of 27 September 2018,

Welcoming the work and the reports of the Special Rapporteur on the situation of human rights in Myanmar, including the report submitted to the Council at its fortieth session,¹ while deeply regretting the decision of the Government of Myanmar to discontinue cooperation with the Special Rapporteur and to deny her access to the country since January 2018,

Welcoming also the work of the independent international fact-finding mission on Myanmar and the decision by the Human Rights Council in its resolution 39/2 to extend the mandate of the fact-finding mission until the ongoing independent mechanism is operational to ensure that the large and continually increasing amount of evidence of human rights violations and abuses it has collected is fully documented, verified, consolidated and preserved in order for the material to be effectively shared, accessed and used by the mechanism, while deeply regretting that the Government of Myanmar has to date refused cooperation with the fact-finding mission,

Calling for the expeditious entry into operation of the ongoing independent mechanism, established by the Human Rights Council in its resolution 39/2 to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011, and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have, or may in the future have, jurisdiction over these crimes, in accordance with international law,

¹ A/HRC/40/68.



Welcoming the work of the Special Envoy on Myanmar and the opening of her office in Nay Pyi Taw, and encouraging her to pursue her mandate as established by the General Assembly in its resolution 72/248 of 24 December 2017,

Recognizing the ongoing humanitarian efforts and commitments that the Government of Bangladesh has extended to those fleeing human rights violations and abuses in Myanmar, in cooperation with United Nations agencies and the international community,

Recognizing also the complementary and mutually reinforcing work of the various United Nations mandate holders working on Myanmar to improve the situation of human rights in Myanmar,

Noting the ruling of the Pre-Trial Chamber of the International Criminal Court that it may exercise jurisdiction over the alleged deportation of the Rohingya people from Myanmar to Bangladesh and the ongoing preliminary examination conducted by the Prosecutor,

Noting also the establishment of the Independent Commission of Enquiry by the Government of Myanmar on 30 July 2018 as a possible step towards promoting accountability for the gross human rights violations and abuses committed in Rakhine State, provided that the Commission, unlike previous national investigative mechanisms, is able to work with independence, impartiality, transparency and objectivity, including for alleged crimes committed by the armed forces of Myanmar, the Tatmadaw, and delivers tangible results to promote accountability, and encouraging the Commission to cooperate with all relevant United Nations mandate holders, as appropriate,

Recalling that States have the primary responsibility to respect, protect and fulfil human rights, and have the responsibility to comply with their relevant obligations to prosecute those responsible for violations of international law, including international humanitarian law and international human rights law, and for abuses of human rights law, and to provide an effective remedy to any person whose rights have been violated, such as restitution, compensation, rehabilitation, satisfaction and guarantees of non-recurrence, with a view to ending impunity and ensuring accountability,

Reiterating the urgent need to ensure that all those responsible for crimes under international law, including violations and abuses of international human rights law and violations of international humanitarian law, in particular in Rakhine, Kachin and Shan States, are held to account through credible and independent national or international criminal justice mechanisms, while recalling the authority of the Security Council to refer the situation in Myanmar to the International Criminal Court, and inviting Myanmar to become a party to the Rome Statute or to accept the exercise of jurisdiction of the International Criminal Court in accordance with article 12 (3) of the Rome Statute,

Welcoming the four-month unilateral ceasefire in northern and eastern conflict areas declared by the armed forces of Myanmar, the Tatmadaw, on 21 December 2018, and encouraging them to respect the ceasefire fully, to make every effort to reduce tensions on the ground, and to extend the ceasefire in time and scope,

1. *Expresses grave concern* at continuing reports of serious human rights violations and abuses in Myanmar, including sexual and gender-based violence and violations and abuses against children, in particular in Rakhine, Kachin and Shan States, and calls upon the Myanmar authorities, in particular the Myanmar military and security forces, to end immediately violence and all violations of international law in Myanmar, in particular in Rakhine, Kachin and Shan States;

2. *Expresses serious concern* about the recent escalation of violence in Rakhine State between the armed forces of Myanmar, the Tatmadaw, and the Arakan Army, causing loss of life, displacement and further human suffering, and calls for the ceasefire declared unilaterally by the armed forces of Myanmar, the Tatmadaw, for Kachin and Shan States to be extended beyond four months and to cover all parts of the country, including Rakhine State, and calls upon all parties to show restraint, to respect their relevant obligations under international human rights law and international humanitarian law, to ensure the safety and protection of civilians and to show readiness to re-engage in dialogue;

3. *Expresses concern* about reports of new internal and cross-border displacements of civilians due to the ongoing conflict with the Arakan Army in Rakhine State, and similar displacements in the Chin State due to a spillover of the conflict, bearing the risk of further large-scale displacement from these two States towards international borders if the conflict continues;

4. *Calls upon* the Government of Myanmar to ensure the protection of the human rights of all persons in Myanmar and to take all measures necessary to ensure accountability and to end impunity for all violations and abuses of human rights by undertaking a full, transparent and independent investigation into reports of all violations and abuses of international human rights law and violations of international humanitarian law;

5. *Calls for* the expeditious entry into operation of the ongoing independent mechanism established by the Human Rights Council in its resolution 39/2 and steps to secure its effective functioning as soon as possible, and for close cooperation between the mechanism and any future investigations pertaining to human rights violations in Myanmar by national, regional or international courts or tribunals, including by the International Criminal Court, and notes in this regard its important and complementary role;

6. *Calls upon* the Government of Myanmar to cooperate fully with and to grant full, unrestricted and unmonitored access to all United Nations mandate holders and human rights mechanisms, including the Special Rapporteur, the independent international fact-finding mission, the ongoing independent mechanism once operational, relevant United Nations agencies and international and regional human rights bodies to independently monitor the human rights situation, and to ensure that individuals can cooperate without hindrance with the United Nations and other human rights entities, without fear of reprisal, intimidation or attack;

7. *Expresses grave concern* about increased restrictions on humanitarian access in Rakhine State, and calls upon the Government of Myanmar to ensure full respect for international humanitarian law and to allow the full, safe and unhindered access of humanitarian personnel to all government-controlled and non-government-controlled areas and to provide humanitarian assistance, including age- and gender-responsive assistance, as well as the delivery of supplies and equipment, in order to allow such personnel to perform efficiently their task of assisting affected civilian populations, including internally displaced persons, and encourages it to grant access to the diplomatic corps, independent observers and representatives of the national and international independent media, without fear of reprisal;

8. *Welcomes* the role of the Association of Southeast Asian Nations in supporting the Government of Myanmar by dispatching a needs assessment team from its Coordinating Centre for Humanitarian Assistance on Disaster Management to Rakhine State, while stressing its complementary role to the mandate of the United Nations High Commissioner for Refugees, and calls upon the Government of Myanmar to cooperate fully with the Office of the High Commissioner and relevant parties to ensure that all returns are safe, voluntary, dignified, sustainable and in accordance with international law;

9. *Calls upon* the Government of Myanmar to safeguard those who report violations and abuses, and expresses concern about reports of the arrest of individuals exercising those rights, and in this regard encourages the Government to amend restrictive laws and to end restrictions on exercising the rights to the freedoms of religion or belief, expression, association and peaceful assembly, which are essential to ensure a safe and enabling environment for all, notably civil society, human rights defenders, journalists, media workers, lawyers, environmental and land rights activists, in particular encourages the Government to proceed with the reform of the Media Law and to review, repeal or reform contested legislation, including the Official Secrets Act, the Unlawful Associations Act, the Peaceful Assembly and Peaceful Procession Law, articles 66 (d) and 80 (c) of the Telecommunications Act, and articles 500 and 505 (b) of the Penal Code to bring them into line with international human rights law obligations;

10. *Also calls upon* the Government of Myanmar to fulfil its commitment to release unconditionally all remaining political prisoners and to provide for the full

rehabilitation of former political prisoners, and reiterates its call for the immediate and unconditional release of journalists Wa Lone and Kyaw Soe Oo, and of other journalists, media workers, human rights defenders and activists detained, charged and arrested under these restrictive laws, and for the Government to step up without delay action to combat hate speech and incitement to violence and hatred;

11. *Further calls upon* the Government of Myanmar to take the measures necessary to promote the inclusion, rights and dignity of all people living in Myanmar, to address the spread of discrimination and prejudice and to combat the incitement to hatred and violence against ethnic, religious and other minorities by publicly condemning such acts, carrying out education programmes, in accordance with international human rights law and standards, and by promoting interfaith dialogue in cooperation with the international community, and encourages political and religious leaders in the country to work towards national unity through dialogue;

12. *Welcomes* the adoption by the Government of Myanmar of a decent work country programme for the period 2018–2022, and emphasizes the need for the Government to address child and forced labour, including for all ethnic groups, and to introduce amendments to the Labour Organization Law and the Settlement of Labour Disputes Law to promote freedom of association in accordance with international labour standards;

13. *Also welcomes* the joint communiqué issued by the Government of Myanmar and the United Nations on addressing conflict-related sexual violence in Myanmar, and calls for its effective implementation, including by taking action to hold perpetrators of sexual violence to account and ensuring accountability for violations of the rights of women and girls in humanitarian settings, supporting legal reforms and providing training and capacity-building on investigating and prosecuting sexual and gender-based violence for justice and security sector actors, and strengthening service delivery and access to survivors of sexual and gender-based violence;

14. *Stresses* the need to expedite action to credibly address the root causes of the crisis in Rakhine State and also the need to create conditions conducive to the safe, voluntary, dignified and sustainable return of Rohingya refugees and forcibly displaced persons, including through the implementation of the recommendations made by the Advisory Commission on Rakhine State and of the memorandum of understanding signed by the Government of Myanmar, the United Nations Development Programme and the Office of the United Nations High Commissioner for Refugees;

15. *Notes* the steps taken by the Government of Myanmar towards establishing a national strategy for the sustainable closure of camps for internally displaced persons in Myanmar, and emphasizes the need for the Government to consult with United Nations agencies, humanitarian and development actors, and displaced persons to ensure its durable implementation, in accordance with international standards, by guaranteeing the reassertion of those persons' control over their original land and safety and security, freedom of movement, and access to livelihoods and essential services;

16. *Urges* the Government of Myanmar to expedite efforts to eliminate statelessness and the systematic and institutionalized discrimination against members of ethnic and religious minorities, in particular against the Rohingya, by, inter alia, reviewing the 1982 Citizenship Law, which has led to violations of human rights; restoring full citizenship through a transparent, voluntary and accessible procedure and guaranteeing all civil and political rights; recognizing self-identification; and amending or repealing all discriminatory legislation and policies, including discriminatory provisions of the set of "protection of race and religion laws" enacted in 2015;

17. *Reiterates* the importance of the full implementation of all recommendations of the Advisory Commission on Rakhine State to address the root causes of the crisis, including those on access to citizenship, freedom of movement, the elimination of systematic segregation and all forms of discrimination, and inclusive and equal access to health services and education, and birth registration, in full consultation with all ethnic and minority groups and persons in vulnerable situations, as well as civil society;

18. *Expresses concern* about the recent amendments to the Vacant, Fallow and Virgin Lands Management Law, and urges the Government of Myanmar to establish an inclusive land governance framework and to resolve issues of land tenure, in full consultation with affected populations, including ethnic minority communities;

19. *Emphasizes* the need for the Government of Myanmar to cooperate fully with the Government of Bangladesh and with the United Nations, in particular the Office of the United Nations High Commissioner for Refugees, and in consultation with the populations concerned to enable the safe, voluntary, dignified and sustainable return of all refugees and forcibly displaced persons to their places of origin in Myanmar, and to give returnees freedom of movement and unimpeded access to livelihoods, social services, including health services, education and shelter, and to compensate them for all losses;

20. *Welcomes* the establishment by the Government of Myanmar of a committee for the prevention of grave violations against children in armed conflict, and encourages the Government to ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and stresses the need to accelerate the implementation of the action plan to end and prevent the recruitment and use of children by government forces;

21. *Stresses* the importance of an inclusive and comprehensive national political dialogue to ensure the full, effective and meaningful participation of all, particularly ethnic and minority groups and persons in vulnerable situations, as well as civil society, with the objective of achieving lasting peace and reconciliation;

22. *Welcomes* the establishment of the joint committee to implement steps to amend the Constitution on 19 February 2019, and calls upon the Government of Myanmar, including its military and security forces, to take further steps to reform the Constitution and other legislation, and to strengthen democratic institutions, good governance and the rule of law to ensure respect for and to promote universal human rights and fundamental freedoms in accordance with international norms and standards, stresses the need for an independent, impartial and effective judiciary and an independent and self-governing legal profession, and calls upon the Government to ensure full compliance with its obligations under international human rights law and international humanitarian law;

23. *Calls upon* the Government of Myanmar and its institutions to step up efforts to strengthen the respect, protection and fulfilment of human rights and the rule of law, and to advance democratization and inclusive economic and social development towards the achievement of the Sustainable Development Goals, including by reforming the Myanmar National Human Rights Commission in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), and calls upon the international community to support Myanmar in this regard, including through technical assistance and capacity-building programmes;

24. *Encourages* all business enterprises, including transnational corporations and domestic enterprises, to respect human rights in accordance with the Guiding Principles on Business and Human Rights, and calls upon the home States of business enterprises operating in Myanmar to set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations;

25. *Calls upon* the Government of Myanmar to demilitarize mining regions and to ensure the protection of human rights for workers in natural resource extraction and the enforcement of environmental safety standards, and urges the Government to work with relevant stakeholders and affected populations to develop inclusive policies for natural resource management and benefit sharing;

26. *Reiterates* its call upon the Government of Myanmar to act on its commitment to open a country office of the Office of the United Nations High Commissioner for Human Rights, with a full mandate and in accordance with the mandate of the High Commissioner, and encourages the Government to issue a standing invitation to all special procedures of the Human Rights Council;

27. *Decides* to extend the mandate of the Special Rapporteur on the situation of human rights in Myanmar for a further period of one year, requests the Special Rapporteur to present an oral progress report to the Human Rights Council at its forty-first and forty-second sessions and to submit a report to the Third Committee of the General Assembly at its seventy-fourth session and to the Council at its forty-third session, in accordance with its annual programme of work, and invites the Special Rapporteur to continue to monitor the situation of human rights and to measure progress in the implementation of the recommendations made by the Special Rapporteur;

28. *Calls upon* the Government of Myanmar to resume without delay its cooperation with the Special Rapporteur in the exercise of the mandate, including by facilitating further visits and granting unrestricted access throughout the country, and to resume its work with the Special Rapporteur to develop a workplan and time frame for the swift implementation of the proposed joint benchmarks identified by the mandate holder in her previous reports, and for progress in priority areas of technical assistance and capacity-building;

29. *Notes* the initiative of the Secretary-General for a review of the operations of the United Nations in Myanmar, calls for the review to give due consideration to the recommendation made by the Special Rapporteur and the independent international fact-finding mission on conducting a comprehensive, independent inquiry into the involvement of the United Nations in Myanmar since 2011 with a view to establishing whether everything possible to prevent or mitigate the unfolding crises was done, identifying lessons learned and good practices, making recommendations as appropriate, including on accountability, and enabling more effective work in the future, and invites the Secretary-General to present a report on the findings of the review, to be followed by a discussion, to the Human Rights Council at its forty-third session;

30. *Requests* the Secretary-General and the United Nations High Commissioner for Human Rights to provide the independent international fact-finding mission, the Special Rapporteur and the ongoing independent mechanism with the assistance, resources and expertise necessary to enable them to discharge their mandates fully.

*55th meeting
22 March 2019*

[Adopted by a recorded vote of 37 to 3, with 7 abstentions. The voting was as follows:

In favour:

Afghanistan, Argentina, Australia, Austria, Bahamas, Bahrain, Bangladesh, Brazil, Bulgaria, Burkina Faso, Chile, Croatia, Czechia, Denmark, Egypt, Eritrea, Fiji, Hungary, Iceland, Iraq, Italy, Mexico, Nigeria, Pakistan, Peru, Qatar, Rwanda, Saudi Arabia, Slovakia, Somalia, South Africa, Spain, Togo, Tunisia, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay

Against:

China, Cuba, Philippines

Abstaining:

Angola, Cameroon, Democratic Republic of the Congo, India, Japan, Nepal, Senegal]