



**Hate Speech Ignited**

**Understanding  
Hate Speech in Myanmar**



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**October 2020**

## About Us

This report was written based on the information and data collection, monitoring, analytical insights and experiences with hate speech by civil society organizations working to reduce and/or directly affected by hate speech. The research for the report was coordinated by Burma Monitor (Research and Monitoring) and Progressive Voice and written with the assistance of the International Human Rights Clinic at Harvard Law School while it is co-authored by a total 19 organizations.

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16. Reliable Organization
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# E

## Executive Summary

**T**he 2015 elections were historic as they ushered in the first civilian-led government in Myanmar in half a century. What could have been the beginning of a new era of democracy, human rights, and fundamental freedoms for all, instead saw a rising tide of hate speech, ultranationalism, grave human rights violations, and escalating conflicts, which were reminiscent of the hallmarks of repressive military rule in the country for decades. From the 2017 military operations in Rakhine State, to the ongoing armed conflicts in Chin, Kachin, Rakhine, and Shan States, civilians—particularly those from ethnic and religious minority communities—have continued to be subjected to gross human rights violations by the Myanmar military (the *Tatmadaw*) and borne the brunt of state oppression.

Myanmar's human rights record today remains dismal and the persecution of its ethnic and religious minority communities, particularly the Rohingya, has garnered global condemnation and driven international accountability efforts, including at the International Court of Justice and the International Criminal Court. These recent steps toward ending impunity for the *Tatmadaw's* atrocities should have been welcome news in a country that has long struggled for democracy and human rights. Instead, the reaction from inside Myanmar has been one of denial and rejection. The civilian government and the *Tatmadaw* have become more aligned than ever before.

This report examines the role of hate speech, rampant misinformation campaigns, and ultranationalism have played in the resurgence in oppression and human rights violations and the new alignment of the government and military in Myanmar. In analyzing the trends and patterns of hate speech in Myanmar, the report identifies a number of mutually reinforcing constructed narratives aimed at advancing Buddhist-Burman dominance at the expense of ethnic and religious minorities

in the country. The report also catalogs a number of key drivers of hate speech, including the role of ultranationalist groups, the political and business interests of the elite, and socio-economic factors such as poverty, education, and historical divisions; these key drivers help explain the root causes of hate speech as well as how systemic and entrenched narratives of hate and discriminatory structures remain. The report also tracks how online and offline channels have been used to spread hate speech.

The report also highlights the wide-ranging and problematic effects of hate speech, from the distrust, psychological trauma, and violence it has spawned to the targeting of civil society and attacks on freedom of expression, which are so critical to combatting hate speech. The report demonstrates how hate speech and discrimination affects all ethnic and religious minorities in Myanmar, while also highlighting the particularly acute impact on the Rohingya and Muslims, who have become a rallying point for ultranationalists and have been subjected to especially violent targeting as seen in the Rohingya crisis and its aftermath. Finally, the report evaluates whether Myanmar has met human rights standards with regards to hate speech, concluding that the country has failed to do so.

Much of this report's findings stems from the analytical insights and experiences with hate speech of 22 Myanmar civil society organizations ("CSOs"), including Burma Monitor (Research and Monitoring) and Progressive Voice. The International Human Rights Clinic at Harvard Law School ("the Clinic") helped capture the local groups' knowledge, experience, and expertise over the course of a year through interviews and two multi-day convenings held in January and December 2019. More than 35 individuals from CSOs and the Clinic met to discuss hate speech in Myanmar in detail. Many of the CSOs have been or are at risk of being targeted by ultranationalist groups as a result of their work and/or their identity as ethnic and religious minorities.

Despite the risks, local groups felt the need to share their experiences and insights on the history of hate speech in Myanmar, current key narratives of hate, the drivers of that they have observed, and effects they have experienced themselves and in their communities. Indeed, as human rights defenders ("HRDs"), activists, and civil society organizations working to address grave human rights concerns in Myanmar, they have been at the frontlines in efforts to combat hate and its effects.

## Narratives of Hate

The report identifies six constructed hate speech narratives, all of which have been interlinked and reinforce an overarching meta-narrative of Buddhist-Burman dominance:

1. Both ethnic minority groups and non-Buddhists threaten race, religion, and country;
2. Islam in particular poses an imminent threat, as a "violent" foreign religion that seeks to overpower Buddhism in Myanmar;
3. Women are in need of protection and particularly vulnerable to the predatory attacks from Muslim men, seeking to convert them and their children;
4. Against these threats, military strength is essential to protect the nation's borders, unity, and continued existence;
5. A biased and misinformed international community is targeting Myanmar, interfering with its sovereignty; and

6. Those that question or challenge the aforementioned narratives—HRDs, activists, and CSOs—are “race traitors” and foreign agents who are equally dangerous to the nation’s sanctity and security.

## Key Drivers

Hate speech in Myanmar is not simply the product of individual bigotry and intolerance, and the aforementioned narratives were not created in a vacuum. Rather, hate speech has been systematically promoted and disseminated by powerful interests that benefit from the constructed narratives and the resulting division and conflict in society. CSO members identified a number of key drivers of hate speech in Myanmar beyond ultranationalist groups. Those drivers include the military, political leaders, business interests, and religious leaders. While the Rohingya crisis has diminished the military’s stature internationally, the crisis has had the opposite effect domestically, strengthening the military’s legitimacy and allowing its nationalist message to reach people who had fervently opposed the military dictatorship in the past.

Daw Aung San Suu Kyi’s civilian government has also been largely ineffective in addressing the rise of hate speech. It has failed to adequately act against ultranationalist groups and has instead succumbed to military and political pressure to distance itself from the Muslim community. Several CSO members interpreted the government’s inaction as condoning hate speech and, even worse to at times exhibit its own nationalist biases. Statements from various government ministries and departments, including the President and State Counsellor’s Office, highlight for example the depth of officials’ animus and discriminatory attitudes toward the Rohingya community.

## Channels and Forms of Dissemination

With the rapid rise in Internet connectivity, propagators of hate speech have increasingly turned to online channels to disseminate their messages. Facebook, the main social media platform in the country, has played the most significant role. Many in Myanmar perceive information circulated on Facebook as reliable due to limited digital and social media literacy, cheap and easy access to Facebook, and the use of the social media platform by government institutions and major media outlets in Myanmar as their principal communication channel to the public. Relative user anonymity, difficulties associated with monitoring and removing content in a timely manner, and the dominant status of Facebook has made the platform a powerful avenue for the dissemination of hate speech.

Despite diligent monitoring attempts from CSOs and some remedial measures taken by Facebook, significant challenges remain for tracking and stopping hate speech on the platform. One major challenge has been that removing specific posts, accounts, or pages does not necessarily prevent further circulation of the posted content. A second challenge has been technological discrepancies between codes and displayed texts that make content detection more difficult. A third challenge has been ensuring that content moderators hired by Facebook fully understand Myanmar’s political con-

text and are free of personal biases and prejudices. A final challenge has been the increased use of alternative online channels that may be harder to monitor.

Hate speech in Myanmar has also been not limited to the online realms. In addition to spreading hate speech through online channels, ultranationalist groups like 969 and Ma Ba Tha have used more traditional methods to disseminate their message of hate. This “offline culture of hate” has been propagated through large scale nationalist rallies and other media such as DVDs, books, journals, pamphlets, and speaker carts.

## **Impact on Ethnic and Religious Minority Communities and Civil Society**

The impact of hate speech and ultranationalism on minority communities, civil society, and activism within Myanmar has been profound. The narratives of hate mentioned above has fomented distrust and violence. The hostile environment has also further marginalized ethnic and religious minority communities. The Myanmar government’s failure to hold ultranationalist groups accountable for perpetuating hate speech has only exacerbated the problem.

While ultranationalist groups have been permitted to disseminate their messages of hate and operate with impunity, CSOs and HRDs that speak out on behalf of ethnic and religious minority communities have been threatened by both state and non-state actors. They report increased restrictions, diminished civil society space, and crackdowns that have made it more difficult for activists to carry out their work. Obstacles have included physical violence, threats to their security, and government surveillance. Furthermore, activists and HRDs who have been critical of the government and the military have been arrested and prosecuted using a myriad of laws designed to silence dissent.

Women activists, journalists, human rights defenders, politicians, and leaders in minority communities have been particularly vulnerable to gendered attacks. These attacks include threats of physical and sexual violence, sexual harassment online, lurid sexist language, the posting of demeaning imagery and morphed sexual images, and the sharing of personal information online without their consent. Overall, the increasingly antagonistic and restrictive environment for civil society actors has diminished hope and discouraged activism. CSOs report for example self-censoring what issues they cover and report on.

## **An International Human Rights Approach to Addressing Hate Speech and Protecting Free Expression in Myanmar**

International human rights law and standards provide guidance on a way forward for Myanmar that would combat hate speech while protecting freedom of expression and civil society space. They offer multi-pronged approaches that combat hate speech in a comprehensive way that include criminal sanctions, civil and administrative remedies, alongside non-legal tools to tackle root causes of intolerance.

Despite lacking a universally recognized definition for “hate speech,” human rights frameworks make clear that incitement to discrimination, hostility, violence, or genocide as examples of “illegal types of expression.” Article III(c) of the Genocide Convention states that “direct and public incitement to commit genocide” prohibits and criminalizes the most extreme form of hate speech. As a contracting party, Myanmar is obligated to uphold its duty to prohibit these types of hate speech, prevent and punish genocide.

Given that freedom of expression is a fundamental right, however, any criminalization of speech must meet a high threshold. The Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence lays out six factors on whether particular speech may rise to the level of incitement warranting criminalization: context, speaker, intent, content and form, extent of the speech and likelihood/imminence of action against the targeted group. One only needs to examine the examples that has been provided in this report and elsewhere to see that hate speech in Myanmar has at times taken this most virulent form. Some hate speech has been designed to provoke, incite violence, discrimination and hatred that has in turn fueled violations of its ethnic and religious minority communities’ human rights and in the case of the Rohingya, it has enabled genocidal violence and atrocity crimes. Unfortunately, not a single domestic case has been brought against known disseminators of such hate speech. Instead, Myanmar’s domestic laws have been weaponized against HRDs and activists’ legitimate forms of speech.

Human rights standards require that any restriction of legitimate expression must meet all three of the following conditions: 1) legality, 2) legitimacy, and 3) necessity and proportionality with the onus upon the state to justify the restriction rather than the individual claiming their right to expression. The law must be sufficiently precise to enable someone to regulate his or her conduct. It also requires that the law must be subject to regular legislative or administrative processes and should not confer unlimited discretion to the authorities. Ultimately in Myanmar, the broad laws, their misapplication, the complete lack of judicial independence, and abuse of state power have all infringed on the right to freedom of expression of numerous CSOs, HRDs, the media, and communities. While state and non-state actors have been able to spread hate speech, activists must contend with: lengthy pre-trial detentions, protracted long trials without bail, expensive monetary fines, being charged across different townships for one act of protest, and having to serve consecutive sentences as opposed to concurrent ones. Myanmar needs to rectify these rights violations and not subject those expressing legitimate forms of speech to criminal, civil or administrative sanctions.

## Corporations and Hate Speech

Under international law and standards, Myanmar also has an obligation to protect civilians from third party harms, including those involving corporations and hate speech. Myanmar has not done so. Despite Myanmar’s failure to regulate corporations, however, human rights standards state that corporations should take steps themselves to prevent contributing to human rights violations. Furthermore, companies who may be complicit in genocide or other gross human rights violations could

be held accountable in some jurisdictions if they have contributed to abuses. The international human rights community has already noted the role of social media corporations in human rights violations in Myanmar with the FFM directing recommendations at Facebook and other businesses active in the country for their failure to prevent the occurrence of hate speech on their platforms.

Facebook states that it is: increasing Myanmar content reviewers, improving proactive detection of hate speech and taking more aggressive action on networks of accounts. Only time will tell whether such measures prove to be effective at curbing hate speech, especially ahead of the 2020 elections, given their potential as a flashpoint for further incitement and offline violence. Regardless, Facebook should apply the UN Guiding Principles on Business and Human Rights, integrate human rights into their platform, and ensure that it: (a) conducts periodic reviews of the impact of the company products on human rights; (b) avoids adverse human rights impacts and prevent or mitigate those that arise; and (c) implements due diligence processes to identify, prevent, mitigate, and account for how they address their impacts on human rights and have a process for remediating harm. Facebook needs to hold meaningful, sustainable, and inclusive consultations with CSOs and HRDs, especially with ethnic and religious minorities on the way forward, to contribute to in-country digital literacy efforts, and be vocal in their zero tolerance for incitement of violence and users violating their community standards.

## Recommendations

Local civil society groups in Myanmar have already taken steps to monitor, document, and counter the rise of hate speech and ultranationalism, often at great risks to themselves. It is essential that the government of Myanmar, the military, international community, and social media companies support these efforts and combat hate speech effectively to prevent further violence and persecution. Myanmar CSOs, including Burma Monitor (Research and Monitoring) and Progressive Voice, and the International Human Rights Clinic at Harvard Law School call on:

### To the Myanmar Government

#### End Impunity and Protect Freedom of Expression

- Prosecute state and non-state perpetrators that incite violence against ethnic and religious minorities;
- End selective application of laws that chill speech and silence CSOs, HRDs, and the media, including dropping all charges against and releasing HRDs, activists, journalists, students, and other political prisoners that have been convicted under Myanmar's laws criminalizing freedom of expression;
- 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;

- Regulate corporations that may be contributing to hate speech or its dissemination;
- Promote and resource policy initiatives consistent with human rights frameworks, such as the Rabat Plan of Action to combat hate speech, including education, intracultural dialogue, condemnation of incidents of hate, and creating a healthy media environment;
- Cooperate with various international accountability mechanisms; and
- Protect ethnic and religious minority civilians and end grave human rights violations and atrocities.

## Law Reform

- Amend or repeal laws that restrict freedom of expression to be consistent with human rights standards, including but not limited to the Telecommunications Law, the News Media Law, the Printing and Publication Law, the Electronic Transactions Law, the Peaceful Assembly and Peaceful Procession Law, the Law Protecting the Privacy and Security of Citizens, the Official Secrets Act, and the Penal Code—especially:
  - Sections 66(d) and 68(a) of the Telecommunications Law;
  - Sections 19 and 20 of the Peaceful Assembly and Peaceful Procession Law;
  - Articles 124(a), 295(a), 499, 500, and 505(b) of the Penal Code;
  - Section 33 and 34(d) of the Electronic Transactions Law;
- Enact anti-discrimination laws to protect and promote the human rights of ethnic and religious minorities;
- 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; and
- Ensure that any judicial or quasi-judicial determination regarding restrictions on freedom of speech is made by an independent adjudicator; if this requires inviting international experts to assist with determinations given the deficiencies with the rule of law in Myanmar, the government should request assistance from the international community to help with such matters.

## Counter Hate Speech in the Lead Up to the 2020 Elections

- Ensure that the Union Election Commission prohibits all political parties from spreading hate speech and misinformation both online and offline;
- Enact a zero-tolerance policy for campaign content (including but not limited to: speeches, slogans, statements, and pamphlets) that are discriminatory and could incite violence; and
- Monitor hate speech and set up an early warning system for potential election violence targeting ethnic and religious minorities.

## To the Myanmar Military

- Adhere to the above recommendations made to the government of Myanmar;
- Place any military personnel implicated in incidents of hate speech, including incitement of discrimination, hostility, violence, and genocide on immediate administrative leave until an independent investigation can be completed; cooperate with all such investigations and support enforcement of any outcomes that result;
- Stop contributing to the circulation of hate speech that target ethnic and religious minorities and promote armed conflict in Myanmar;
- Stop military operations against ethnic and religious minorities, and end grave human rights violations and atrocities; and
- Stop endorsing or supporting ultranationalist groups that perpetuate narratives of hate.

## To Civil Society

- Monitor and counter hate speech by state and non-state actors;
- Raise public awareness to combat hate speech by highlighting its harmful narratives, its drivers and root causes, how such speech is disseminated, and the impact of such speech on ethnic and religious minority communities and society more generally; and
- Hold consultations and trainings on the impact of hate speech in Myanmar and support efforts to promote tolerance and peaceful coexistence.

## To the International Community

- Urge the Myanmar government and military to adopt and implement the above recommendations;
- Support local CSOs and HRDs who work to monitor and counter the harms of hate speech and ultranationalism; and
- Implement the recommendations made by UN Independent International Fact-Finding Mission on Myanmar in its reports in 2018 and 2019; and
- Support ongoing international accountability efforts, including at the International Court of Justice and International Criminal Court for gross human rights violations and atrocities.

## To Social Media Platforms, Telecommunication Companies, and Other Businesses Operating in Myanmar

- Ensure business practices in Myanmar adhere to human rights standards, including the UN Guiding Principles on Business and Human Rights, particularly with regards to avoiding, mitigating, and addressing adverse human rights impacts;
- Make sure that business operations/products do not facilitate hate speech or incitement of violence;
- Consider the adverse human rights impacts that may directly or indirectly result from operating in Myanmar and conduct due diligence to mitigate any risks; if operations cannot ensure adequate human rights protections, withdraw operations from the country to ensure they do not contribute to further harm and avoid being complicit in abuses;
- Rigorously and independently monitor speech that calls for or incites unlawful activity in accordance with international laws and standards, preserving digital copies of such content for the eventual use by domestic or international accountability mechanisms, including the Independent Investigative Mechanism for Myanmar, International Court of Justice, and International Criminal Court;
- Provide digital literacy training for Myanmar users and consult with local CSOs and HRDs, particularly with those advocating for protection of human rights and monitoring hate speech, to combat and respond effectively to new hate speech trends;
- Provide CSOs assistance in countering efforts aimed at de-escalating violence and hate speech;
- Publish company policies and standards in easy-to-read formats and/or short videos in local languages;
- Be transparent on how content is flagged for removal from online platforms, including regularly publicly available Myanmar-specific data on removed content and distribution trends of online hate speech that is readily available in Burmese; and
- Hire more content moderators who are fluent in Burmese and other ethnic languages that possess an understanding of hate speech and human rights, and are committed to protecting ethnic and religious minorities.

## List of Acronyms and Terms

969 .....	Buddhist nationalist movement
CEDAW.....	The Convention on the Elimination of all Forms of Discrimination Against Women
CRC .....	Convention on the Rights of the Child
CSO .....	Civil society organization
EAO .....	Ethnic armed organization
IFM .....	Independent International Fact-Finding Mission on Myanmar
FGD.....	Focus group discussion
HRD.....	Human rights defender
ICC.....	International Criminal Court
ICJ .....	International Court of Justice
ICCPR.....	The International Covenant on Civil and Political Rights
ICERD .....	International Convention on the Elimination of All Forms of Racial Discrimination
IIMM .....	Independent Investigative Mechanism for Myanmar
<i>Ma Ba Tha</i> .....	Association for the Protection of Race and Religion
NLD .....	National League for Democracy
<i>Tatmadaw</i> .....	Myanmar military
UN .....	United Nations
USDP .....	Union Solidarity and Development Party



# **Objective, Scope, and Methodology**

## A. Objectives and Scope

**T**his report has a number of objectives. First, it seeks to analyze the root causes of hate speech in Myanmar that has been targeting ethnic and religious minorities and eroding their fundamental rights and freedoms. The report examines the role of a variety of players in perpetuating hate speech, including state and non-states actors and in particular, the military and ultranationalist groups and individuals. Second, the report unpacks the effects of hate speech, including its relationship to human rights defenders (“HRDs”) and activists, and the shrinking space for civil society. The report also analyzes the impact on communities and individuals, from the psychological toll of hate speech to the physical violence it has fueled to the divisiveness it has sowed in society generally. Third, the report analyzes the Myanmar government’s use of various laws to curb dissent rather than protect ethnic and religious minorities, HRDs, and activists from hate speech. Finally, the report outlines international human rights standards with regards to hate speech, and assesses how Myanmar and businesses should address hate speech, including by instituting prohibitions on incitement but also pursuing a variety of tools to counter the root causes of such speech.

The report consists of five parts: this part (Part I) describes the objectives, scope, and methodology of the report. Part II provides a history of hate speech in Myanmar and the current context in the lead up to the forthcoming November 2020 elections. Part III presents the main analysis of the report, including constructed narratives of hate, the drivers of such speech, and the impacts of the rise of hate speech. Part IV covers the international human rights framework and outlines Myanmar’s obligations to prohibit certain forms of hate speech and safeguard freedom of expression and civil society space. This section also presents the human rights standards that apply to companies operating in Myanmar, including social media corporations like Facebook. Finally, Part V concludes with recommendations for various stakeholders, including steps to be taken in the lead up to the 2020 elections when hate speech and misinformation around race and religion is likely to increase, which could result in further violence against Myanmar’s ethnic and religious minority communities.

## B. Methodology

More than 35 individuals from civil society organizations (CSOs) and the Clinic met to discuss hate speech in Myanmar in detail. Many of the CSOs have been or are at risk of targeting by ultranationalist groups as a result of their work and/or their identity as ethnic and religious minorities. This report presents the analytical insights and experiences with hate speech of 22 Myanmar CSOs, including Burma Monitor (Research and Monitoring) and Progressive Voice. The International Human Rights Clinic at Harvard Law School (“the Clinic”) helped capture the local groups’ knowledge, experience, and expertise through interviews and two multi-day convenings held in January and December 2019.

At the first convening in January 2019, the organizations developed a context-specific definition of “hate speech,” presented in Part I.C below. The organizations also mapped out key issues and participated in focus group discussions (“FGDs”) on the key narratives, drivers of hate speech, the channels and forms of dissemination and impact on ethnic and religious minority communities and civil

society. The groups held a second convening in December 2019 to explore new trends and patterns around hate speech that had emerged during the year. The report's analysis captures the discussions from the two convenings along with findings from twenty in-depth, semi-structured interviews with activists and HRDs from Myanmar. These interviews took place at the convenings and in the months following them.

Given the sensitive nature of this topic, steps have been taken to ensure the confidentiality, security, and anonymity of the interviewees. Interviewers conducted the interviews in secure locations to help ensure the participants felt as comfortable as possible. Data security protocols have also been put in place to help protect information as well as the identities of those who were interviewed. Before every interview, the interviewer explained the objectives of the report, assured anonymity, and obtained verbal consent from the interviewee to participate. Following each interview, the interviewer allocated time to answer any questions and to listen to comments from the interviewee.

## C. Definition of Hate Speech for the Purposes of This Report

There is no agreed upon definition of hate speech under international law.<sup>1</sup> The ways in which people experience or encounter hate speech may be expansive and are affected by the context in which they live.<sup>2</sup> Hate speech definitions can cover a wide range of speech from incitement to violence and genocide to demeaning references, harmful stereotypes, revised historical accounts, and narratives that attack a group or individual's identity. Contextualizing a definition is thus important.

With this in mind, to make the analysis most relevant to Myanmar, this report employs a definition of hate speech generated by the 22 CSOs who participated in the January 2019 convening. The report uses this tailored definition to analyze the narratives, identify key drivers, and document the impact that such speech has had on ethnic and religious minorities, CSOs, HRDs, and civil society space in Myanmar. Based on their diverse experience, expertise, and collective identities, the CSOs generated a contextualized definition of hate speech that encompasses how hate speech in Myanmar occurs and what protected characteristics it targets most frequently. As such, for the purposes of this report, hate speech means:

**Hate Speech:** Violent or dehumanizing speech that calls for exclusion or segregation of, incitement to violence against, or discrimination against individuals or groups based on their race, ethnicity, national origin, religious or political affiliation, sexual orientation, caste, sex, gender, gender identity, or disability.

1 Ibid., para. 1; United Nations, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, A/74/486 (October 9, 2019), para. 1; United Nations, Strategy and Plan of Action on Hate Speech (June 18, 2019), para. 2; United Nations, Promotion and protection of the right to freedom of opinion and expression, A/67/357 (September 2012), para. 44. For a full discussion of hate speech under international law, see *infra* Part IV.

2 See generally Mary Matsuda, "Public Response to Racist Speech: Considering the Victim's Story," *Michigan Law Review* 87, no. 8 (1989): 2320-81.



# 2

## **Background: History of Hate Speech in Myanmar**

**T**wo historical and cultural contexts are important for understanding the recent rise of hate speech in Myanmar: (1) the colonial and military governments' entrenchment of divisions among different ethnic and religious groups; and (2) ultranationalist groups' and the military's exploitation of race, religion, and identity politics as Myanmar has sought to transition to civilian rule. In addition, in order to analyze ongoing hate speech, it is critical to understand the current political context leading up to the 2020 elections.

## A. Historical Entrenchment of Division

Racial and religious identifications are largely synonymous with social identity and organization in contemporary Myanmar. For example, they are commonplace in moments of personal introduction,<sup>3</sup> and national identity cards specify the race and religion of the cardholder in addition to name, identification number, and date of birth.<sup>4</sup> The fixation on categorizing and enumerating race and religion partly stems from the diversity of self-identified races and religions in contemporary Myanmar society.<sup>5</sup> Myanmar is one of the most ethnically diverse countries in Southeast Asia.<sup>6</sup> At present, the government officially recognizes 135 different ethnic groups under eight major "national ethnic races;"<sup>7</sup> the official list excludes the so-called "alien races," including Hokkien and Hakka Chinese, Tamil, Punjabi, and Rohingya.<sup>8</sup>

In terms of religion, 89 percent of Myanmar's 51.4 million people are Theravada Buddhists according to official government statistics.<sup>9</sup> Christians and Muslims make up approximately four percent each while the remaining three percent practice indigenous Animist *Nats* or other religions, including Hinduism and Bahai.<sup>10</sup> Given critiques of the recent census in Myanmar, these estimates from the Ministry of Labour, Immigration and Population likely underestimate the actual figures of religious minorities.<sup>11</sup>

Recent scholarship suggests that the dominance of race and religion as fundamental social categories is a relatively recent phenomenon in Myanmar's history.<sup>12</sup> According to one scholar, race as a social category was not as prominent in pre-colonial times.<sup>13</sup> Other social markers such as land ownership, connections to the royal authority, and class were more important.<sup>14</sup> However, when the British arrived in 1824, they introduced dramatic changes to the country's social dynamics.<sup>15</sup>

3 Charles Carstens, "Religion," in *Routledge Handbook of Contemporary Myanmar*, eds. Adam Simpson et al. (Routledge, 2018), 126-7.

4 *Ibid.*, 128.

5 *Ibid.*

6 Nehginpao Kipgen, *Myanmar: A Political History* (Oxford University Press, 2016), 11.

7 Tom Kramer, "Ethnic Conflict and Land Rights," *Social Research* 82, no. 2 (2015): 355-57.

8 Violet Cho, "Ethnicity and Identity," in *Routledge Handbook*, 45.

9 Myanmar Ministry of Labour, Immigration and Population, *Population and Housing Census of Myanmar: Union Report* (February 2019), <http://www.dop.gov.mm/en/publication-category/census>.

10 *Ibid.*

11 International Crisis Group, "Counting the Costs: Myanmar's Problematic Census," *Crisis Group Asia Briefing*, no. 144 (15 May 2014), 18, <https://www.crisisgroup.org/asia/south-east-asia/myanmar/counting-costs-myanmar-s-problematic-census>.

12 Cho, 43.

13 *Ibid.*

14 *Ibid.*

15 *Ibid.*

**Figure 1.** List of national ethnic races and foreign races according to the Ministry of Labour, Immigration and Population. The box lists categories of citizens from Rakhine State, notably excluding the Rohingya (obtained from interviewee in January 2020).

The image shows a document with Burmese text. At the top, there are headings in Burmese. The main body of the document consists of several columns of text, likely representing different ethnic groups. At the bottom, there is a red rectangular box with a black arrow pointing to it from the right. The text inside the box is: Rakhine-Chittagong, Burmese-Muslims, Rakhine-Kaman, Myudu, and Burmese-Indian.

## Colonial Legacy

The legacy of British colonialism has played an important role in defining and reinforcing the divisions of ethnic and religious identity in Myanmar. British rule lasted from 1824 to 1948, and the colonial project included “ethnicizing” differences.<sup>16</sup> The British classified their subjects along ethnic lines in an effort to make an alien population “knowable and therefore governable.”<sup>17</sup>

Colonial officials performed studies that made broad taxonomic conclusions on entire groups of people.<sup>18</sup> For example, a 1906 study of the Palaung Palaung, who also self-identify as Ta’ang, people states:

The Palaung is peaceful and law-abiding. More reserved and suspicious than the Burman and the Shan, he is capable nevertheless on occasions of expanding. Industrious up to a certain point, he becomes, when the limit is passed, hopelessly supine and inert. He has the reputation of being niggardly and extortionate.<sup>19</sup>

16 Ibid., 44.

17 Ibid.

18 Ibid., 45.

19 Ibid.

These types of studies served to create and solidify stereotypes and essentialize ethnicity.<sup>20</sup> Subsequently, colonial policies spread these stereotypes and sowed seeds of division, many of which manifest themselves still today. The British recruited members of the ethnic minority groups into the British-Burma Army and generally excluded ethnic majority Burmans, also called *Bamars*, from its ranks.<sup>21</sup> The *Bamar* nationalists rose up against their colonizers, and ethnic minority soldiers from the British-Burma Army crushed these anti-colonial rebellions (1930-1932) also known as the *Sayar San* Rebellions, which furthered inter-ethnic tensions.<sup>22</sup> For example, *Bamar* nationalist movements like the *Dobama Asiayone* (Our Burma Association) began propagating quantifiers of “belonging”: to be a “*dobama*” was to be both Buddhist and *Bamar*, an identity that excluded ethnic minorities on both ethnic and religious grounds; ethnic minorities and immigrants, in contrast, became associated with “*thudo bama*” (the Colonials’ Burma).<sup>23</sup>

In addition, British colonial discourse made broad and problematic conclusions about religious groups in Burma.<sup>24</sup> Christianity would have received favorable treatment by the British, while other religions, including Buddhism and animism, were disfavored.<sup>25</sup> Furthermore, the British tended to “represent Islam as something that was not a natural feature of life in Burma,” which had the effect of “differentiating Islam from things Burmese.”<sup>26</sup> Ethnographic studies described Myanmar as a place with “one dominant population and many minor ethnic groups,” and Muslims were less visible and not as recognized in colonial Burma.<sup>27</sup> The result of colonial policies was that “Muslims were neither recognized as a distinctive community nor were they understood as intrinsically Burmese,” despite the fact that many Muslims spoke Burmese and considered themselves Burman.<sup>28</sup>

## Military Rule Post-independence

Protection of minority rights and autonomy were key guarantees of the 1947 *Panglong* Agreement, which aimed to build national unity between *Bamars* and other ethnic groups.<sup>29</sup> Proposed by one of Myanmar’s independence heroes, General Aung San, *Panglong Agreement* was to be the foundation for a federal, democratic Myanmar.<sup>30</sup> However, General Aung San and members of his interim government were assassinated in 1947 before the aspirations of *Panglong* were fully realized.<sup>31</sup>

Myanmar gained independence the following year, and Prime Minister U Nu pursued Buddhist nationalist policies in the name of re-establishing Myanmar as it was before British colonization.<sup>32</sup> In

20 Ibid.

21 Kipgen, 18.

22 John S. Furnivall, *Colonial Policy and Practice: A Comparative Study of Burma and Netherland India* (Cambridge: Cambridge University Press, 1948).

23 Ibid.

24 Note, however, that there is also evidence of persecution of Muslims during the pre-colonial era.

25 Donald Smith, *Religion and Politics in Burma* (Princeton, NJ: Princeton University Press, 1965).

26 Stephen Keck, “Reconstructing Trajectories of Islam in British Burma,” in *Islam and the State in Myanmar: Muslim-Buddhist Relations and the Politics of Belonging*, ed. Melissa Crouch (2016), 39-40.

27 Ibid., 40.

28 Ibid., 67.

29 Thant Myint-U, *The Making of Modern Burma* (Cambridge: Cambridge University Press, 2001), 14.

30 Ibid.

31 Josef Silverstein, *The Political Legacy of Aung San* (New York: Cornell University Press, 1972), 13.

32 Mikael Gravers, *Nationalism as Political Paranoia in Burma* (Richmond: Curzon Press, 1999), 42.

1961, the government installed Buddhism as the state religion, a move that alienated non-Buddhist ethnic groups.<sup>33</sup> U Nu opposed “minority rights,” viewing them as remnants of British imperialism that undermined “national unity.”<sup>34</sup> For U Nu’s central government, national unity meant assimilating the population under the Buddhist *Bamar* mono-ethnic, national identity.<sup>35</sup>

When the central government failed to honor its promises of granting autonomy and protecting minority rights, some ethnic armed organizations (“EAOs”) rebelled, with some seeking secession.<sup>36</sup> The EAOs quest for autonomy and self-determination in a federal, democratic Myanmar continues to this very day with many engaged in ongoing armed struggle against the Myanmar military, known as the *Tatmadaw*. The *Tatmadaw* led by General Ne Win was initially brought in by U Nu in 1958 to form a temporary caretaker government to maintain internal peace and restore order.<sup>37</sup>

In 1962, General Ne Win led a coup and permanently deposed the civilian government and created a military junta to rule the country.<sup>38</sup> The junta dismantled the parliament and the judiciary, established one-party rule, and nationalized the economy.<sup>39</sup> The country’s human rights record became marred by systemic abuse and violations spanning the spectrum of civil, political, economic, social, and cultural rights.<sup>40</sup>

Threats of “ethnic uprising” and the need to prevent the “disintegration of the union” were utilized by the military to justify authoritarianism.<sup>41</sup> Instead of embracing Myanmar’s diversity, the *Tatmadaw*’s nation-building has revolved around creating a national identity based on excluding “others” and removing influences perceived to be alien.<sup>42</sup> The military junta, like the British colonialists, engaged in ethnological projects about ethnic communities.<sup>43</sup> A 1967 study, for instance, wrote that the Karen people “love war and fighting and have a tradition of taking revenge,” which it argued accounted for their underdevelopment.<sup>44</sup> The military held themselves out as “saviors” who were keeping Myanmar whole, battling against both internal disruptors like the EAOs and external foreign forces seeking to destroy the country.<sup>45</sup>

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33 Ibid., 57.

34 Ibid., 55.

35 Ibid.

36 Bertil Lintner, *Land of Jade: A Journey Through Insurgent Burma* (Edinburgh: Kiscadale Publications, 1990), 167.

37 Gravers, 55.

38 Ibid.

39 Ibid., 22.

40 Ibid.

41 Cho, 43.

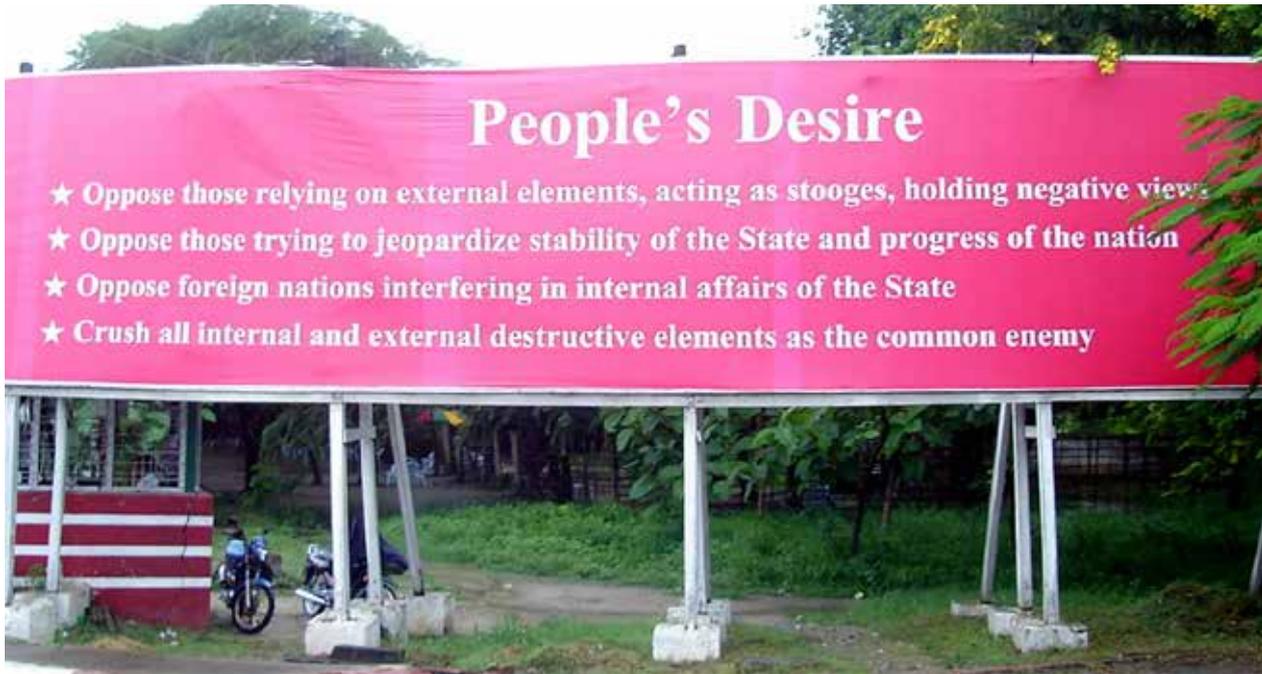
42 Ibid., 46; Keck, 67.

43 Cho, 47.

44 Ibid.

45 Gravers, 65.

**Figure 2.** Myanmar military propaganda displayed around Myanmar (circa 1990s).



Among the ethnic communities that the *Tatmadaw* vilified, Muslim minorities, especially the Rohingya in Rakhine State, faced particularly harsh attacks. Deemed unassimilable and external to Burmese society, the Rohingya became convenient targets for exclusion. Ultranationalists seeking to exclude the Rohingya as an ethnic minority have often suggested that they are not *taiyingtha* or “sons of the native land,” an expression that refers to ethnic groups deemed “indigenous” to Myanmar.<sup>46</sup> To be included as a *taiyingtha*, a group must prove that it has existed in Myanmar prior to 1823, the date of the first British occupation.<sup>47</sup> Despite their presence in Rakhine State since at least the late eighteenth century, the Rohingya have been deemed as a non-*taiyingtha* group of foreign interlopers, brought into Myanmar by the British colonialists and denied citizenship rights under the 1982 Myanmar Citizenship Law.<sup>48</sup>

For the rulers of Myanmar, Buddhist *Bamar* cultural identity thus became synonymous with the Myanmar national identity, permeating civil, political, and cultural life.<sup>49</sup> From the education system to citizenship laws, state policies were designed to maintain Buddhist *Bamar* privilege and perpetuate systemic discrimination and distrust of “others.”<sup>50</sup> Under the military government, information was closely controlled, and a nationwide propaganda machine controlled public discussion.<sup>51</sup> For example, the state-controlled media outlets such as the “New Light of Myanmar” celebrated the *Tatmadaw*’s military glories against enemies besieging the country.<sup>52</sup> As propaganda, these same sources failed to mention the *Tatmadaw*’s excessive use of force, extrajudicial killings, enforced disappearanc-

46 Nick Cheesman, “How in Myanmar ‘National Races’ Came to Surpass Citizenship and Exclude Rohingya,” *Journal of Contemporary* 7, no. 3 (2017): 461-83.

47 Ibid.

48 Keck, 67-68.

49 Gravers, 22-25.

50 Ibid.

51 Ibid.

52 Ibid.

es, sexual violence, torture, arbitrary detention, forced labor, land confiscation, internal displacement, and mass expulsion of ethnic and religious minorities.<sup>53</sup> Citizens were instead warned to be vigilant against the threats that sought to destroy Myanmar.<sup>54</sup> As the junta closed off Myanmar for decades and attempted to quell the “enemy within,” the military maintained its power through polices and rhetoric that built fear, paranoia, and hate in the society.<sup>55</sup>

## B. Exploiting Race and Religion During Myanmar’s Transition

Home to the world’s longest running civil war, Myanmar experienced little peace during its 50 years of isolated, military rule.<sup>56</sup> In 2010, the *Tatmadaw* handed over power to a quasi-civilian government, led by the military-backed Union Solidarity and Development Party (“USDP”).<sup>57</sup> USDP and President Thein Sein carried out a series of reforms during this transitional period, relaxing censorship and permitting greater political and civil society space. The USDP also freed political prisoners including Daw Aung San Suu Kyi, General Aung San’s daughter.<sup>58</sup> Her party, the National League for Democracy (“NLD”), was permitted to run for the 2012 by-elections.<sup>59</sup> While the NLD had won the 1990 elections, the military had never honored those results and instead imprisoned NLD members, including Daw Aung San Suu Kyi, who was placed under house arrest. The liberalization efforts resulted in the lifting of foreign sanctions and restoration of diplomatic ties.<sup>60</sup>

The transitional period’s reforms, however, did not bring peace nor end human rights abuses by the *Tatmadaw* in ethnic areas like Kachin, Karen, Rakhine, Chin, and Shan States. Systemic problems including impunity for gross human rights violations and unchecked military power continued.<sup>61</sup> The military-drafted 2008 Constitution has also ensured that active and retired military officers maintain control over all branches of government—from Parliament (where 25 percent of the seats in the upper and lower houses are reserved for unelected military members) to the civil service and the judiciary.<sup>62</sup> Furthermore, under the Constitution, key ministerial posts (Defence, Border Affairs, and Home Affairs) as well as the entire security apparatus, including the National Defence and Security Council, have remained under military control.<sup>63</sup> Section 20(b) of the Constitution states that the *Tatmadaw* has the “right to independently administer and adjudicate all affairs of the armed forces,” allowing the military to operate with complete independence without civilian oversight.<sup>64</sup>

53 Ibid.

54 Ibid.

55 Ibid.

56 Lex Rieffel, “Peace and War in Myanmar,” The Brookings Institute, December 6, 2019, <https://www.brookings.edu/blog/order-from-chaos/2019/12/06/peace-and-war-in-myanmar/>.

57 Ibid.

58 Ibid.

59 Ibid.

60 Ibid.

61 Shayna Bauchner, “In Myanmar, Democracy’s Dead End: Constitutional Vote Spotlights Transition’s Failed Reforms,” Human Rights Watch, March 10, 2020, <https://www.hrw.org/news/2020/03/10/myanmar-democracys-dead-end>.

62 Ibid.

63 Marco Bünte and Björn Dressel, *Politics and Constitutions in Southeast Asia* (Routledge, 2016), 124-25.

64 Ibid., 124.

Finally, the government and military's exclusionary identity politics around race and religion from the previous eras remained dominant. In many regards, race and religion took center stage during the transitional period. Of particular note during this time was the rise of social media, the growth of high-profile ultranationalist groups that exploited racial and religious differences, and the failure of prominent political leaders to stand up for the rights of ethnic and religious minorities.<sup>65</sup>

## The Rise of Social Media Since 2010 and Pathways to Violence

For decades, information was strictly controlled under military rule. Such restrictions continued into the new millennium. For example, SIM cards were sold at an artificially high price, effectively limiting access to the Internet and mobile phones to “members of associates of the state apparatus unlikely to challenge the status quo.”<sup>66</sup> In 2011, Myanmar had the lowest mobile penetration in the world at 2.6 percent,<sup>67</sup> and an Internet penetration rate of 1 percent.<sup>68</sup>

Access to information began to change with the liberalization of the telecommunications sector in June 2014, when the government granted operator licenses to two international companies.<sup>69</sup> The subsequent proliferation of mobile phone shops selling low-cost web-enabled phones led to an unprecedented increase in the number of smartphone users in the country.<sup>70</sup> In just two years, over 43 million SIM cards were sold, and around half regularly used Internet data.<sup>71</sup> Facebook benefited the most from the telecommunications boom. Many people saw Facebook as an “all-in-one solution” that provided messaging, news, and entertainment.<sup>72</sup> Catching on to the trend, mobile phone operators began to offer deals enabling users to use Facebook without data charges.<sup>73</sup> For many mobile phone users in Myanmar, Facebook became synonymous with the Internet.<sup>74</sup>

The rise of Facebook in Myanmar coincided with the abolition of direct media censorship in August 2012.<sup>75</sup> While these changes opened up the country to new sources of information and more free press than Myanmar had seen in decades, the new atmosphere also enabled ultranationalist groups—including monks affiliated with the 969 Movement (“969”) like U Wirathu, and *Ma Ba Tha*, the Association for the Protection of Race and Religion—to stoke fear and incite violence against ethnic and religious minorities.<sup>76</sup> Central to these xenophobic campaigns has been the idea of a Myanmar reserved for Buddhist *Bamars*.<sup>77</sup> The ultranationalist movement in Myanmar incorporated decades

65 Timothy McLaughlin, “How Facebook’s Rise Fueled Chaos and Confusion in Myanmar,” *Wired*, July 6, 2018, <https://www.wired.com/story/how-facebooks-rise-fueled-chaos-and-confusion-in-myanmar/>.

66 Gerard McCarthy, *Cyber-Spaces*, in *Routledge Handbook*, 92.

67 *Ibid.*, 93.

68 Freedom House, *Burma: Freedom on the Net* (2012), <https://freedomhouse.org/report/freedom-net/2012/burma>. See generally Steve Stecklow, “Why Facebook Is Losing the War on Hate Speech in Myanmar,” *Reuters*, August 15, 2018, <https://www.reuters.com/investigates/special-report/myanmar-facebook-hate/>.

69 Qatari company Ooredoo and Norwegian company Telenor. McCarthy, 93.

70 *Ibid.*

71 *Ibid.*

72 Stecklow, “Why Facebook is Losing the War.”

73 *Ibid.*

74 McCarthy, 94.

75 Under the new rules, journalists do not have to submit reports to state censors before publication. However, there remain criminal provisions for distribution of information detrimental to national security, such as the Electronic Transaction Law of 2004. Aung Hla Hun, “Myanmar government abolishes direct media censorship,” *Reuters*, August 20, 2012, <https://www.reuters.com/article/us-myanmar-censorship-idUSBRE87J06N20120820>.

76 McLaughlin.

77 International Crisis Group, “Buddhism and State Power in Myanmar,” *Crisis Group Asia Report*, no. 290 (September

of nationalist propaganda by the *Tatmadaw* and replicated the military's playbook, utilizing fear and division between communities as a means to advance its goals.<sup>78</sup>

Many Myanmar CSOs believe that 969 and *Ma Ba Tha* receive substantial support and resources from the *Tatmadaw*, hardliners, and private cronies. Some have gone so far as to say that 969 and *Ma Ba Tha* are a “non-weaponized civilian wing of the *Tatmadaw*.”<sup>79</sup> Former monks like U Gambira, who fled Myanmar in 2016, have openly stated that, “Military leaders approached our fellow monks with offers of financial support and gifts. . . . This emboldened the monks to rise up and speak up in public to spread the pro-military propaganda, spreading hatred between religions.”<sup>80</sup>

There is evidence of at least implicit approval of the ultranationalist groups' actions. Over the span of a few years, they have managed to operate freely, spread hate speech and intolerance, support a series of discriminatory laws, and initiate a series of anti-Muslim riots across Myanmar.<sup>81</sup> None of these would have been possible without at least the implicit permission or endorsement from the military and the USDP government.<sup>82</sup> 969 and *Ma Ba Tha* have in turn openly supported the military while criticizing its opponents: Daw Aung San Suu Kyi, the NLD, and EAOs.<sup>83</sup>

969 emerged on the national stage by encouraging people to support Buddhist-owned businesses instead of Muslim-owned ones.<sup>84</sup> As Muslims have been well represented in Myanmar's mercantile community since the colonial era, the movement tapped into historic inter-ethnic tensions—specifically Buddhists' historic perception and resentment of financially successful Muslims.<sup>85</sup>

Some prominent Buddhist monks have also fueled anti-Muslim sentiment by delivering messages along ethnic and religious lines. For instance, U Wirathu, who refers to himself as the “Burmese Bin Laden,” had been jailed in 2003 for inciting anti-Muslim violence.<sup>86</sup> Soon after his release from prison, he began giving sermons throughout the country vowing to patriotically defend Myanmar and Buddhism against Islam and the “enemy within.”<sup>87</sup>

In June 2012, the rape and murder of Thida Htwe, a Buddhist woman, allegedly committed by three Muslim men in Rakhine State became the vehicle 969 and U Wirathu used to incite and unleash violence against Rohingya Muslims.<sup>88</sup> 969 characterized the rape as an honor crime and disseminated online graphic photos of her corpse along with incendiary remarks about her killers' identities and religious backgrounds.<sup>89</sup> They fanned longstanding historical tensions between the Rakhine Buddhists

2017), 6-8.

78 “An Unholy Alliance: Monks and the Military in Myanmar,” Al Jazeera, March 18, 2019, <https://www.aljazeera.com/programmes/specialseries/2019/03/unholy-alliance-monks-military-myanmar-190309083316608.html>.

79 Focus group discussions from convenings held in January 2019 and December 2019 [hereafter “FGD (January 2019 and/or December 2019)”].

80 Ibid.

81 Ibid.

82 Ibid.

83 Ibid.

84 Hannah Beech, “The Face of Buddhist Terror,” Time, July 1, 2013, <http://content.time.com/time/subscriber/article/0,33009,2146000-3,00.html>.

85 Matthew J. Walton and Susan Hayward, “Contesting Buddhist Narratives: Democratization, Nationalism, and Communal Violence in Myanmar,” East-West Center Policy Studies 71 (2014), 14, <https://www.eastwestcenter.org/sites/default/files/private/ps071.pdf>.

86 Beech, “The Face of Buddhist Terror.”

87 Ibid.

88 Human Rights Watch, All You Can Do Is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State (June 2013), 21, <https://www.hrw.org/report/2013/04/22/all-you-can-do-pray/crimes-against-humanity-and-ethnic-cleansing-rohingya-muslims>.

89 Ibid., 33.

and Rohingya Muslims. And soon after, Rakhine Buddhist mobs attacked killing ten Muslim pilgrims, setting off violence that spread across Rakhine State.<sup>90</sup> The first wave of violence lasted until August 2012 and was followed by a second series of attacks in October 2012 and a final incident of violence in 2013.<sup>91</sup> The violence affected twelve townships and primarily three communities: the Rohingya, the Rakhine, and the Kaman (another Muslim community in Rakhine who, unlike the Rohingya, are considered citizens under the 1982 Citizenship Law).<sup>92</sup> The United Nations (“UN”) estimates over 140,000 people were displaced by the violence, 95 percent of whom were Rohingya who were eventually confined to internally displaced person (“IDP”) camps in Rakhine State.<sup>93</sup>

Violence against Muslims erupted in towns of Rakhine State and in other parts of central and northern Myanmar, resulting in deaths, injuries, destruction of property and strained communal relations. For instance, a jewelry store dispute between a Buddhist and a Muslim and the murder of a Buddhist monk by a group of Muslims in March 2013 led to violence in Meikhtila.<sup>94</sup> This was followed attacks in Okkan, in April, after a Muslim woman in Okkan had bumped into a Buddhist monk with her bicycle and knocked over his alms bowl.<sup>95</sup> In Lashio, violence occurred in May 2013 after a Muslim man poured gasoline on a Buddhist woman and threatened to set her on fire; Buddhist mobs attacked in retaliation.<sup>96</sup> Another incident broke out in Htan Gon in August due to rumors that a Muslim man had attempted to sexually assault a Buddhist woman.<sup>97</sup> In 2014, a similar allegation that Muslims had tried to rape a Buddhist woman employee led to violence in Mandalay, resulting in the death of a Muslim man and a Buddhist man.<sup>98</sup> The allegation later turned out to be false.<sup>99</sup>

Myanmar CSOs and international human rights organizations such as Justice Trust have detected a pattern associated with the various incidents.<sup>100</sup> According to their analysis, an allegation of rape or incident of offence to Buddhism precedes the attacks on Muslims.<sup>101</sup> The alleged perpetrator is usually a Muslim and the victim, a Buddhist.<sup>102</sup> Ultranationalist groups and monks like U Wirathu highlight such incidents and use them to saturate people’s social media feed, regardless of whether the allegation is true.<sup>103</sup> Online posts by these groups are almost always accompanied by a call to Buddhists to take action to defend their race and religion, which is portrayed as being under threat.<sup>104</sup> 969 and *Ma Ba Tha* would also hold mass rallies and sermon tours.<sup>105</sup> According to local activists, the

90 “Muslims Killed in Attack in Burma’s Rakhine Province,” BBC News, June 4, 2012, <https://www.bbc.co.uk/news/world-asia-18324614>.

91 Human Rights Watch, *All You Can Do Is Pray*, 21-23.

92 *Ibid.*, 4.

93 United Nations Development Program (UNDP), *Area Based Programming: UNDP in Rakhine*, <http://www.mm.undp.org/content/myanmar/en/home/area-based-programming/rakhine.html>.

94 Walton and Hayward, 7.

95 “One Dead After New Anti-Muslim Riots in Myanmar,” *Agence France-Presse*, 1 May 2013.

96 International Crisis Group, “The Dark Side of Transition: Violence Against Muslims in Myanmar,” *Crisis Group Asia Report*, no. 251 (October 2013), 14.

97 *Ibid.*, 15.

98 “Myanmar Convicts Five over Fake Rape Claim That Sparked Riots,” *Reuters*, March 20, 2015, <https://uk.reuters.com/article/uk-myanmar-conviction/myanmar-convicts-five-over-fake-rape-claim-that-sparked-riots-idUKKBN-0MG11820150320>.

99 *Ibid.*

100 Justice Trust, *Hidden Hands Behind the Communal Violence in Myanmar* (Bangkok: Justice Trust, 2015).

101 *Ibid.*, 15, 20.

102 *Ibid.*

103 *Ibid.*

104 *Ibid.*

105 *Ibid.*, 16.

authorities have permitted these gatherings while they routinely disband peace protests against military offensives in ethnic regions and arresting the organizers.<sup>106</sup> Eyewitnesses to the violence have similarly reported that police officers have stood by while mobs attacked and destroyed mosques and Muslim shops and homes.<sup>107</sup> Furthermore, activists have documented that almost every major outbreak of anti-Muslim violence since 2012 was preceded by a 969-sponsored sermon tour in the area, usually led by U Wirathu himself.<sup>108</sup>

Myanmar CSOs interviewed for this report believe that the military and ultranationalist groups have been using Facebook to strategically spread hate speech and misinformation.<sup>109</sup> Hateful rhetoric and incitement of violence towards ethnic and religious minorities circulate through newsfeeds, fake news, inflammatory posts, poems, articles, comments, graphic images, and propaganda videos primed for “liking” and “sharing” widely.<sup>110</sup>

Ultrnationalist groups have also been taking advantage of the wider lack of digital literacy in Myanmar.<sup>111</sup> For example, in October 2018, the New York Times uncovered a systematic online campaign by *Tatmadaw* personnel to create negative content aimed at the Rohingya and Muslims in Myanmar.<sup>112</sup> According to the article, “hundreds of military personnel created troll accounts and news and celebrity pages on Facebook and then flooded them with incendiary comments and posts timed for peak viewership. . . . [O]fficers were also tasked with collecting intelligence on popular accounts and criticizing posts unfavorable to the military.”<sup>113</sup> Facebook’s head of cybersecurity confirmed that there was “clear and deliberate attempts to covertly spread propaganda that were directly linked to the Myanmar military.”<sup>114</sup> The Russian military is also alleged to have assisted the *Tatmadaw*’s online influence campaigns.<sup>115</sup>

The 2018 report of the UN-mandated Independent International Fact-Finding Mission on Myanmar (“FFM”) found that Facebook has been “slow and ineffective” in responding to the calls to mitigate hate speech on its platform and called for a thorough investigation on the extent to which activities on the platform led to real-world discrimination and violence.<sup>116</sup> By 2018, Facebook had begun to bolster its efforts to address hate speech in Myanmar by commissioning an independent human rights impact assessment, committing to hiring 100 native Burmese speakers as content moderators, and banning certain *Tatmadaw* leaders from its platform.<sup>117</sup> However, its decision in February 2019 to ban four EAOs as “dangerous organizations” but not the *Tatmadaw*, raises questions about Facebook’s efforts as well as its ability and willingness to engage with local stakeholders to effectively

106 Ibid.

107 Ibid., 3.

108 Ibid., 16.

109 FGD (January 2019).

110 Ibid.; Paul Mozur, “A Genocide Incited on Facebook, With Posts From Myanmar’s Military,” *The New York Times*, October 15, 2018, <https://www.nytimes.com/2018/10/15/technology/myanmar-facebook-genocide.html/>.

111 Ibid.

112 Ibid.

113 Ibid.

114 Ibid.

115 Ibid.

116 United Nations, Report of the Independent International Fact-Finding Mission on Myanmar, A/HRC/39/64 (September 2018), para. 74.

117 BSR, Human Rights Impact Assessment: Facebook in Myanmar (2018), 21, [https://about.fb.com/wp-content/uploads/2018/11/bsr-facebook-myanmar-hria\\_final.pdf](https://about.fb.com/wp-content/uploads/2018/11/bsr-facebook-myanmar-hria_final.pdf).

understand the problem.<sup>118</sup> According to local activists, the ban is worrying as it limits ethnic minority communities' ability to present their views while allowing state security forces to continue to disseminate (mis)information.<sup>119</sup>

While attention during the post-2010 period has often focused on social media's role in hate speech, such speech in Myanmar has not been limited to the online realms. Consistent with Myanmar's long history of seeding intolerance, an "offline culture of hate" has been propagated through large scale nationalist rallies and other media such as DVDs, books, journals, pamphlets, and speaker carts.<sup>120</sup> Books like *Islamization* and *A Myo Pyaut Hmar Soe Kyaut Sayar* (Fearing the Extinction of Our Race), which the government had banned in the past, are currently in wide circulation.<sup>121</sup> These books state that the greatest threat to Buddhism is Islam and that inaction will lead to the disappearance of Buddhism and Myanmar in a hundred years.<sup>122</sup>

Addressing hate speech in Myanmar requires an understanding of the key constructed narratives, the main drivers of the rhetoric, and how online and offline channels have been used to spread hate speech. These will be presented in Part III of this report.

Race, religion, and identity politics became a major focus of the 2015 elections – for ethnic minorities, ultranationalist groups, the military, or political parties like the NLD and the USDP.<sup>123</sup> For example, peace and political talks between the government, the *Tatmadaw*, and EAOs were of great importance to ethnic minorities and factored into who they would support in the elections.<sup>124</sup> Additionally, the ultranationalist groups, 969 and *Ma Ba Tha*, campaigned openly in support of the USDP.<sup>125</sup> Both groups urged people to vote for the incumbent USDP, asserting that the party would better protect race and religion than the NLD.<sup>126</sup> 969 and *Ma Ba Tha* also conducted "voter education" sessions where the underlying message was that a vote for NLD could grant citizenship rights to the Rohingya, weaken national security, and make Myanmar vulnerable to Jihadist threats.<sup>127</sup>

118 Julia Carrie Wong, "'Overreacting to Failure': Facebook's New Myanmar Strategy Baffles Local Activists," *The Guardian*, February 7, 2019, <https://www.theguardian.com/technology/2019/feb/07/facebook-myanmar-genocide-violence-hate-speech>.

119 Ibid.

120 See, e.g., Search for Common Ground, *Key Findings and Recommendations: Stakeholder Mapping of Countering Hate Speech in Myanmar - External Report* (January 2018), 4, <https://www.sfcg.org/wp-content/uploads/2018/01/SFCG-Stakeholder-Mapping-Report-external-20Nov2017-FINAL-for-printing.pdf>.

121 Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, A/HRC/39/CRP.2 (September 2018), para. 697.

122 Ibid.

123 Oliver Holmes, "Myanmar's Muslims Win No Seats in New Parliament," *The Guardian*, November 15, 2015, <https://www.theguardian.com/world/2015/nov/15/myanmars-muslims-win-no-seats-in-new-parliament>; Human Rights Watch, "Burma Elections 2015: The Politics of Hate and Exclusion," November 3, 2015, <https://www.hrw.org/blog/feed/burma-elections-2015>.

124 Ibid.

125 Ibid.

126 Ibid.

127 Ibid.

**Figure 3.** The title of the book is “Murderous God,” and it is published by Buddhism and Cultural Preservation Group (affiliated with Ma Ba Tha). The book details and demonizes non-Buddhist religions.



The actions of the government and the NLD in the lead up to the elections only reinforced divisions, particularly against Muslim individuals and communities. Hundreds of thousands of Muslim voters were removed from voting lists, and many Muslim candidates were disqualified by the election commission on grounds of citizenship.<sup>128</sup> Major political parties including the NLD asked Muslim members not to run, apparently yielding to pressure from *Ma Ba Tha*.<sup>129</sup> Ultimately, in 2015, a mere 0.5% of the 6,074 registered candidates were Muslim.<sup>130</sup> None were elected.<sup>131</sup> Thus, the 2015 elec-

128 Ibid.

129 Poppy McPherson, “No Vote, No Candidates: Myanmar’s Muslims Barred from Their Own Election,” *The Guardian*, November 2, 2015, <https://www.theguardian.com/world/2015/nov/03/no-vote-no-candidates-myanmars-muslims-barred-from-their-own-election>.

130 Holmes.

131 Ibid.

tions marked the first time in the history of Myanmar where the Parliament had no Muslim members.<sup>132</sup> The NLD ultimately won the elections and began negotiating power sharing with the military, but the elections normalized hate speech and affirmed ultranationalist groups' power to shape national discourse. . . . Myanmar CSOs believe that political leaders from the NLD and others associated with the pro-democracy movement should have challenged this nationalist rhetoric and stood up for the rights of ethnic and religious minorities.<sup>133</sup> Many interviewed for this report noted that had prominent figures including Daw Aung San Suu Kyi taken a principled stance, the situation for persecuted communities including the Rohingya could have been quite different.<sup>134</sup>

## C. Current Context: From the 2015 Elections to the Upcoming 2020 Elections

The 2015 elections were historic as Daw Aung San Suu Kyi's NLD won a landslide victory that ushered in the first civilian-led government in half a century.<sup>135</sup> A few short years later, however, the political landscape had changed substantially to see the NLD and the *Tatmadaw* aligned more than ever before. Hate speech was a major part of the shift.

The *Tatmadaw's* now well-documented "clearance operations" targeting the Rohingya community in Rakhine in August 2017 occurred after the Arakan Rohingya Salvation Army ("ARSA") on thirty border police outposts.<sup>136</sup> In response, the *Tatmadaw* destroyed hundreds of Rohingya villages in northern Rakhine State, forcing nearly a million Rohingya refugees to flee to neighboring Bangladesh in what has come to be known as the "Rohingya crisis."<sup>137</sup> While the military claim it is pursuing ARSA and other terrorist elements, harrowing accounts from Rohingya survivors tell another story.<sup>138</sup> They reveal a brutal, genocidal military campaign build upon decades of systemic discrimination policies that stripped the Rohingya of their citizenship rights, rendering them stateless.<sup>139</sup> The clearance operation had the hallmarks of the *Tatmadaw's* past campaigns waged against civilians in other ethnic regions over the decades: indiscriminate targeting and killing of civilians; widespread use of sexual violence, paired with dehumanizing, racist rhetoric; and complete impunity for its actions.<sup>140</sup>

The FFM was established in response to the escalating violence and human rights abuses against Rohingya in Rakhine State and ongoing armed conflict in Kachin and Shan States.<sup>141</sup> The

132 Austin Ramzy, "After Myanmar Election, Few Signs of a Better Life for Muslims," *The New York Times*, November 18, 2015, <https://www.nytimes.com/2015/11/19/world/asia/myanmar-election-rohingya-muslims.html>.

133 FGD (January 2019 and December 2019).

134 *Ibid.*

135 "Myanmar's 2015 Landmark Elections Explained," *BBC News*, December 3, 2015, [www.bbc.com/news/world-asia-33547036](http://www.bbc.com/news/world-asia-33547036).

136 A/HRC/39/64, para. 31-35.

137 *Ibid.*, para. 33.

138 Wa Lone and Shoon Naing, "At Least 71 Killed in Myanmar as Rohingya Insurgents Stage Major Attack," *Reuters*, August 24, 2017, <https://www.reuters.com/article/us-myanmar-rohingya/at-least-71-killed-in-myanmar-as-rohingya-insurgents-stage-major-attack-idUSKCN1B507K>.

139 See generally A/HRC/39/64.

140 *Ibid.*, sec. V.

141 Human Rights Council, Report of the independent international fact-finding mission on Myanmar, A/HRC/42/50 (August, 2019), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/236/74/PDF/G1923674.pdf?OpenElement>

FFM presented its findings in August 2018 and recommended that senior generals in the *Tatmadaw* be investigated and prosecuted for genocide, crimes against humanity, and war crimes.<sup>142</sup> After the FFM's mandate ended in September 2018, the UN Human Rights Council, established the Independent Investigative Mechanism for Myanmar ("IIMM") as a repository of evidence.<sup>143</sup> Subsequently, in November 2019, the Office of the Prosecutor at the International Criminal Court ("ICC") opened an investigation into the alleged forced deportation of the Rohingya from Myanmar to Bangladesh.<sup>144</sup> That same month, The Gambia filed a case against Myanmar at the International Court of Justice ("ICJ") for allegedly violating its obligations under the the Convention on Prevention and Punishment of the Crime of Genocide ("The Genocide Convention").<sup>145</sup>

## Growing Ultrationalist Support for the *Tatmadaw*

These recent steps toward international accountability for the *Tatmadaw's* atrocities should have been welcome news in a country that has struggled for democracy and human rights in the face of a repressive military rule. Instead, the reaction from those inside Myanmar has been commonly one of denial and rejection—with hate speech and rampant misinformation campaigns both online and offline playing a central role in mobilizing public sentiment against criticism of the military and the government.

Political leaders, including the civilian government have been criticized for aligning with the military, not supporting accountability efforts, and perpetuating the othering of minorities, particularly the Rohingya. In her first public address following the Rohingya crisis, Daw Aung San Suu Kyi stated that “after a century or more of authoritarian rule, now we are in the process of nurturing our nation,” and that “as a young and fragile country facing many problems,” Myanmar “cannot just concentrate on the few.”<sup>146</sup> She has refused to condemn the *Tatmadaw* and has personally defended Myanmar at the ICJ genocide proceedings.<sup>147</sup> However, she is not alone in her failure, as a moral and political leader, to condemn or even acknowledge the violence and hate aimed at the Rohingya. Even former political prisoners like Ko Ko Gyi and Min Ko Naing have justified the military's operations in Rakhine State. Ko Ko Kyi, for example, has espoused similar rhetoric as 969 and *Ma Ba Tha* with regards to the Rohingya: namely, perpetuating the idea that they are not an ethnic group originally from Myanmar.<sup>148</sup> Political leaders' rejection of the

142 “Myanmar: Tatmadaw Leaders Must Be investigated for Genocide, Crimes against Humanity and War Crimes,” Office of the United Nations High Commissioner for Human Rights, August 27, 2018, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=23475&LangID=E>.

143 Human Rights Council, Report of the independent international fact-finding mission on Myanmar, A/HRC/42/50 (August, 2019), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/236/74/PDF/G1923674.pdf?OpenElement>

144 International Criminal Court, Statement of ICC Prosecutor, Mrs. Fatou Bensouda, on Opening a Preliminary Examination Concerning the Alleged Deportation of the Rohingya People from Myanmar to Bangladesh (September 18, 2018), <https://www.icc-cpi.int/Pages/item.aspx?name=180918-otp-stat-Rohingya>.

145 Owen Bowcott, “Gambia Files Rohingya Genocide Case against Myanmar at UN Court,” *The Guardian*, November 11, 2019, <https://www.theguardian.com/world/2019/nov/11/gambia-rohingya-genocide-myanmar-un-court>.

146 Rebecca Wright, Katie Hunt, and Joshua Berlinger, “Aung San Suu Kyi Breaks Silence on Rohingya, Sparks Storm of Criticism,” *CNN News*, September 19, 2017, <https://www.cnn.com/2017/09/18/asia/aung-san-suu-kyi-speech-rohingya/index.html>.

147 *Ibid.*

148 Hla Myaing, “An Open Letter to 88 Generation Student Leader Ko Ko Gyi,” July 30, 2012. See generally: Francis Wade, “Myanmar's Enemy Within: Buddhist Violence and the Making of a Muslim ‘Other’” (London: Zed Books Ltd., 2017).



**Figure 5.** On January 13, 2019, a prominent female member of the NLD shared a post listing the party's achievements, the first of which reads: "Drove out 700,000 Ro [reference to the Rohingya]."



Statements from various government ministries and departments, including the President and State Counsellor's Office, highlight the depth of officials' animus and discriminatory attitudes toward the Rohingya community. The Facebook feed of Zaw Htay, the Director General of the State Counsellor Office, is full of such content.<sup>153</sup> For instance, he famously posted a picture of dark-skinned villagers in Rakhine burning their own house with the question "Who are they?" insinuating that the Rohingya burned their own homes to solicit international sympathy.<sup>154</sup> He was also among the first to deny allegations of what he called "fake rapes" of Rohingya women.<sup>155</sup> Others like Phone Tint, Rakhine's Minister for Border Affairs, suggested to Myanmar journalists that rape allegations were unfounded because Rohingya women are undesirable: "These women were claiming they were raped, but look at their appearances—do you think they are that attractive to be raped?"<sup>156</sup>

[php?story\\_fbid=3225361654156942&id=531873223505812](https://www.facebook.com/z.y.zawhtay).

153 Zaw Htay's Facebook account formerly available at [www.facebook.com/z.y.zawhtay](https://www.facebook.com/z.y.zawhtay). Annie Gowen and Max Bearak, "Fake News on Facebook Fans the Flames of Hate against the Rohingya in Burma," *The Washington Post*, December 8, 2017, [https://www.washingtonpost.com/world/asia\\_pacific/fake-news-on-facebook-fans-the-flames-of-hate-against-the-rohingya-in-burma/2017/12/07/2c1fe830-ca1f-11e7-b506-8a10ed11ecf5\\_story.html](https://www.washingtonpost.com/world/asia_pacific/fake-news-on-facebook-fans-the-flames-of-hate-against-the-rohingya-in-burma/2017/12/07/2c1fe830-ca1f-11e7-b506-8a10ed11ecf5_story.html).

154 Rachael Krishna, "These Pictures Show That Rohingya Muslims Weren't Actually Setting Their Own Houses On Fire," *Buzzfeed News*, September 12, 2017, <https://www.buzzfeednews.com/article/krishrach/no-these-pictures-dont-show-rohingya-muslims-setting-their>.

155 A/HRC/39/CRP.2, para. 935.

156 Kristen Gelineau, "AP: Rohingya Methodically Raped by Myanmar's Armed Forces," *AP News*, December 11, 2017,

Political parties are also not immune from playing into this discourse for their benefit. Members of NLD, National Development Party (“NDP”) and National Unity Party are also embracing such nationalist rhetoric. CSOs interviewed for this report stated that problematic language and discourse around ethnic and religious minorities has appeared during parliamentary debates for example.<sup>157</sup> The social media feeds of politicians, entertainers, and social influencers have also been rife with hate speech targeting ethnic and religious minorities. The screen capture below is just one example.

While historically the *Tatmadaw* was one of the most reviled institutions in Myanmar, the military has galvanized its domestic support and seen its popularity grow as a result of the Rohingya crisis.<sup>158</sup> Other ethnic minorities have experienced ongoing violence and abuses as armed conflict has continued and peace talks with EAOs have effectively stalled.<sup>159</sup> As of June 2020, the military offensives in Kachin, Shan, Chin and Rakhine State persists.<sup>160</sup> With the global COVID-19 outbreak, EAOs had called for a nationwide ceasefire, but at the time of writing, the *Tatmadaw* had still refused the request.<sup>161</sup>

CSOs increasingly worry that the military’s rising popularity could lead to a return to authoritarianism.<sup>162</sup> Many people interviewed for this report believe an emboldened *Tatmadaw* has been the reason human rights violations against ethnic and religious minorities in the aforementioned states have continued and space for civil society and HRDs has been shrinking.<sup>163</sup> While the Rohingya crisis has diminished the military’s stature internationally, the crisis has had the opposite effect domestically, strengthening the military’s legitimacy and allowing its nationalist message to reach people who had previously fervently opposed the military dictatorship in the past.<sup>164</sup>

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<https://apnews.com/5e4a1351468f4755a6f861e39ec782c9/Rohingya-women-methodically-raped-by-Myanmar's-armed-forces>.

157 MS-R1-02

158 Richard Paddock, “Myanmar General’s Purge of Rohingya Lifts His Popular Support,” *The New York Times*, November 26, 2017, <https://www.nytimes.com/2017/11/26/world/asia/myanmar-rohingya-min-aung-hlaing.html>.

159 International Crisis Group, “Report: Rebooting Myanmar’s Stalled Peace Process,” *Crisis Group Asia Report*, no. 308 (June 2020), <https://www.crisisgroup.org/asia/south-east-asia/myanmar/308-rebooting-myanmars-stalled-peace-process>.

160 *Ibid.*

161 *Ibid.*

162 FGD (January 2019 and December 2019). Also see: “Thousands March in Support of Myanmar Military,” *VOA News*, October 29, 2017, <https://www.voanews.com/a/thousands-march-in-support-of-myanmar-military/4090915.html>.

163 *Ibid.*

164 *Ibid.*

**Figure 6.** After the military clearance operations in Rakhine, Mg Mg Aye, a celebrity with hundreds of thousands of followers, wrote the following post on social media: “Go to Rakhine with speakers mounted on military tanks and blare the national anthem. Anyone who can’t sing along should be shot on the spot.”



Complicating the picture even further has been the resilient culture of domestic support for Daw Aung San Suu Kyi. Her handling of the Rohingya crisis has led to criticism from local CSOs and the international community.<sup>165</sup> The domestic and international reactions resemble the pattern seen with support of the military. While domestic discontent around issues of Burmanization and the stalled peace process lingers, especially in ethnic states, loyalty to Daw Aung San Suu Kyi has remained strong with much of the general public in the predominantly *Bamar* regions.<sup>166</sup> In the eyes of her supporters, she has been unjustly targeted by international actors and foreign powers.<sup>167</sup> As explained by one interviewee, the cultural importance of heroism and the idea of “bloodline” leadership has given her tremendous power as the daughter of General Aung San, which helps explain why many supporters in Myanmar view attacks on Daw Aung San Suu Kyi as both deeply personally and attacks on the nation itself.<sup>168</sup>

165 Anthony Ware, “Aung San Suu Kyi still has the moral authority to right Myanmar’s wrongs against the Rohingya,” Quartz, October 4, 2018, <https://qz.com/1413080/aung-san-suu-kyi-still-has-the-moral-authority-to-right-myanmars-wrongs-against-the-rohingya/>; Hannah Ellis-Peterson, “From peace icon to pariah: Aung San Suu Kyi’s fall from grace,” The Guardian, November 23, 2018, <https://www.theguardian.com/world/2018/nov/23/aung-san-suu-kyi-fall-from-grace-myanmar>; Timothy McLaughlin, “How Aung San Suu Kyi Lost Her Way,” The Atlantic, September 28, 2018, <https://www.theatlantic.com/international/archive/2018/09/myanmar-aung-san-suu-kyi-rohingya-united-nations/571618/>; “Critics circle Aung San Suu Kyi over Rohingya Crisis,” Al Jazeera, September 11, 2017, <https://www.aljazeera.com/news/2017/09/critics-circle-aung-san-suu-kyi-rohingya-crisis-170910090032580.html>.

166 Philip Heijmans, “Aung San Suu Kyi support strong despite denunciations,” Al Jazeera, September 11, 2017, <https://www.aljazeera.com/news/2017/09/aung-san-suu-kyi-support-strong-denunciations-170910183725884.html>.

167 Ibid.

168 YGN-R1-01



## 2020 Elections

The upcoming 2020 election is expected to place a significant spotlight on minority groups, which may aggravate inter-ethnic and religious divisions and tensions once again. The main political battle will likely be between the NLD and the USDP, both of which have been strategizing to gain more support from ethnic minorities.<sup>172</sup> However, other political parties may also play a major part in shaping the dynamic. In 2015, for example, in the hope that the NLD would help create a genuine federal union, many ethnic minority voters chose the NLD over their own ethnic parties; ethnic minority voters were sometimes even encouraged to do so by members of EAOs.<sup>173</sup> That trust in the NLD has dissipated over time, particularly as peace talks have made little progress and violence and oppression against ethnic minorities has persisted in multiple areas.<sup>174</sup> Activists and leaders of ethnic minority groups have in turn increasingly urged ethnic nationality parties to join together to compete more effectively in the 2020 election, a call that has sparked a series of mergers between different ethnic parties across the country.<sup>175</sup>

The current political context presents both critical challenges and opportunities for addressing hate speech effectively. Initiatives to garner electoral support, especially with the emergence of larger political entities that represent minorities, could fuel greater tension and contribute to the proliferation of intolerant messages, especially from ultranationalist groups. With the increased connectivity in Myanmar, several organizations, including Human Rights Watch, have raised concerns about “what will likely be a tsunami of hate speech and attacks in the 2020 election.”<sup>176</sup> In October 2018, an independent review commissioned by Facebook also stressed 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.”<sup>177</sup> At the same time, the need to court minority voters may also allow for more substantive debates on how to improve inter-ethnic relations and advance the failing peace process. In preparation for the serious risks and the potential opportunities for positive reform, therefore, the next section takes a deeper look at the current landscape of hate speech in Myanmar and its effects.

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(May 2016), para. 45.

172 Han Htoo Khant Paing and Richard Rower, “Testing the Water: The 2018 By-Elections and Myanmar’s Political Future,” Tea Circle Oxford, December 19, 2018, <https://teacircleoxford.com/2018/12/19/testing-the-water-the-2018-by-elections-and-myanmars-political-future/>.

173 Aung Aung, “Myanmar’s Current Politics: Implications for the 2020 General Elections,” ISEAS-Yusof Ishak Institute (October 5, 2018), 4, [https://www.iseas.edu.sg/images/pdf/ISEAS\\_Perspective\\_2018\\_61@50.pdf](https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2018_61@50.pdf).

174 Ibid.

175 Ibid.

176 Pares Dave, “Facebook Says Human Rights Report Shows It Should Do More in Myanmar,” Reuters, November 5, 2018, <https://www.reuters.com/article/us-facebook-myanmar/facebook-says-human-rights-report-shows-it-should-do-more-in-myanmar-idUSKCN1NB06Z>.

177 BSR, 25.





## **Analysis: Current Landscape of Hate Speech in Myanmar**

This section provides an analysis of the current landscape for hate speech in Myanmar and identifies the disturbing trends associated with such virulent speech in the country. The analysis draws particularly on the expertise, knowledge, and experience of CSO representatives from Myanmar. Part A explores the key narratives of hate speech and ultranationalism that have been constructed in Myanmar. Part B addresses the main drivers of hate speech, including who the key beneficiaries are and what policies have been put in place to foment hatred and division; this part also examines underlying contributors to the problem, including socio-economic factors such as poverty and education. Part C delves into the online and offline channels of dissemination. Finally, Part D analyzes the negative impact and effects of hate speech on communities, civil society, and activism in Myanmar.

## A. Key Narratives of Hate and Ultranationalism

Consultations and interviews with CSOs highlighted a number of hate speech narratives, all of which have been interlinked and reinforce a central meta-narrative of Buddhist-Burman dominance.<sup>178</sup> Each particular narrative has exploited differences in identity, religion, and ethnicity to stoke fear and divide communities in Myanmar, leading communities to believe that their identities and existences are under attack. This section maps the key constructed narratives of hate that the government, military, ultranationalist groups, and their supporters have deliberately promulgated. The section also highlights how hate speech and misinformation circulating in Myanmar has drawn simultaneously on multiple narratives to further an ultimate agenda of ultranationalism and hate. Finally, the section analyzes how these multiple narratives have been constructed in such a manner that they have set the stage for violence by framing it as necessary for survival in the face of growing threats.

### Exploiting an Environment of Prejudice and Fear

Narratives of hate speech have had widespread appeal because they exploit circumstances already present in Myanmar: namely historical divisions and segregation; existing stereotypes and prejudices bolstered by misinformation; and rumors, fears, and paranoia cultivated over the years by successive military regimes. All of these factors have increased the appeal of ultranationalism and the narratives put forward by its adherents.

While the narratives have further cemented societal division and discrimination, interviewees noted that messaging builds off of pervasive racism already present in Myanmar. One activist described the centrality of race in self-identification and social interaction by pointing to the Burmese expression “race in a human, bone in a chicken (*luu mar a myo, kyat mar a yoe*)” as one that “gives a message of how important race is for humans.”<sup>179</sup> Another explained:

Color discrimination is . . . deep-rooted; we don’t really name it, but it is there. Imagine if the Rohingya people were not dark but white, or Chinese: People would react differ-

178 FGD (January 2019 and December 2019).

179 002-R3-02, 1; See also FGD (January 2019 and December 2019).

ently [to the situation]. They are [dark], and poor, and from a different religion—and that makes them doubly or triply discriminated against.<sup>180</sup>

Activists also described a daily discourse steeped in prejudice. They pointed to a number of Burmese sayings like, “if you see a viper and a Rakhine, you need to kill the Rakhine first.”<sup>181</sup> A common warning offered by parents when trying to silence their crying children is: “a *kalar* [derogatory term used to describe Muslims and people of Indian descent or dark-skinned Asians] is coming, and if you cry, he will take you away,” leading “kids to grow up knowing this group as a threat.”<sup>182</sup>

## Constructed Narratives

Against this contextual backdrop, a troubling picture of the narratives driving and perpetuated by hate speech has emerged. The key narratives captured in the consultations and interviews were as follows: (1) Race, religion, and country are under threat from both non-*Bamar* ethnic groups and non-Buddhists; (2) Islam in particular poses an imminent threat, as a “violent” foreign religion that seeks to overpower Buddhism in Myanmar; (3) Ultranationalists frame threats in gendered, derogatory ways, asserting that women are particularly vulnerable to the predatory attacks from Muslim men and singling out women HRDs and journalists who push back against such narratives; (4) Against these threats, military strength is essential to protect the nation’s borders, unity, and continued existence; (5) A biased and misinformed international community is targeting Myanmar, interfering with its sovereignty; and (6) Those that question or challenge the aforementioned narratives—for example, the activists interviewed for this report—are “race traitors” and foreign agents who are equally dangerous to the nation’s sanctity and security.

### A Buddhist-Burman nation under threat

Perhaps most critical to the rise and penetration of hate speech and ultranationalism has been the underlying narrative of Myanmar as a nation facing existential threats from both EAOs and religious fundamentalists. This account has portrayed Myanmar as a Buddhist-Burman nation.<sup>183</sup> According to an activist, “in the country, nationalism plus religion is always mixed up and utilized as a political card.”<sup>184</sup>

Buddhist-Burman majority identity has been framed as being in opposition to the country’s other ethnic and religious communities.<sup>185</sup> This narrative has been backed by a distorted version of history that celebrates Burmans alone as the winners of Myanmar’s independence, and frames the position and inclusion of other ethnic nationalities as a generous offer from the Burman majority in power.<sup>186</sup>

180 002-R1-01, 3; See also FGD (January 2019 and December 2019).

181 Ibid, 5; See also Jonathan Head, “Rakhine State: Hatred and Despair in Myanmar’s Restive Region,” BBC News, February 8, 2018, <https://www.bbc.co.uk/news/world-asia-42899242>.

182 002-R4-04, 3; See also Gravers.

183 See International Crisis Group, “Buddhism and State Power;” Kate Hodal, “Buddhist monk uses racism and rumours to spread hatred in Burma,” The Guardian, 18 April 2013, <https://www.theguardian.com/world/2013/apr/18/buddhist-monk-spreads-hatred-burma>.

184 002-R1-01, 2.

185 FGD (January 2019 and December 2019); See also Gravers; Hodal; Holmes.

186 Ibid.

**Figure 9.** *The signage displaying the motto of the Ministry of Labour, Immigration and Population. It states that the earth will not consume a race, but another race could consume and render one extinct.*



The long history of violence between the Myanmar military and EAOs, paired with renewed international scrutiny, has allowed ultranationalist groups to advance this narrative and assert that it is a national duty of citizens to stand with Myanmar's civilian government and the *Tatmadaw* in the face of both internal and external threats.<sup>187</sup> Under this narrative, EAOs are viewed as enemies of the state and ungrateful opportunists who are seeking to exploit the current instability to take Myanmar's resources.<sup>188</sup> Furthermore, the story goes that it is the EAOs' unwillingness to give up arms and accept their share of land and resources that constitutes the nation's biggest barrier to peace.<sup>189</sup> EAOs are also identified in the narrative as representative of their entire ethnic communities, a framing that creates a perception that all displaced individuals and ethnic civilians in conflict areas are deserving of their fate.<sup>190</sup>

Any time the *Tatmadaw* is fighting some "enemy," their community as a whole is treated as traitors. I really feel bad for the Kachin IDPs, Ta'ang, first the Rohingya and now the Rakhine, . . . [T]hey're all trapped in the armed conflicts raging around them.<sup>191</sup>

187 002-R4-04, 2; see also A/HRC/39/CRP.2; Beech, "Across Myanmar."

188 Ibid.; FGD (January 2019 and December 2019); see also John Powell, "Us vs Them: The Sinister Techniques of 'Othering,'" *The Guardian*, November 8, 2017, <https://www.theguardian.com/inequality/2017/nov/08/us-vs-them-the-sinister-techniques-of-othering-and-how-to-avoid-them>.

189 Ibid.

190 Ibid.

191 Ibid.

This divisive “othering” narrative has posed a significant obstacle to fostering understanding across religious and ethnic groups, particularly between the majority Buddhist-Bamar majority and others. The danger of the ultranationalist movement is that it seeks to continue the *Tatmadaw*’s policies: institutionalization of Buddhist *Bamar* hegemony at the expense of ethnic and religious minorities’ rights. CSOs mentioned that Myanmar authorities’ reports of crime often list the ethnic and religious identity of perpetrators if they are members of a particular minority group, but the same is not done for alleged Buddhist *Bamar* perpetrators.<sup>192</sup>

**Figure 10.** *Myaing Gyi Ngu, Karen State. The signage reads “non-Buddhists Kalar prohibited from entering.” There are now towns and villages which are deemed Buddhist-only zones.*



Activists noted that while the main target of hate speech has been Muslims and Rohingya, Christians and other non-*Bamar* ethnic groups have also been targeted especially as the conflict in the north enter its tenth year.<sup>193</sup> Some CSOs believe that this new shift is due to ongoing *Tatmadaw* offensives in Kachin, Shan, and Rakhine States. According to them, minority groups are consistently profiled as potential threats and their identity places them on a watch list and under suspicion for betraying and threatening the nation.<sup>194</sup>

192 Ibid.

193 See, e.g., YGN-R4-04, 3.

194 Ibid.; see also FGD (January 2019 and December 2019).

### Case Study: Reinforcing Hate Narratives in the Conflict Between the Arakan Army and the Myanmar Military<sup>195</sup>

The recent conflict between the Arakan Army (“AA”) and the *Tatmadaw* highlights how the multiple narratives can be drawn on simultaneously to promote hatred and ultranationalism. It also highlights how these narratives can be manipulated to target not only the Rohingya and Muslims, but other ethnic and religious minority communities.

After an increase in violence between the AA and *Tatmadaw* in Rakhine State in January to February 2019, a “key narrative of hate speech and fake news linked AA to outsider groups, in an attempt to reduce public support to AA in Rakhine State and among the Burmese public more broadly.”<sup>196</sup>

For example, some online posts claimed a link between the Buddhist AA and the Arakan Rohingya Salvation Army (“ARSA”),<sup>197</sup> a Muslim group who has been connected to attacks on police stations in August 2017 which Myanmar has sought to justify its retaliatory violence against the Rohingya by the Myanmar military. The linking of the two groups attempts “to portray AA as unpatriotic terrorists that put Rakhine at risk and threaten the unity of the country.”<sup>198</sup> Other posts “link the threat from [the] AA to the threat of Kachin autonomy [which would lead to] Chinese control of northern Myanmar.”<sup>199</sup> This misinformation plays on the above-elaborated decades-long deep seeded fears of Islam, EAOs, foreign influence, terrorism, and disintegration of the union to construct a justification for a harsh military response against the AA. This example represents only one instance of a strategic campaign drawing on multiple concurrent narratives of hate—in this case, to target a Buddhist EAO.

Activists from Myanmar stated that it has become common practice to play nationalist songs like “*Thitsa A Dait Htan*” (Pledge Allegiance) and “*Thway Aye Lot Ma Nay Thint Byi*” (Our Blood Can’t Be Cooled) at Buddhist festivals and at public and monastic schools.<sup>200</sup> These songs have the shared theme of upholding a Buddhist-Burman nation, and the lyrics celebrate Buddhist-Burman martyrs who have died to protect the land for future generations. CSOs believe practices like these could indoctrinate and radicalize communities, turning them against “others.”<sup>201</sup>

This linkage between the state, military, religion was also linked to dehumanization and violence. Many interviewees mentioned for example that Buddhist teachings have been distorted to justify and even glorify killing those of other faiths.<sup>202</sup> For example, in a sermon to military personnel following the 2017 clearance operations in Rakhine State, a revered and internationally recognized

195 Beautifiers of Diversity, “Fake News and Hate Speech Monthly Report,” February 2019.

196 Ibid.

197 Ibid.

198 Ibid.

199 Ibid.

200 YGN-R3-02, 2; see also Walton and Hayward, 23-24.

201 Ibid.

202 Ibid.; See also Facebook post from November 17, 2017 (accessed February 15, 2020): <https://www.facebook.com/watch/?v=1871396312900824>.

monk named U Sittagu alluded to fables about ancient kings who slaughtered “lesser” beings but received no karmic consequences for their act of killing because not all lives are valued the same.<sup>203</sup>

## The particular threat of Islam

A narrative framing of non-Buddhist religions and non-*Bamar* ethnic groups as threats has portrayed Islam in particular as a violent religion that threatens to overpower and destroy the union. One activist explained that “everyone is afraid” because of rumors about Islamization quickly spreading across the country.<sup>204</sup> CSOs and human rights organizations have concluded hate speech played a significant role in incitement of genocide against the Rohingya.<sup>205</sup>

### Case Study: Altered Identities

A *Bamar* Muslim interviewee told us that in the past, their ID card accurately reflected both their ethnicity and religion.<sup>206</sup> However, when they renewed their ID card, they were told by the government office in Yangon that, if they wanted to list Islam as their religion, they could not list just *Bamar* as their ethnicity.<sup>207</sup> Instead, they were told that they would be registered as “*Thway Nhaw*” (mixed blood). The officers gave them a choice to select *Bamar* in conjunction with either Indian, Bangladeshi, or Pakistani ethnicities. The interviewee said that even though their family has no connection to any of these countries, they were labeled as a foreigner and mixed blood in their own country with one stroke of the officer’s pen. They felt that this must be a new, unspoken policy of the Ministry of Labour, Immigration and Population because it has become the standard practice for most if not all Burmese/*Bamar* Muslims. The interviewee’s experience reflected what many CSOs including those that are part of the Burma UPR Forum have recounted as well.<sup>208</sup>

*The interviewee’s new identity card with “(Bengali + Bamar) + (Indian + Bamar)/Islam” listed in the ethnicity field indicating their status as a Thway Nhaw (mixed blood). Please see the image in the following page.*

203 Facebook post from November 1, 2018 (accessed February 15, 2020): <https://www.facebook.com/watch/?v=1871396312900824>.

204 001-R1-01, 4.

205 See, e.g., Progressive Voice, “Home is Where the Hate Speech is: Rhetoric of Hate and Violence in Context of Genocide, Crimes Against Humanity and War Crimes in Myanmar, September 2018.

206 MS-R1-01, 2.

207 Ibid.

208 A coalition of 28 human rights and civil society organizations formed in 2010, focused on “Thway Nhaw” identity card issue as one of the main focus of their 2020 submission to the UN Human Rights Council.



CSOs from other ethnic minority backgrounds also mentioned that people have had to be more vigilant in recent years, as identity card renewals are fraught with errors, especially around ethnicity and religion.<sup>209</sup> A Karen participant said that their new card listed them as *Bamar* instead of Karen.<sup>210</sup> A Christian human rights defender related that even though they had listed Christian on the application form, the final card came back listing them as Buddhist.<sup>211</sup> As these “errors” have occurred repeatedly, some wondered if the government offices were intentionally committing these errors to distort population data.<sup>212</sup>

One widespread narrative frequently used by ultranationalist groups has been that Muslim families have high birth rates relative to the rest of the population.<sup>213</sup> The ultranationalist groups have presented their own statistics highlighting that the Buddhist population in the country has been decreasing relative to the Muslim population.<sup>214</sup> Ultranationalist groups have long spread rumors that “if a Muslim man marries a Buddhist woman, he is rewarded because that means [Muslims] can extend their race.”<sup>215</sup> The flip side of this narrative has been the expectation that Buddhist women should only marry Buddhist men, which means that “girls have to be careful even to hang out with a Muslim friend” for fear of being accused of having relationships with Muslim men.<sup>216</sup>

Interviewees also noted that ultranationalist groups have often presented distorted accounts of Indonesia, Malaysia, and Bangladesh.<sup>217</sup> All are home to predominantly Muslim populations, and they have been portrayed as nations that used to be Buddhist and examples of what Myanmar’s future may look like if Islam is permitted to spread.<sup>218</sup> U Wirathu’s main narrative has been that, “if

209 FGD (December 2019); See, e.g., YGN-R3-01, 6-7.

210 FGD (December 2019)

211 FGD (December 2019)

212 See, e.g., MS-R1-01, 2.

213 See, e.g., MS-R1-01, 4; MS-R1-02, 3.

214 002-R4-04, 2.

215 002-R4-04, 3. See also Beech, “The Face of Buddhist terror.”

216 002-R3-01, 7; *Ibid.*

217 YGN-R1-01, 5-6; FGD (January 2019).

218 *Ibid.*

we are weak, our land will become Muslim.”<sup>219</sup> His now defunct personal blog contained a whole series of videos dedicated to jihad threats including those entitled “Defend against the dangers of Jihad,” “Jihad and the future,” and “Jihad war and future Myanmar.”<sup>220</sup>

Fundamental misperceptions about Islam have circulated at the community level as well. One CSO member described the effectiveness of local misinformation:

I usually heard rumors in our community that in Islam, religious people are not allowed to look up when they worship in the mosque because their god is a dog or a pig . . . . After that, I started to see my Muslim friends differently. I believed what I heard about the mosque, which is not true, but I couldn’t know, because I have never been to one.<sup>221</sup>

Such misperceptions about Islam have been further reinforced by international events, acts of terrorism in other countries, and global discourse on terrorism more broadly. Activists have pointed out that ultranationalist groups have sensationalized attacks by ISIS and Al Qaeda for example by sharing graphic videos and photos from these terrorist groups designed to conflate Jihadism with Islam: “Even in the international community, Muslims are being hated by many different people because of . . . suicide bomb[ing]s, so Myanmar is impacted by that as well.”<sup>222</sup>

Local CSOs from Yangon, Mandalay, Taunggyi, and Bago shared an example of a deliberate attempt by unknown forces to use 9/11 to incite local violence.<sup>223</sup> On September 11, 2017, a chain mail message went out on Facebook Messenger to both Buddhists and Muslims in the four cities.<sup>224</sup> The message aimed at Buddhists stated that Muslims were gathering in a nearby mosque to celebrate 9/11 by waging an attack on Buddhist soil like they had done in the United States.<sup>225</sup> The Muslims were warned at the same time that Buddhists were coming to destroy their mosques and businesses.<sup>226</sup>

CSOs from the aforementioned cities reported that cooperation, mutual trust, and open communications between Muslim and Buddhist communities ensured that violence did not break out at the time, but that it could very well have escalated.<sup>227</sup> Many believe incidents like this one highlight a concerted and coordinated effort by actors within Myanmar seeking to sow chaos and turn people against each other.<sup>228</sup> CSOs believe that these forces have significant resources, technical know-how, and access to individuals’ personal backgrounds that enable them to tailor and send out targeted messages en masse.<sup>229</sup>

219 Thomas Fuller, “Extremism Rises Among Myanmar Buddhists,” *The New York Times*, June 20, 2013, <https://www.nytimes.com/2013/06/21/world/asia/extremism-rises-among-myanmar-buddhists-wary-of-muslim-minority.html>.

220 On file with civil society activists in Myanmar.

221 002-R4-04, 3.

222 002-R1-01, 5.

223 FGD (January 2019 and December 2019); Mozur.

224 Ibid.

225 Ibid.

226 Ibid.

227 FGD (January 2019); MS-R2-01.

228 Ibid.; Mozur.

229 Ibid.; See also YGN-R1-01.

## Gendered framing and derogatory attacks

Gendered narratives have also fueled the push for Buddhist-Burman dominance in two ways. First, a constructed narrative has portrayed women as vulnerable victims in need of protection. Second, virulent and derogatory language is both gendered and aimed at women. The gendered framing also has intersected with other narratives, such as the one promulgating a threat of Islam. A 2013 sermon by U Wirathu, captures the essence of the “Muslim conspiracy” in Myanmar and its connection to gendered threats:

Muslims have a lot of money and no one knows where that money mountain is. They use that money to get our young Buddhist women. They show that money to attract our young women. . . . That money will be used to get a Buddhist-Burmese woman, and she will very soon be coerced or even forced to convert to Islam. . . . And the children born of her will become Bengali Muslims and the ultimate danger to our Buddhist nation, as they will eventually destroy our race and our religion. Once they become overly populous, they will overwhelm us and take over our country and make it an evil Islamic nation.”<sup>230</sup>

Interviewees observed that when religious leaders want to “create problems, they use women as victims—for example, [by saying], ‘women are being raped.’”<sup>231</sup> At the same time, religious teachings espoused by ultranationalists promote an inferior view of women, telling them: “by being yourself, you are a lower being, so know your rightful place.”<sup>232</sup>

According to CSOs, threats and attacks on Facebook against women HRDs are more severe, degrading, graphic, and almost always sexual in nature.<sup>233</sup> Female interviewees spoke extensively about gendered insults levied against them.<sup>234</sup> Although both female and male HRDs are threatened by ultranationalist groups, only women are called whore, slut, bitch, and other terms connoting inferior status.<sup>235</sup> Male interviewees agreed with the above and added that insults aimed at men often allude to their weakness in gendered ways such as femininity.<sup>236</sup>

### Women Rising against Ultranationalists

After the violence of the 2012 riots in Rakhine subsided, 969 and *Ma Ba Tha* turned their attention to passing a series of discriminatory laws known as the four laws to “safeguard nationality and religion.”<sup>237</sup> They petitioned USDP President Thein Sein in June 2013, claiming they had more than 1.3 million signatures from Myanmar citizens seeking to protect the most vulnerable among them: women.<sup>238</sup>

230 Copy of 969 DVD (2013) on file with Burma Monitor.

231 001-R2-01, 4.

232 002-R1-01, 3.

233 FGD (December 2019); MS-R1-02, 2-5; MS-R3-01; YGN-R3-03.

234 MS-R3-03, 1-3; YGN-R1-01, 7; FGD (January 2019).

235 YGN-R3-01, 9; YGN-R3-02, 4; See also Crisis Group, “Buddhist and State Power,” 13, 24.

236 MS-R2-02, 2-4; MS-R2-01, 7-8.

237 Crisis Group, “Buddhism and State Power,” 10-17.

238 Ibid.

The “Buddhist Women’s Special Marriage Law” placed restrictions on interfaith marriages and limited the rights non-Buddhist men, including custodial rights.<sup>239</sup> The “Population Control Healthcare Law” required 36-months birth spacing for couples.<sup>240</sup> The “Religious Conversion Law” created a new system of state oversight for those who wished to change religion.<sup>241</sup>

Lastly, the “Monogamy Law” prohibited polygamy, and though the law does not explicitly mention Muslims or the Rohingya, its discriminatory intent based on anti-Muslim stereotypes is evident.<sup>242</sup> The stereotypes are that Muslims in Myanmar are polygamous and have high birth rates, and they are also seeking to marry Buddhist women and convert them to Islam.<sup>243</sup>

The women organizations in Myanmar voiced its opposition and mobilized against the discriminatory laws.<sup>244</sup> For example, women’s rights groups held public events and press conferences asserting that the four laws contravene Myanmar’s obligations under the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).<sup>245</sup> 969 and *Ma Ba Tha* in turn labelled them “race traitors” and threatened them with violence.<sup>246</sup>

Nearly all prominent women’s rights leaders who spoke out against the ultranationalists reported having their social media, email, and phone hacked.<sup>247</sup> Others received threatening messages and texts. Several tried to open “first information” reports (an initial step required before police can investigate the alleged offence) with the police but were turned away.<sup>248</sup>

Ultimately, the four laws were passed in 2015.<sup>249</sup> It is worth noting that women’s bodies and allegations of rape and dishonor at the hands of Muslims have been used by 969 and *Ma Ba Tha* to incite violence and yet the draft “Protection and Prevention of Violence Against Women Law” has been stalled since 2014.<sup>250</sup> The four laws, on the other hand, managed to get drafted and passed in a mere eighteen months.<sup>251</sup>

## The necessity of Myanmar’s military strength

The narrative that the military’s power and control is essential to resist existential and terrorist threats to the country as a whole has been central to the *Tatmadaw*’s continued dominance in Myanmar. In this narrative, “Burmese ultranationalism comes out from national security—[the idea] that

239 Ibid., 11-12.

240 Ibid.

241 Ibid., 12-13.

242 Ibid.

243 Ibid.

244 FGD (January 2019 and December 2019); See also Wai Moe, “Burma’s Women Are Still Fighting for Their Rights,” *Foreign Policy*, July 2, 2015, <https://foreignpolicy.com/2015/07/02/burmas-women-are-still-fighting-for-their-rights-myanmar/>.

245 Matthew Walton, Melyn McKay, and Daw Khin Mar Mar Kyi, “Women and Myanmar’s ‘Religious Protection Laws,’” *The Review of Faith and International Affairs* 13, no. 4 (2015): 36-49.

246 Ibid.

247 Ibid.

248 Ibid.

249 Crisis Group, “Buddhist and State Power,” 13-20.

250 Ibid.

251 Ibid.

[the military] ha[s] to defend the national boundaries.”<sup>252</sup> This narrative has framed the *Tatmadaw* as Myanmar’s savior, with their strength necessary to prevent further violence, and violence on their part justified by the need to keep the country safe and intact.<sup>253</sup> CSOs reported feeling that those in the military buy into this narrative and sincerely believe that only they can “protect not only the boundaries, but also the [nation’s] values.”<sup>254</sup> One interviewee noted that:

[The military has] brainwashed many generations that they need to defend the country . . . . They will defend the country by any means. They always say the *Tatmadaw* is your father, mother.<sup>255</sup>

According to another interviewee, the power of this narrative lies not only in its appeal, but also in its effects:

That’s what the military government wanted—to divide the civilians as much as they can so they can rule the country as they like. They took advantage of the diversity within the country. The unity of civilians is the worst fear for the military . . . because the civilians together can change the government and leaders of the country.<sup>256</sup>

Indeed, this narrative has helped facilitate the military’s stature in Myanmar society and been central to justifying the use of nearly unchecked military might to “protect” the state and ensure its survival. By playing into myths of national security, even the NLD and prominent politicians sometimes have embraced this narrative when it has been helpful to the political agenda.<sup>257</sup>

### Human rights defenders and journalists in Myanmar as traitors

In Myanmar’s politically charged environment, critiquing those in power and challenging hate speech has been dangerous. Voices critical of hate speech – whether they are individuals, CSOs, or journalists – have often been portrayed as race traitors to the nation.<sup>258</sup> For example, a monk who spoke to Reuters in 2018 described, “if you don’t write from the side of your own religion, they think of you as a traitor.”<sup>259</sup>

Perhaps the most prominent example of these dynamics is the conviction of Reuters journalists Ko Wa Lone and Kyaw Soe Oo, who were given seven-year sentences under the Official Secrets Act for reporting on the killing of 10 Rohingya men in the city of Inn Din in Rakhine State.<sup>260</sup> Though they were eventually released on May 6, 2019, the journalists spent over 500 days in prison.<sup>261</sup> Their in-

252 002-R1-01, 2.

253 Ibid; Beech, “The Face of Buddhist Terror.”

254 FGD (January 2019 and December 2019).

255 002-R1-01, 3.

256 002-R4-04, 4.

257 See, e.g., International Crisis Group, “Buddhist and State Power.”

258 John Reed, “Hate speech, atrocities and fake news: the crisis of democracy in Myanmar,” FT Magazine, February 22, 2018, <https://www.ft.com/content/2003d54e-169a-11e8-9376-4a6390addb44>.

259 Tom Lasserer, “Dangerous News: How two young reporters shook Myanmar,” Reuters, August 8, 2018, <https://www.reuters.com/investigates/special-report/myanmar-reporters-democracy/>.

260 Simon Lewis and Shoon Naing, “Two Reuters reporters freed in Myanmar after more than 500 days in jail,” Reuters, May 6, 2019.

261 Ibid.

vestigative documentation of the massacre included photographic evidence of the victims before they were executed and the mass grave where their bodies were left.<sup>262</sup>

Even though the pair were simply doing their job as journalists, local journalists whom Frontier Myanmar interviewed believed that the two deserved their fate because they “should have been ‘loyal’ to their country” rather than publishing details that could damage its reputation.<sup>263</sup> Wa Lone and Kyaw Soe Oo are not alone, as many other journalists have also faced similar threats and prosecutions.<sup>264</sup>

**Figure 11.** Photos of HRDs arrested at the Tarmwe peace rally shared on Facebook accompanied a post reading, “13-5-2018, yesterday in Yangon (Tarmwe), she was paid [by foreigners] to protest. Not because ..... She is to tarnish our race. Look at her. . . There are many in Myanmar who change to winning side. Her account name is Khin Sandar.”



262 Wa Lone, Kyaw Soe Oo, Simon Lewis, and Antoni Slodkowski, “Massacre in Myanmar: A Reuters Special Report,” Reuters, February 8, 2018, <https://www.reuters.com/investigates/special-report/myanmar-rakhine-events/>.  
 263 Su Myat Mon and Kya Ye Lynn, “In Facebook’s reverse reality, journalists are called traitors,” Frontier Myanmar (December 27, 2018), <https://frontiermyanmar.net/en/in-facebooks-reverse-reality-journalists-are-called-traitors>.  
 264 See, e.g., Yasmeeen Serhan, “A False Dawn for Journalists in Southeast Asia,” The Atlantic, May 7, 2019, <https://www.theatlantic.com/international/archive/2019/05/myanmar-reuters-imprisoning-journalists-asia/588925/>.

Interviewees for this report also noted that HRDs and activists publicly critical of Daw Aung San Suu Kyi, the NLD, and the military have been labeled as foreign-trained traitors.<sup>265</sup> A common narrative has been that they are “liars” exaggerating human rights violations, who are working not of their own accord but at the behest of biased international organizations and funders sponsoring their work.<sup>266</sup> HRDs and activists said that in addition to the online and offline threats and harassment, they have been routinely insulted by ultranationalists with the question, “how much are you getting paid to say that?”:

As an organization countering hate speech, we were accused of being “dollar zah,” which means dollar earners, by nationalists. Nationalists like to use the word “dollar zah” against NGOs and CSOs as an attack.<sup>267</sup>

**Figure 12.** A Facebook post singling out a local media fixer for assisting international journalists. The post states, “I am sure you all remember this ‘Mus’ . . . he was arrested for trying to release a drone over Parliament. Now he’s free. Sponsored dollar zahs and journalist traitors are working together and actively mobilizing to bring destruction to our country. We must all band together and fight them.” It is worth noting that the mobilizing that is being described here is a peace protest in Tarmwe calling for an end to the Tatmadaw’s armed conflicts in Myanmar.



265 FGD (January 2019 and December 2019); YGN-R3-01, 4; YGN-R4-04, 4-6.

266 FGD (January 2019).

267 YGN-R4-04, 4.

Aligning dissent with foreign interference, this narrative has served to delegitimize the work generally of civil society, activists, and media in the country. Critically, it has placed their work critiquing hate speech as fundamentally foreign to Myanmar and harmful to its interests.<sup>268</sup> Support for the international accountability measures described below are similarly being characterized as antithetical to the interests of Myanmar.<sup>269</sup>

**Figure 13.** Front page of a journal featuring two diaspora activists from Myanmar standing in front of the ICJ with the following headline: “People who betray Myanmar for money.”



268 Reed.

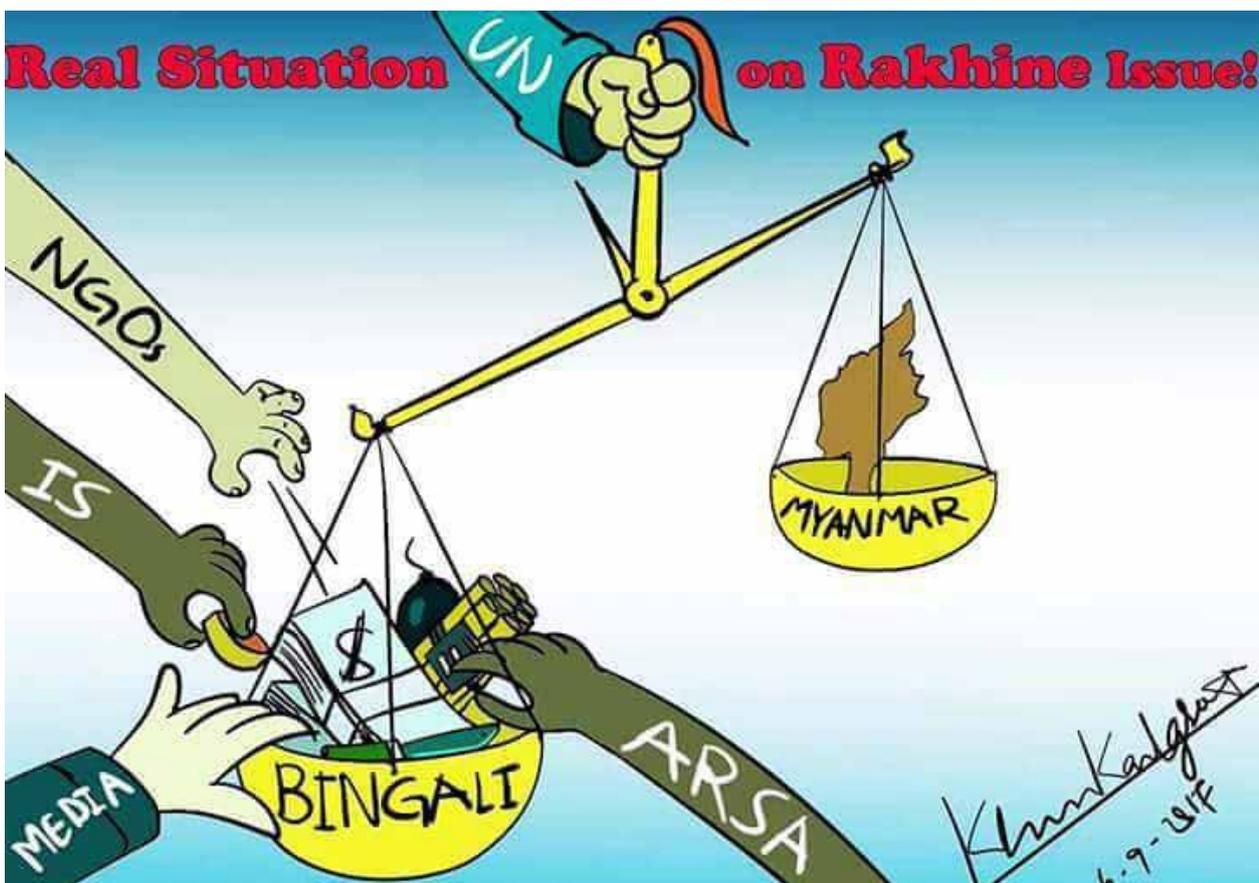
269 Ibid.

### Biased international community

The narrative around the UN and particularly the international human rights system (which had once been held in positive regard by many in Myanmar during the decades of the military rule) has taken root as a narrative of biased interference – foreigners seeking to interfere and encroach upon Myanmar’s sovereignty. Ultranationalist groups have claimed “outsiders” are spreading “fake news” about atrocities in Myanmar.<sup>270</sup> According to them, the international community does not understand the threat that the Rohingya and Muslims pose to Myanmar’s race and religion.<sup>271</sup>

969 and *Ma Ba Tha* have asserted that the international community has been either “hijacked by Arabs” and/or funded by the Organisation of Islamic Cooperation (“OIC”) to disseminate misinformation.<sup>272</sup> There have been countless political cartoons, both online and offline about international community.<sup>273</sup>

**Figure 14.** *Anti-Rohingya cartoon depicting a false narrative of “Bingali” issues receiving biased and unjustified attention from the media, NGOs, and the UN.*



270 Spacia and Mozur; “Two Ultra-Nationalist Buddhist Monks in Myanmar Return to Preaching,” DW News, <https://www.dw.com/en/two-ultra-nationalist-buddhist-monks-in-myanmar-return-to-preaching/a-42921238>.

271 Ibid.

272 Beech, “The Face of Buddhist Terror.”

273 Walton and Hayward.

**Figure 15.** *Anti-Rohingya propaganda circulated on Facebook depicting a crying “Bengali” seizing the full attention of the international media while the real victims in Rakhine state with their hacked-up bodies are completely ignored.*



**Figure 16.** *The Trojan horse is labelled “Refugees” and the returnees from Bangladesh are waving an ARSA flag and seen hiding weapons and used torches, indicating they had been responsible for the destruction.*



UN Special Rapporteurs have been threatened, attacked, and barred from entering Myanmar. In 2013, for example, former Special Rapporteur for the human rights situation in Myanmar Tomás Ojea Quintana attempted to visit Meiktila following the riots there.<sup>274</sup> Protestors surrounded his convoy, punching his vehicle's doors and windows.<sup>275</sup> At a public rally in 2015, U Wirathu called the Special Rapporteur Yanghee Lee a "bitch" and a "whore" and threatened her with violence.<sup>276</sup> Myanmar authorities have denied her entry into the country since 2017.<sup>277</sup> They have similarly refused to cooperate with the FFM and blocked its investigators from entering Myanmar.<sup>278</sup> This level of rejection of the international community resembles the military era policies of non-engagement, and the anti-international attitudes and withdrawal from international human rights institutions has been a disturbing trend in recent years.

### Domestic Rejection of "Biased" International Accountability Efforts

In a significant development towards international accountability, The Gambia filed an application before the ICJ on November 11, 2019 to institute proceedings and request provisional measures against Myanmar for the attacks on Rohingya communities.<sup>279</sup>

The application is concerned with the "acts adopted, taken and condoned by the Government of Myanmar against members of the Rohingya group, a distinct ethnic, racial and religious group that resides primarily in Myanmar's Rakhine State" in manifest violation of the Genocide Convention.<sup>280</sup> Myanmar signed the Genocide Convention in 1949 and ratified it in 1956.<sup>281</sup>

Three days later, on November 14, the Pre-Trial Chamber III of the ICC issued a decision authorizing the Prosecutor's request to start investigating the "Situation in Bangladesh/Myanmar" in the period from June 1, 2010 to the present.<sup>282</sup>

In the same week, on November 13, a Rohingya advocacy group and Argentinian civil society groups filed a criminal case in Argentina against top Myanmar officials for perpetrating and covering up the genocide committed against the Rohingya community.<sup>283</sup> The case is proceeding

274 "Burma 'Failed to Protect' UN Rights Envoy," BBC News, August 21, 2013, <https://www.bbc.com/news/world-asia-23787470>.

275 Ibid.

276 Maddie Smith, "Myanmar's Extremist Monk Doesn't Regret Calling UN Envoy a 'Whore,'" Vice, January 22, 2015, [https://www.vice.com/en\\_us/article/3kegwv/myanmars-extremist-monk-doesnt-regret-calling-un-envoy-a-whore](https://www.vice.com/en_us/article/3kegwv/myanmars-extremist-monk-doesnt-regret-calling-un-envoy-a-whore); Link to video footage (January 18, 2015) (accessed March 2, 2020): <https://www.youtube.com/watch?v=co-mAfSalvEY>.

277 Office of the United Nations High Commissioner for Human Rights, "Myanmar Refuses Access to UN Special Rapporteur," December 20, 2017, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22553>.

278 "Myanmar Refuses Visas to UN Team Investigating Abuse of Rohingya Muslims," Reuters, January 30, 2017, <https://www.theguardian.com/world/2017/jun/30/myanmar-refuses-visas-un-abuse-rohingya-muslims>.

279 "Application Instituting Proceedings and Requesting Provisional Measures," Republic of The Gambia v. Republic of the Union of Myanmar (November 11, 2019), <https://www.icj-cij.org/files/case-related/178/178-20191111-APP-01-00-EN.pdf>.

280 Ibid.

281 United Nations General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide (1951), [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-1&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-1&chapter=4&clang=_en).

282 "Pre-Trial III Decision," Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar (November 14, 2019), ICC 09/19, [https://www.icc-cpi.int/CourtRecords/CR2019\\_06955.PDF](https://www.icc-cpi.int/CourtRecords/CR2019_06955.PDF).

283 "Myanmar's Aung San Suu Kyi Faces First Legal Action over Rohingya Crisis," Agence France-Press, November 14, 2019, <https://www.theguardian.com/world/2019/nov/14/myanmars-aung-san-suu-kyi-faces-first-legal-action-over-rohingya-crisis>.

under the principle of universal jurisdiction for violations of international criminal law.<sup>284</sup> Among officials named in the case are top civilian leaders, including Daw Aung San Suu Kyi, and senior military leaders, including Commander-in-Chief Senior-General Min Aung Hlaing.<sup>285</sup>

In response to ICJ proceedings, Daw Aung San Suu Kyi announced on November 20, 2019, that she would personally appear before the ICJ to defend Myanmar in the case filed by The Gambia.<sup>286</sup> Daw Aung San Suu Kyi's decision to appear before the ICJ has signaled her intention to resist international accountability measures for atrocities committed against ethnic and religious minorities in Myanmar.<sup>287</sup> In a press statement, NLD spokesperson Myo Nyunt said about the ICJ case:

[The government] has officially announced that the State Counsellor, in her capacity as foreign affairs minister, will take the lead role to address this as [the case] harms the dignity of Myanmar. There is a huge difference between what is happening inside the country and what the rest of the world knows about it. So it is best for the State Counsellor to address the issue.<sup>288</sup>

The fact that the ICJ case was instituted by a member state of the OIC has often been invoked to discredit the case as a strategic move funded by Islamic countries to tarnish Myanmar's international standing.<sup>289</sup> For example, U Maung Maung Soe, a political commentator and ethnic affairs analyst has commented that from the ICJ case it "appears that OIC countries do not want to accept the simple repatriation of Bengali refugees" and that "OIC members are powerful and can spread propaganda with their strong financial power."<sup>290</sup>

Myanmar CSOs interviewed for this report expressed disappointment in Daw Aung San Suu Kyi's decision to attend the ICJ proceedings.<sup>291</sup> According to them, awareness inside Myanmar about the details of these international cases has remained low and has resulted in equating support for the ICC and ICJ cases with opposing Daw Aung San Suu Kyi.<sup>292</sup>

In the eyes of her supporters (and also in Myanmar media coverage), she has been heralded as a national hero for not bowing to international pressure, magnanimously defending Myanmar from unjust claims.<sup>293</sup> Many believe that issues like international accountability will likely come to the forefront in the upcoming 2020 elections.<sup>294</sup>

284 Ibid.

285 Ibid.

286 "Aung San Suu Kyi to Lead Myanmar Team to Fight Genocide Accusation," The Associated Press, November 20, 2019, <https://www.nytimes.com/2019/11/20/world/asia/suu-kyi-genocide.html>.

287 Ibid.

288 "Observers Demand Myanmar Unity Before ICJ Case," The Irrawaddy, November 26, 2019, <https://www.irrawaddy.com/news/burma/observers-demand-myanmar-unity-ahead-icj-case.html>.

289 FGD (December 2019).

290 "Observers Demand Myanmar Unity," The Irrawaddy.

291 FGD (December 2019); See also Ibid.

292 Ibid.

293 Ibid.

294 Ibid.

The ICJ in January 2020 ordered provisional measures against Myanmar.<sup>295</sup> Namely, to take all measures within its power to: 1) prevent genocide against the Rohingya; 2) ensure the military and armed groups are to not commit acts of genocide including direct and public incitement to commit genocide; 3) prevent the destruction and preservation of any evidence related to allegations of acts; 4) report to the court every six months on all measures it has taken to give effect to the order. The first order was submitted by Myanmar in May 2020.

The six constructed narratives have created a toxic mix of hate aimed at those who are different from the Buddhist-Burman majority and state and security apparatus. The hate has been aimed at both ethnic and religious minorities inside the country as well as those outside of Myanmar, and spawned structurally-rooted violence and deep-seeded systemic intolerance.

## B. Key Drivers

A troubling picture of the key drivers of the hate speech in Myanmar emerged from the interviews and conversations done for this report. Many CSO members described that hate speech in Myanmar is not simply the product of individual bigotry and intolerance; rather, it has been systematically promoted and disseminated by powerful interests that benefit from the constructed narratives and the resulting division and conflict in society.<sup>296</sup> They also noted that the civilian government has been largely ineffective in addressing the rise of hate speech, too often succumbing to military pressure while also exhibiting its own nationalist biases.<sup>297</sup> Several interviewees also noted that the narratives were not created in a vacuum.<sup>298</sup> Instead, they proliferated due to socio-economic factors including Myanmar's poverty and an education system that normalize and promote systematic discrimination.<sup>299</sup>

### Contributors to and Beneficiaries of Hate Speech

Beyond the ultranationalist groups themselves, CSO members identified a number of key contributors to the rise in hate speech in Myanmar, including the military, political leaders, business interests, and religious leaders.<sup>300</sup> They also analyzed how these entities have benefitted from the effects of hate speech.<sup>301</sup>

CSOs most often cited the military as the main contributor and beneficiary of hate speech.<sup>302</sup> The interviews highlighted specific ways in which the military has been involved in the propagation

295 "Order: Request for the Indication of Provisional Measures, Application of the Convention on the Prevention and Punishment of the Crime of Genocide," Republic of The Gambia v. Republic of the Union of Myanmar (January 23, 2020), <https://www.icj-cij.org/files/case-related/178/178-20200123-ORD-01-00-EN.pdf>.

296 FGD (January 2019 and December 2019).

297 Ibid.

298 Ibid.; MS-R1-02; YGN-R3-01; YGN-R4-04.

299 YGN-R1-01; MS-R3-01; MS-R2-01.

300 FGD (January 2019 and December 2019).

301 Ibid.

302 Ibid; See, e.g., YGN-R3-01.

of hate speech.<sup>303</sup> For example, there have been reports of the military's direct involvement in organized social media operations that target minorities and propagate pro-military messages.<sup>304</sup> One interviewee provided a detailed account of one such suspected operation on social media in which multiple accounts repeatedly use the same language to promote a pro-military agenda:

One account is lobbying for the military and has been sharing many things that are pro-military and he has . . . thousands of followers. He shares that photo and many people shared it again: Within one hour, it was shared 500 times. It was done systematically. . . . I notice that they copy and paste. After 15 comments, there is the same comment. After 15 more comments, the same comment appears again, but from a different account. All the accounts have no real name or real picture. I see it is done systematically.<sup>305</sup>

The military has also been connected to sponsoring ultranationalist groups who are the principal agents of hate speech.<sup>306</sup> At a minimum, the military has tolerated these groups, and links may be much deeper.<sup>307</sup> One activist stated that the "military, crony and its fellows" have been the ones that "support those spreading hate speech and ultranationalist groups from behind."<sup>308</sup> Citing their ability to "preach, organize huge gathering, publish text and newspaper," the activist explained that these actors "would not have done it alone by themselves."<sup>309</sup> The benefit to the military is clear – a politics of fear has bolstered the legitimacy of a powerful military to defend the nation, race, and religion, as well as enriching their cronies.<sup>310</sup> According to one CSO member, the military has been able to "maintain their authority and power" by targeting the Muslim community and ethnic minorities.<sup>311</sup>

Interviewees also widely cited nationalist political parties as well as businesses as important contributors and beneficiaries of the rise of hate speech.<sup>312</sup> Some "29 nationalist political parties," including USDP and NDP were identified as providing financial support for the activities of ultranationalist religious leaders.<sup>313</sup> Multiple CSO members stated that some businesses have also directly funded ultranationalist movements.<sup>314</sup> One interviewee cited Super Coffee Mix and Max Corporation as examples of businesses that propagate anti-Muslim hate speech.<sup>315</sup> Prominent businessmen "Max" Zaw Zaw and Zaykarbar Khin Shwe have been among those singled out by local activists as funders of ultranationalist movements and promoting "hate to benefit their business," according to the interviewee.<sup>316</sup>

303 Ibid; See, e.g., MS-R3-01; YGN-R3-01.

304 YGN-R3-01.

305 002-R1-01, 7.

306 "An Unholy Alliance," Al Jazeera.

307 Ibid.

308 001-R2-01, 3.

309 Ibid., 4.

310 See "Myanmar Army Enjoys Popularity Surge Amid Rohingya Crackdown," AP News, January, 16, 2018, <https://www.apnews.com/61b769ea85164d2ca433371321a1e1a6>.

311 002-R3-03, 3.

312 Ibid.; FGD (January 2019 and December 2019); YGN-R3-02; YGN-R4-04.

313 001-R2-01, 3.

314 001-R1-01, 1; 002-R3-03, 2.

315 002-R3-03, 2.

316 Ibid.

Finally, there is the NLD government's role in contributing to the rise of hate speech by failing to take effective action against ultranationalist groups and succumbing to political pressure to distance itself from the Muslim community. Several CSO members interpreted the government's silence and actions as condoning hate speech.<sup>317</sup> One interviewee expressed that the "NLD government is still very weak at handling racial and religious issues" and "the government is involved in spreading the hate speech. They may be not directly involved but they allowed things to happen."<sup>318</sup> Another interviewee suggested that the government does not have the political will or capacity to resist popular sentiments: "By staying silent, the government is supporting hate speech in another way. . . . They have no guts to resist the crowd, they just follow and listen to them."<sup>319</sup>

## Policies that Enable or Facilitate Hate Speech

CSOs have stated that hate speech is enabled by a number of factors. Domestic laws that should be enforced against state and non-state drivers of hate speech are not enforced. Such enforcement has the potential to curb hate speech and protect ethnic and religious minorities. Instead, these key drivers and their narratives of hate have been permitted to continue whereas a myriad of domestic laws are routinely applied against HRDs and activists critical of the military and the government.

Furthermore, the NLD government actions and policies have also maintained Burmanization agenda and perpetuated prejudice towards certain minorities.<sup>320</sup> In 2015, facing criticism regarding Muslims, the NLD excluded Muslims, even long-term, qualified members, from representing the party.<sup>321</sup> One CSO member put it bluntly: "The NLD has issues with Muslims. They don't have a proper stand and policy on the other ethnicities. Also, they said they're working on national reconciliation but they only work closely with the Myanmar military."<sup>322</sup> Other government officials have also tried to distance themselves from the Muslim community. For example, Yangon Chief Minister Phyo Min Thein has attended Hindu religious ceremonies and Chinese ceremonies but not Islamic events.<sup>323</sup> Government efforts to cater to popular sentiment and distance themselves from the Muslim community has led to the disenfranchisement of the Muslim population, who "don't have any representatives in parliament to speak for their rights, and no one in politics."<sup>324</sup> Furthermore, a CSO member noted that the government's actions have also created intergroup tensions as they only consult with the Sunni Muslim community "when they make decisions" and have ignored Shia Muslims.<sup>325</sup>

317 See, e.g., MS-R1-01; MS-R3-01.

318 002-R3-03, 1.

319 002-R1-01, 4.

320 FGD (January 2019).

321 Holmes.

322 002-R3-01, 3-4.

323 Ibid; Ramzy.

324 Ibid; 002-R3-03, 2.

325 Ibid.

## Poverty

A number of CSOs commented that poverty, stress, and a dearth of jobs have created a volatile environment and groups like *Ma Ba Tha* have taken advantage of it.<sup>326</sup> One interviewee explained: “Many people don’t have any way out of stress, and listening to those preaching [and] speeches becomes a way of releasing their stress. Slowly, it leads to them to become ultranationalists. Therefore, I believe that the economic vulnerability of the people is the source of making the ultranationalists stronger.”<sup>327</sup> The interviewee also stated that “the daily struggle of people leads them to rely on religion. In our country, you can see that many farmers pay respect to gods; this is kind of a way out for stress that they have to go through every day in their lives. Let’s say if we can improve the living standard and the daily life of the people, we will definitely be able to reduce the issue of ultranationalism.”<sup>328</sup>

Ironically, it has often been the most impoverished communities that borne the brunt of the effects of hate speech. As one interviewee observed, “now because of nationalist movement, people at the bottom class have divided in groups, they don’t like each other and they get into fights. Some people become jobless, and some stopped buying things from Muslim’s shops. There are some impacts too for the high class rich people. But the impacts are so small for the rich people.”<sup>329</sup> Another interviewee similarly noted that the 969 encouraged Buddhists to put 969 stickers on Buddhist shops and only buy from them.<sup>330</sup> This practice has caused some Muslim shop owners to suffer because “people stopped buying their products at the local market, betel nut shops, and even taxi drivers.”<sup>331</sup>

## Systematic Discrimination in the Education System

A number of CSOs said that systematic discrimination in the education system has been one of the contributing factors facilitating hate speech. From openly discriminatory practices at school against ethnic and religious minority students to curriculums that focuses only on the Buddhist *Bamar* experiences, to learning via rote memorization rather than critical thinking, a range of policies and practices have affected how people in Myanmar absorb and evaluate information.<sup>332</sup>

An interviewee said that school curriculum is woefully outdated.<sup>333</sup> For instance, the nation-wide University of Distance Education has been using textbooks with articles written by Myanmar Alin editor and nationalist monk Ledi Pandita U Maung Gyi from the colonial era.<sup>334</sup> These books are rife with inaccuracies and derogatory excerpts about ethnic and religious minorities.<sup>335</sup> Ethnic minorities are often demonized in them for their past collaboration with British colonialists.<sup>336</sup> De-

326 FGD (December 2019); See, e.g., 002-R1-01; MS-R3-01.

327 001-R2-02, 3.

328 Ibid.

329 002-R3-02, 2.

330 002-R3-01, 5.

331 Ibid.

332 001-R2-02, 3; 001-R3-01, 4; YGN-R1-01, 2, 5; 002-R3-01, 1, 5–6; 002-R3-03, 3; 002-R4-04, 2.

333 YGN-R4-04; 3.

334 Ibid.; Su Myat Mon, “Civics Education in Primary Schools Is a Lesson in Discrimination,” *Frontier Myanmar*, February 5, 2019, <https://frontiermyanmar.net/en/civics-education-in-primary-schools-is-a-lesson-in-discrimination>.

335 Ibid.

336 Robert Taylor, “Do States Make Nations? The Politics of Identity in Myanmar Revisited,” *South East Asia Research* 13, no. 3 (2017).

spite these clear deficiencies, the Ministry of Education has continued to use the texts even though they no longer reflect the reality of modern Myanmar.<sup>337</sup>

Furthermore, the textbooks highlight Buddhist *Bamar* heroes and histories, despite Myanmar being a multi-ethnic and multi-faith country. Activists said that children in primary school have had to repeat the slogan “Myanmar is our country, Burmese is our language.”<sup>338</sup> These narratives perpetuate the idea that Myanmar is a country for Buddhist-Burman; erasing the histories of other ethnic and religious groups.<sup>339</sup> Other problematic slogans young students have been asked to memorize at school in the past include: “*Thway hnaw darn nga doe mone lu myo anyunt tone*,” which translates to “We hate mixed blood, it will make a race extinct.”<sup>340</sup> Fortunately, this module from Grade 5 was removed in 2019 as a result of concerted campaign efforts by CSOs, but that change alone cannot erase the legacy of the discriminatory educational practices overnight.<sup>341</sup>

Ethnic and religious minorities interviewees also shared painful experiences of feeling alienated at school and bullied by teachers and other Buddhist *Bamar* students in schools.<sup>342</sup> Examples include, being forced to participate and donate to temples and monks during Buddhist festivals like *Wah Zoe* and *Kah Htein*.<sup>343</sup> Meanwhile, other religious festivals are not celebrated, and school holidays are given only to mark Buddhist occasions.<sup>344</sup> Schools and offices normally have Buddhist symbols and shrines.<sup>345</sup> It also have become apparently common practice for teachers to demand that students clasp their hands and “*gah dawh*” (Buddhist prayer hands) them, as a sign of respect.<sup>346</sup>

Many mentioned that teachers assigned to ethnic regions have been often ignorant of the local cultures and insensitive to their needs.<sup>347</sup> Teachers, for example, have been known to call students derogatory names like “Shan Ma” (Shan woman) instead of by their proper names.<sup>348</sup> Classmates have laughed when students mispronounced Burmese words, as instruction is provided in Burmese instead of ethnic dialects.<sup>349</sup>

Muslim interviewees added that they have not been permitted to leave early on Friday for prayers and if they did, they would have been penalized for it.<sup>350</sup> Others mentioned that even if they have had the necessary grades, ethnic and religious minorities have been denied admission to professional colleges for medicine or engineering, which are the two most prestigious professions in Myanmar.<sup>351</sup> After enduring these sorts of discriminatory practices, minority students have not always

337 002-R3-01, 7; Myat Mon.

338 001-R1-02, 4.

339 Ibid.

340 002-R4-04, 2–3; See also Myat Mon.

341 Ibid.; FGD (December 2019).

342 FGD (January 2019 and December 2019); See, e.g., YGN-R1-01, 9.

343 Ibid.; Myat Mon.

344 Ibid.

345 Ibid.

346 YGN-R4-04, 2; YGN-R3-01.

347 Ibid.; FGD (January 2019 and December 2019); See also YGN-R3-02, 1–4.

348 YGN-R4-04, 3.

349 Ibid.

350 FGD (December 2019).

351 Ibid.

received their degree certification; CSOs state that schools and universities have pointed to some sort bureaucratic excuse (usually around their citizenship and identity status) to justify not providing a degree.<sup>352</sup>

The patterns are so commonplace that one interviewee believes teachers and others in the Ministry of Education learn, at a minimum implicitly, to oppress minority groups through the civil service training:

Somehow they become familiar with [the] government's institutions to gain a government's staff mindset. . . . [P]eople who came from those institutions have already developed a Burmanization mindset and . . . provide services to the public in a discriminatory manner.<sup>353</sup>

To overcome the tremendous challenges of structural discrimination, CSOs working to build religious tolerance have emphasized the importance of teaching children about diversity and different faiths.<sup>354</sup> For instance, one CSO representative who works to promote education and peace in Myanmar explained that children could learn about Islam just by interacting with Muslim members of the community:

If only students from other religions can learn what Muslims are doing, they can see our mosques, how we worship, what we do in the mosque and outside of the mosque so that they will understand that we're not spreading hate to other religions and that we're not terrorists. We don't plan purposely to show them that, [but] that's what we hope they will learn about our community by being around. They are allowed to listen to our discussions. We have learned that the students who have joined our school hang out together until now. They are invited to each other's religious festivals [and] shar[e] food.<sup>355</sup>

Any solutions addressing hate speech needs a commitment approach to dismantle these discriminatory policies and practices which are rooted in government institutions, and replaced with positive government-spearheaded actions for peaceful coexistence. Without it, these powerful state and non-state key drivers of hate will remain protected and shall continue to disseminate their rhetoric of hate through various channels.

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352 Ibid.

353 002-R3-01, 8-9.

354 FGD (January 2019 and December 2019).

355 001-R3-01, 1.

## C. Channels and Forms of Dissemination

Hate speech in Myanmar is disseminated using a variety of channels. The first part of this section will discuss online channels with a specific focus on Facebook. The latter part is dedicated to other “offline” methods of dissemination.

### Online Channels

#### The role of Facebook in Myanmar

With the rapid rise in Internet connectivity, propagators of hate speech have increasingly turned to online channels to disseminate their messages. Facebook has played the most significant role as the main social media platform in the country. For many of Myanmar’s 20 million Facebook users, the social media platform is “their main source of information.”<sup>356</sup> Moreover, the lack of digital and social media literacy, the cheap and easy access to the social media platform, and the use of Facebook by government institutions as well as major media outlets in Myanmar as their principal communication channel with the public have created the perception that information circulated on Facebook is reliable.<sup>357</sup> Coupled with relative user anonymity and difficulties associated with monitoring and removing content in a timely manner, the dominant status of Facebook has made the platform a powerful avenue for the dissemination of hate speech.<sup>358</sup>

The spread of hate speech on Facebook has frequently involved the use of fake accounts and fake news. In 2018, the New York Times exposed years of *Tatmadaw*-led online campaigns, which have systematically deployed hundreds of military personnel to “create troll accounts and news and celebrity pages on Facebook” and “tend the pages to attract large numbers of followers.”<sup>359</sup> The pages then have become “distribution channel for lurid photos, false news and inflammatory posts,” after which fake accounts have been used to share the content, silence opposing voices, and incite quarrels among commenters to enrage the public—all timed for peak viewership.<sup>360</sup>

One CSO representative observed that much of the content in the social media pages have often been “clickbait”—information such as tips for romantic relationships and eye-catching imagery—meant to lure unsuspecting users to hate speech content included among harmless posts.<sup>361</sup> Another interviewee also noted the artificial pattern have been observed, with the same comments being copied and pasted at noticeably regular intervals, highlighting the systematic nature of the posts and there likely orchestration.<sup>362</sup>

Confirming the existence of harmful content, Facebook removed a total of 490 Facebook pages, 163 Facebook accounts, 17 groups, and 16 Instagram accounts during the latter half of 2018.<sup>363</sup> Among

356 BSR, 13.

357 A/HRC/39/CRP.2, para. 1345.

358 Ibid., para. 1346.

359 Mozur.

360 Ibid.

361 001-R1-02.

362 002-R1-01.

363 Facebook, “Removing Myanmar Military Officials from Facebook,” December 18, 2018, <https://newsroom.fb.com/>

the accounts were the commander-in-chief of the armed forces and the military's television networks, which were banned from Facebook to prevent "further inflaming of ethnic and religious tensions."<sup>364</sup> The great majority of content was taken down for "coordinated inauthentic behavior," whereby Facebook found that seemingly independent news, entertainment, beauty, lifestyle, opinion, and informational pages were in fact linked to the Myanmar military.<sup>365</sup> Some of the most followed pages including: *Sayama Lay Myah* (Young Female Teachers); *Pawh Pawh Pah Pah* (Let's Laugh Casually), Beauty and Classic; and We Love Myanmar. Altogether, the removed pages had about 16 million followers.<sup>366</sup>

Others interviewed for this report also described duplicate pages meant to look like real media sources or fake pages of militant Rohingya set up to make it seem as though Rohingya are violently retaliating, and pages established specifically to criticize prominent HRDs.<sup>367</sup> For example, they describe how during the conflict with the AA, a duplicate AA account emerged.<sup>368</sup> It looked, at first glance, to be identical to the official AA account down to the profile picture.<sup>369</sup> The fake one, however, shared pictures and misinformation detailing the death of AA leadership and defeat at the hands of *Tatmadaw*.<sup>370</sup>

## Challenges facing hate speech regulation on Facebook

In April 2018, Facebook publicly released its Community Standards that moderators use to determine content that violates its policies, including a three-tiered approach to identify hate speech and prioritize what is proactively filtered.<sup>371</sup> The highest level, Tier I, covers violent or dehumanizing speech.<sup>372</sup> Tier II includes statements of inferiority, disgust, or contempt of a protected group.<sup>373</sup> Tier III comprises of calls for segregation or exclusion of a protected group.<sup>374</sup> The company continues to update these standards through periodic reviews.<sup>375</sup> Despite diligent monitoring attempts from CSOs and some remedial steps taken by Facebook, significant challenges remain for tracking and stopping hate speech on the platform.<sup>376</sup>

## Ineffectiveness of Removal

One major challenge has been that removing specific posts, accounts, or pages does not necessarily prevent further circulation of the posted content.<sup>377</sup> For example, consultation participants noted that public figures such as the Director General of the State Counsellor Office, Zaw Htay, have been posting

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news/2018/08/removing-myanmar-officials/.

364 Ibid.

365 Ibid.

366 Ibid.

367 FGD (December 2019); YGN-R1-01, 7-8; MS-R1-02, 5-7.

368 Ibid.

369 Ibid.

370 Ibid.

371 Facebook, "Publishing Our Internal Enforcement Guidelines and Expanding Our Appeals Process," April 24, 2018, <https://about.fb.com/news/2018/04/comprehensive-community-standards/>.

372 Ibid.

373 Ibid.

374 Ibid.

375 Facebook, "Community Standards—Recent Updates—Hate Speech," October 2019, [https://www.facebook.com/communitystandards/recentupdates/hate\\_speech](https://www.facebook.com/communitystandards/recentupdates/hate_speech).

376 FGD (December 2019); Wong; Stecklow, "Why Facebook is Losing the War."

377 Ibid.

old photos and video content again.<sup>378</sup> In Myanmar, most users share posts by copying and pasting the content, rather than by using the “share” function.<sup>379</sup> Moreover, while Facebook has not released the underlying data, it has stressed that some of the pages removed in December 2018 were taken down because of their connection to pages that were removed earlier in the year for their military connection.<sup>380</sup>

### Technological Discrepancy

The second challenge has been technological discrepancies. Prior to October 2019, Myanmar was the only country in the world that predominantly used Zawgyi as the standard for encoding and displaying text, instead of Unicode, the global international text encoding standard.<sup>381</sup> The mismatch has created complications on both ends of social media platforms: users of Zawgyi devices have not been able to properly access instructions for reporting hate speech for example, while Facebook has encountered difficulties in deploying automated tools for tracking messages and posts that have been produced with Zawgyi.<sup>382</sup> Myanmar has since officially adopted the use of Unicode, and its government offices, telecommunications companies, banks, and media must now use it as the default for Burmese.<sup>383</sup> Facebook has been supporting Myanmar’s transition to Unicode, but the gap has continued to hinder efforts to identify and respond to the spread of hate speech.<sup>384</sup>

### Need for Greater Context Sensitivity

The third challenge has been ensuring greater context sensitivity in content moderation. As noted by the FFM, Facebook needs more “content moderators who understand Myanmar language and its nuances, as well as the context within which comments are made.”<sup>385</sup> In particular, “[s]ubtleties in the Myanmar language and the use of fables and allegories make some potentially dangerous posts difficult to detect.”<sup>386</sup> In the wake of the FFM’s findings, Facebook commissioned a study by Business and Social Responsibility (“BSR”) that provided recommendations for Facebook to address hate speech on their platform. In the report, BSR similarly identified that “there is substantial consensus—among both external stakeholders and Facebook’s own staff—that effective implementation of the Community Standards in Myanmar requires Burmese staff with insight into the local context, such as cultural, political, conflict, ethnic, religious, and language factors.”<sup>387</sup>

As of November 2018, Facebook employed a team of 99 native Myanmar speakers to review content.<sup>388</sup> A few CSO interviewees mentioned concern about content moderators’ own biases and

378 Ibid.

379 BSR, 14.

380 Facebook, “Removing.”

381 Facebook, “Integrating autoconversion: Facebook’s path from Zawgyi to Unicode,” Sep. 26, 2019, <https://engineering.fb.com/android/unicode-font-converter/>.

382 BSR, 51.

383 Eaint Thet Su, “Zawgyi to Unicode: the big switch,” *The Frontier Myanmar*, September 28, 2019, <https://frontier-myanmar.net/en/zawgyi-to-unicode-the-big-switch>.

384 Sara Su, “Update on Myanmar,” Facebook Newsroom, August 15, 2018, <https://newsroom.fb.com/news/2018/08/update-on-myanmar/>.

385 A/HRC/39/CRP.2, para. 1350.

386 Ibid., para. 1311.

387 BSR, 26.

388 Jon Porter, “Facebook Admits It screwed up on Myanmar — but It Refuses to Take All the Blame,” *The Verge*, Novem-

prejudices.<sup>389</sup> A Kachin activist said that they had flagged content that definitely violated Facebook’s community standards but then were told by a content moderator that it was fine.<sup>390</sup> A Muslim participant also said that they wanted a Tier I derogatory post about the Rohingya to be taken down, but the reviewer kept it up.<sup>391</sup>

A CSO representative remarked that the aforementioned changes have led to some improvement, reducing the time the company takes to respond to reported content from a week to about two days.<sup>392</sup> Nonetheless, the number of moderators for Myanmar pale in comparison to the 1,200 moderators Facebook has employed to review hate speech in Germany alone for example.<sup>393</sup> According to one estimate, a similar ratio of users to moderators would require about 800 reviewers for Myanmar.<sup>394</sup>

Indeed, the perils of the lack of context sensitivity stood out in February 2019 when Facebook banned four EAOs as “dangerous organizations,” as well as any associated praise, support, or representation of the groups on its platform.<sup>395</sup> This ban, made without consultation with local CSOs, sparked serious concerns among CSOs and human rights organizations that the company was “tipping the scales toward the military” by applying restraints to a select group of non-state actors and refusing to clarify the standards used for the decision.<sup>396</sup>

### Increasing use of alternative online channels

The fourth challenge has been the increased use of alternative online channels that may be harder to monitor. Specifically, representatives of several CSOs noted that crackdowns by Facebook have not reduced hate speech online, because propagators have simply turned to alternative means of communication. Alternative methods have included creating secret or closed groups on Facebook that are not easily accessible by CSOs engaged in monitoring and fact checking.<sup>397</sup>

After being banned from Facebook, members of the military and ultranationalist groups including Ma Ba Tha and its allies attempted to migrate to V Kontakte (“VK”), a Russian social media platform that claims 97 million active monthly users, but were subsequently blocked there as well.<sup>398</sup> CSOs reported that ultranationalist figures including U Wirathu and U Sittagu have created their own namesake applications, which are only downloadable via private links on Google Drive that are shared through VK.<sup>399</sup> These individual applications have provided them with a direct line of communication to their followers, and the information that is shared often contradicts official reports from the government.<sup>400</sup>

ber 6, 2018, <https://www.theverge.com/2018/11/6/18068104/facebook-business-social-responsibility-myanmar-report>.

389 MS-R1-01, 6; MS-R1-02, 6; FGD (December 2019).

390 MS-R1-01, 6-7.

391 YGN-R1-01, 7.

392 002-R1-01.

393 Kevin Roose and Paul Mozur, “Zuckerberg Was Called Out Over Myanmar Violence. Here’s His Apology,” *The New York Times*, April 9, 2018, <https://www.nytimes.com/2018/04/09/business/facebook-myanmar-zuckerberg.html>.

394 Ibid.

395 Facebook, “Recent Updates.”

396 Wong.

397 002-R4-04; 002-03-01; 002-R3-03.

398 James Hookway and Myo Myo, “Banned From Facebook, Myanmar’s Top General Finds Russian Refuge,” *Wall Street Journal*, August 30, 2018, <https://www.wsj.com/articles/banned-from-facebook-myanmars-top-general-finds-russian-refuge-1535631150>; Steger.

399 FGD (December 2019).

400 Ibid.

More recently, another application that has become popular among ultranationalist groups and government and military officials is *OK Bah* [meaning, [being taking down by FB] is ok or no problem!].<sup>401</sup> The app was designed to facilitate free discussions with little to no threat of censorship, but no criticism of China or the Chinese government is permitted due to the role of Chinese developers in its creation.<sup>402</sup> Though *OK Bah* is still not as widely used as Facebook in Myanmar, there has been a lot of activity on the app, especially surrounding the activities of *Ma Ba Tha*.<sup>403</sup> CSOs who have studied this application found that posts have been taken from *OK Bah* and reposted on Facebook.<sup>404</sup>

Additionally, ultranationalist groups have used direct messaging apps such as Facebook Messenger, WeChat, and Viber to spread misinformation, compounding the spread of hate narratives.<sup>405</sup> In particular, Viber has remained popular among older populations and members of Myanmar's civil service, the General Administration Department.<sup>406</sup> As of 2016, there were approximately 25 million Viber users in Myanmar.<sup>407</sup> Encrypted messaging apps such as WhatsApp, already under fire for enabling incitement and lynch mobs in India, may also exacerbate the situation, making it even more challenging to track and stop the dissemination of problematic content.<sup>408</sup>

CSO interviewees also described how hate speech has been circulated in large online groups through websites such as Yangon Chat and Mandalay Chat, which existed even before the advent of Facebook.<sup>409</sup> Interviewees believe that certain participants pretending to be members of other religious groups sign in online to inflame opinions even further.<sup>410</sup> However, despite the various other means through which hate speech has been spread, the use of social media like Facebook has greatly expanded the reach and power of such hate speech.<sup>411</sup> Addressing social media's role in the hate speech problem requires at a minimum greater data transparency, analysis, and coordination among relevant stakeholders.<sup>412</sup>

## Offline Channels

In addition to spreading hate speech through online channels, ultranationalist groups like *Ma Ba Tha* have also used more traditional methods to share the message, including preaching and sermon tours, newspapers, pamphlets, DVDs, and books.

### Electronic media—movies and DVDs

According to the CSOs, *Ma Ba Tha* and other ultranationalist groups have distributed DVDs containing hate speech and anti-Muslim messages at public places including boat docks, tea shops, and bus and

401 Ibid.

402 Ibid.

403 Ibid.

404 Ibid.

405 BSR, 14; 002-R1-01; FGD (January 2019 and December 2019).

406 002-R1-01.

407 BSR, 12–13.

408 Ibid., 54.

409 FGD (January 2019).

410 Ibid.; See also 001-R1-01.

411 Stecklow; Elise Thomas, "Facebook Keeps Failing in Myanmar," *Foreign Policy*, June 21, 2019, <https://foreignpolicy.com/2019/06/21/facebook-keeps-failing-in-myanmar-zuckerberg-arakan-army-rakhine/>.

412 Ibid.

train stations.<sup>413</sup> For instance, one interviewee described that in 2012, an organization sponsored by Burmese business tycoon Zaykarbar Khin Shwe circulated a documentary DVD about the threat of terrorist groups like Boko Haram and the Taliban to the Buddhist community; the DVD was shared to coincide with Shwedagon Pagoda’s milestone anniversary year.<sup>414</sup> The interviewee noted that this DVD caused many Buddhists to think that Muslims kill non-Muslims.<sup>415</sup> Similarly, another DVD “talked about how in 2012, in Bangladesh, some monasteries were destroyed by a Bangladeshi Muslim group.”<sup>416</sup> The DVD was distributed in Karen State to convince the public that “Muslims will destroy the Burmese shops [and] people, burn monasteries, and kill to become powerful.”<sup>417</sup>

CSOs also described how movies in Myanmar reinforce racist messages.<sup>418</sup> For instance, films play off stereotypes by depicting villains that are either part of EAOs or commonly wearing ethnic clothing.<sup>419</sup> According to one activist, “most celebrities in Myanmar are also racists. They usually make movies that involve a *kalar* villain or *Ah Chaut* [a gay man] as comic relief. It is a very common stereotypical joke used in most Myanmar movies. They often make the villains wear ethnic clothing like Shan long pants. There is a lot of discrimination in movies.”<sup>420</sup>

In addition to movies, other types of pop culture, such as comedy and folk theatre groups like Hnin Si A Nyeint and Five Star, have been saturated with negative depictions of the Rohingya.<sup>421</sup> One skit from the group Hnin Si A Nyeint, for example, includes a monologue by a Buddhist woman: She explains that she was forced to marry what she calls her horrible, smelly, and ugly bearded *kalar* husband.<sup>422</sup> She says that people all around her told her to embrace democracy, and that he’s a human, after all. But she laments that he is barbaric, abusive, and keeps marrying one Buddhist wife after another. Finally, she has had enough, so she leaves him. The skits end with her telling the audience his name: “Rohingya.”<sup>423</sup> In a music video, the popular artist MC Hlwan Paing mocks other rappers by calling them “Hip Hop Rohingya”: they steal his ideas and rhymes, but they will never be superior like him.<sup>424</sup>

## Print media—books, newspapers, and pamphlets

Books, newspapers, and pamphlets have also been important tools for spreading hate speech. One interviewee described that *Ma Ba Tha* has distributed booklets with their propaganda by placing them in tea shops and public areas.<sup>425</sup> The CSOs pointed to two particularly influential books—*Amyo Pyauk Hma So Chauk Sayar* and *Islamization*—which contain anti-Muslim messages and portray Is-

413 FGD (January 2019); See also YGN-R3-01, 4-5; YGN-R4-04, 3.

414 001-R1-01, 6.

415 Ibid.

416 Ibid., 3.

417 Ibid.

418 FGD (January 2019); YGN-R3-01; See also Aung Kaung Myat, “Military Rule May Be Over, but Myanmar’s Film Industry Remains in a Tawdry Time Warp,” *Time*, August 22, 2018, <https://time.com/5374231/myanmar-cinema-film-movies/>.

419 002-R4-04, 3.

420 YGN-R3-01, 4.

421 FGD (December 2019)

422 Ibid.

423 Ibid.

424 MC Hlwan Paing, “Hip Hop Rohingya (Lyrics)” Youtube (accessed December 7, 2019), <https://www.youtube.com/watch?v=QWKfobeKrjg>

425 001-R1-01, 4.

lam as a threat to Myanmar.<sup>426</sup> Others explained that some mainstream, including the state-run and military-owned, news sources including: Eleven, 7 Days News, New Light of Myanmar (*Myanma Alin*), Myawaddy News, MCNTV, Kamaryut Media (a main distributor of Ministry of Information propaganda), Thuriya Nay Won, and The Mirror (*Kyemon*) have perpetuated hate speech by reporting news in a seemingly professional manner yet with a racial bias.<sup>427</sup>

Pamphlets have served as another inexpensive and effective means of distributing hate speech. One interviewee described how pamphlets have been used by groups such as the Pa-O National Organization (PNO), a Pa-O political party in Myanmar with an EAO armed wing, the Pa-O National Army, to further religious tensions between Buddhists and Muslims in Shan State:

Many rumors were spread out, like provoking people to burn down all the Muslim-owned shops. At that time, I called all my Muslim friends to react to the violence calmly, because we don't know where all the propaganda comes from. . . . The darker the night fell, the louder the rumors were. Mosques were burned. Pamphlets were distributed everywhere in the town.<sup>428</sup>

In another example, an interviewee explained that members of the Democratic Karen Buddhist Army ("DKBA")<sup>429</sup> distributed anti-Muslim pamphlets in the villages around Hlaingbwe for 1,000 MMK and "put it in every home."<sup>430</sup> Finally, one activist noted that in 2012, Zaykarbar Khin Shwe's organization distributed pamphlets with the clear message that "the Imams of the mosque are preaching every Friday to kill non-Muslims."<sup>431</sup>

Overall, forms of offline hate speech have been present in local communities for many years and are deeply embedded in culture and the education system. As one activist explained:

The actual population who spread hate speech exists in the community and lives in the community. They have their institutions and community. They were working offline even before Facebook existed, so the hate speech won't stop just because Facebook bans them. They have many other platforms. They have television channels and radios. Those are more effective.<sup>432</sup>

426 Ibid., 6; 001-R1-02, 3.

427 Ibid.

428 001-R2-02, 1. [TG: timing on the incidents in question – will add later]

429 A Karen EAO which has supported Tatmadaw operations against other EAOs.

430 001-R1-01, 3. [TG: timing on the incidents in question – will add later]

431 Ibid., 6.

432 Ibid.

## D. Impact on Ethnic and Religious Minority Communities and Civil Society

The impact of hate speech and ultranationalism on minority communities and civil society work and activism within Myanmar has been profound and the cycle of hate and violence has tightened in recent years. Making matters worse, in order to combat hate speech effectively and its cultural underpinnings, there needs to be open civil society space to promote tolerance and understanding; instead there have been increasing restrictions on freedoms of expression and retaliation against those who speak out against those in power.

This section sketches, first, how the hostile environment created by hate speech has sowed distrust, violence, and further marginalization of ethnic and religious minority communities. The breakdown in societal tolerance has spiraled in the wrong direction, affecting individuals' and communities' psychological well-being and leading to even further physical separation of various groups. The prospects of breaking the vicious cycle are not promising if the current trends and policies continue.

Secondly, the section examines the differential treatment of speech by two groups of actors: hate speech by ultranationalists has been permitted, but there has been a corresponding increased crackdown on CSOs and HRDs' freedom of expression in recent years. Current conditions have created a dangerous trend: as ultranationalists, supporters of the military, and the civilian government fan the flames of divisions and tensions through hate speech, CSOs and activists attempting to combat hate and discrimination must do so in the face of increased risk of arrests, prosecutions, and attacks on their personal security. This antagonistic and restrictive environment has resulted in a loss of hope and sense of isolation among some activists, both in their work and in the democratic transitional process. These trends pose a chilling effect on legitimate expression in Myanmar and undermine the likelihood that hate speech will be adequately combatted despite its destructive force in society.

### Impacted Communities – Distrust and Violence

At its root, hate foments distrust and violence. One common theme from the discussions at both convenings, was that hate speech ultimately condones and promotes violence against ethnic and religious minority communities.<sup>433</sup> Many stated that fear, be it of “the others,” or loss of one’s ethnic identity and religion, is used to justify violence, attributing it as a necessity in defense of one’s race and religion.<sup>434</sup> While the most well-known manifestation has been the violence against the Rohingya, those attacks have not been the only incident stemming from fear and hate. One activist recalled “there were rumors [in Meiktila] when buying foods that people were worried that foods they bought would be poisoned by Muslims. The worst is it affected people’s mental health. They threatened to burn down mosques. Mentally people didn’t feel safe anymore.”<sup>435</sup> Indeed, it is the interplay between the physical violence and the psychological effects of hate speech on both the perpetrators and the affected communities that make it

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433 FGD (January 2019 and December 2019).

434 Ibid.

435 002-R3-03, 4.

so powerful and dangerous and why it is so important to counter whenever possible.

Myanmar unfortunately has been in the midst of deeply rooted cycle of hate and the cycle of distrust and intolerance has been spiraling in the wrong direction. After the well-known lawyer U Ko Ni, who had served as a senior adviser to Daw Aung San Suu Kyi and the NLD, and advocate for a new Constitution, was assassinated at the Yangon International Airport in 2017, ultranationalists took to Facebook to celebrate.<sup>436</sup> They said that the gunman was a “Buddhist hero” who had “saved the future of Buddhism by killing U Ko Ni [as] a Muslim and a political leader,” according to an activist.<sup>437</sup> Following U Ko Ni’s assassination, U Wirathu warned race traitors, disruptors, and non-supporters to “eat as much rice as you can,” a cultural reference implying that their days were numbered.<sup>438</sup>

Activists believe being bombarded by so much hate and misinformation affects people. For example, they showed us Facebook posts where users shared thoughts like, “I don’t know anything [about Muslims] but I want to kill . . . because if we don’t kill the Muslims, they will kill us.”<sup>439</sup> Interviewees detect a sense of fear and urgency driving these narratives. They think people are compelling others to believe that, “you will lose your religion if you don’t do it, you will lose your land if you don’t do it, you will lose your identity if you don’t do it.”<sup>440</sup>

Local CSOs made clear that the constructed narratives of hate and resulting violence have resulted in loss of trust and sense of community.<sup>441</sup> CSOs noted that people have become fearful and divided,<sup>442</sup> and there is a palpable sense that people “[don’t] trust each other anymore,” one interviewee described.<sup>443</sup> Another explained that “the elders tell their children not to associate with Muslim children and restrict their children from going anywhere near the Muslim area.”<sup>444</sup>

Ultranationalists’ rhetoric of hate has reached far and wide and even affected attitudes of tolerance within minority communities themselves. For instance, CSOs stated that there have been divisions within persecuted Muslim communities.<sup>445</sup> Because of hate speech, some Muslims who consider themselves “Myanmar-born” have been resentful of Rohingya, following the ultranationalists false narrative that Rohingya’s are “foreign interlopers.”<sup>446</sup> A few people mentioned in the interviews that some Muslims feel they would not be scrutinized and ostracized were it not for the Rohingya.<sup>447</sup>

According to CSOs, some groups and individuals that have been targeted also can end up employing hate speech as a retaliatory response.<sup>448</sup> “People who are being attacked also use hate speech to counter, so hate speech is being used by both sides,” explained one CSO interviewee.<sup>449</sup> Those at the consultation meetings believe that past oppression and trauma has exacerbated hate-

436 Shoon Naing and Simon Lewis, “Myanmar Sentences Two to Death for Murder of Muslim Lawyer Who Advised Suu Kyi,” Reuters, February 15, 2019, <https://www.reuters.com/article/us-myanmar-lawyer-verdict/myanmar-sentences-two-to-death-for-murder-of-muslim-lawyer-who-advised-suu-kyi-idUSKCN1Q40TT>.

437 002-R3-02 4.

438 Wira Thu Masoeysin, “Translated Title: Eat As Much Rice As You Can,” Youtube (February 6, 2018) (accessed February 10, 2019), <https://www.youtube.com/watch?v=i14ghT7QTcI>.

439 001-R1-01, 6.

440 002-R1-01, 6.

441 FGD (January 2019 and December 2019).

442 Ibid.

443 002-R1-01, 3.

444 002-R3-02, 3.

445 FGD (January 2019).

446 Ibid.

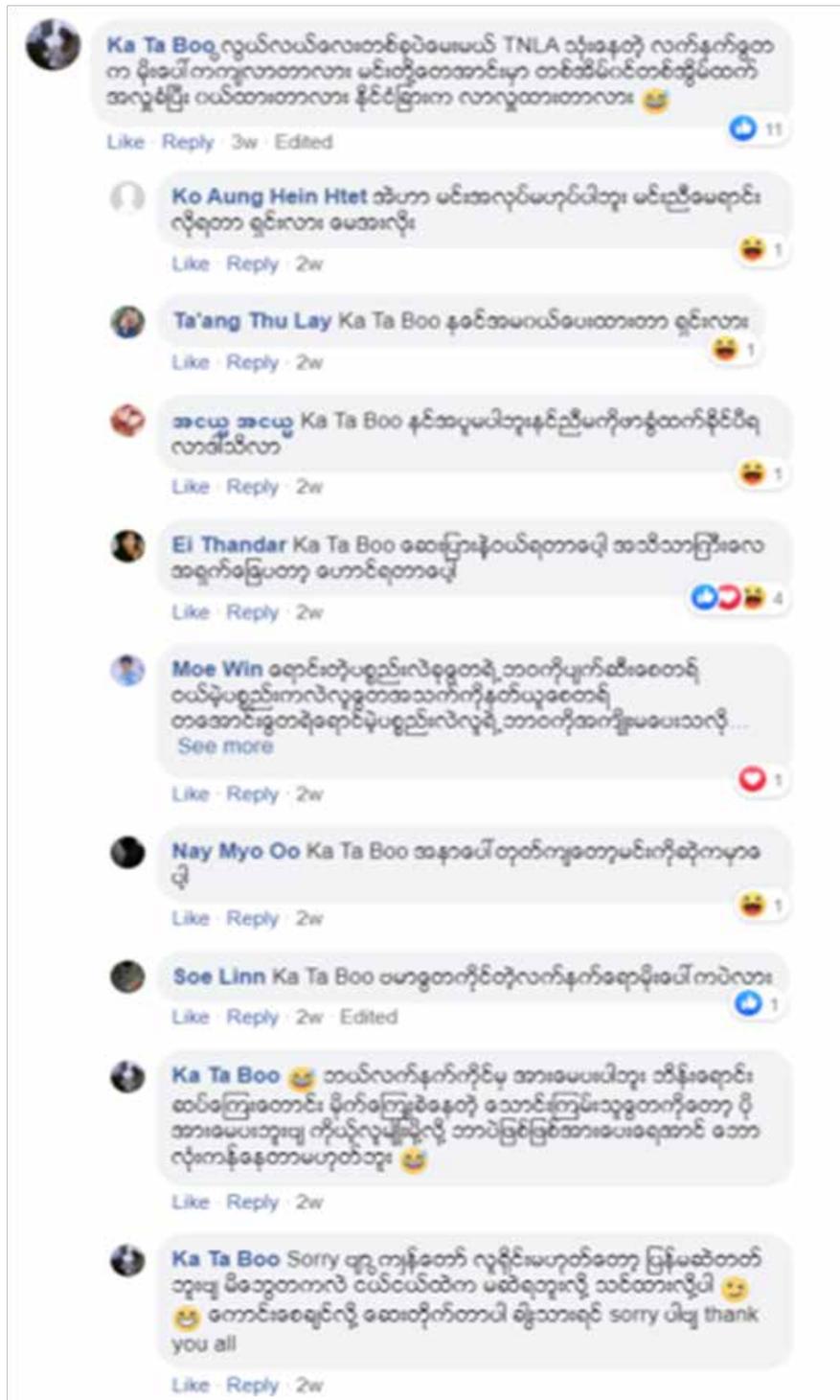
447 Ibid.

448 FGD (January 2019 and December 2019).

449 002-R3-02, 3.

ful responses among minorities: “Some people might go beyond the normal line because they were oppressed for many years in many ways, so they have a strong sense of rebellion, revolution,” one interviewee explained.<sup>450</sup>

**Figure 17.** An exchange between an ultranationalist supporter and members of the Ta’ang ethnic group. The former attacks the Ta’ang National Liberation Army by saying that they get guns and weapons by selling drugs. This angers the Ta’ang users and they respond using derogatory language against the Bamar.



450 FGD (January 2019 and December 2019); 002-R1-01, 2.

At the same time, one activist noted that some leaders from different religious backgrounds also have spread intolerance: “Some of the religious leaders, the Imams, their teachings are dangerous. Because of their teachings there are misunderstandings in Muslim society and non-Muslim society. . . . This is a big challenge because Muslims in Myanmar have to accept diversity. If they do not accept diversity, they have no chance for social cohesion.”<sup>451</sup>

The distrust is so deep that many said that Muslims have moved to areas where they will not feel that they are minorities, and that Burmese have also been moving out of predominantly Muslim communities, with the two communities no longer frequenting each other’s businesses.<sup>452</sup> “It’s not easy for non-Buddhist people to have a business or live in that kind of community influenced by such extreme patriotism, because they have restricted local people not to support non-Buddhist shops,” one interviewee explained.<sup>453</sup> The same interviewee also admitted a change in her own behavior in response to the hate speech she had witnessed: “I became conscious about hanging out with my male friends, especially Muslim male friends. I don’t dare to go out with them.”<sup>454</sup> Local CSOs worry that further segregation of communities will only further perpetuate misunderstandings and hatred.<sup>455</sup>

Interviewees from minority communities reported feeling further marginalized than before. For example, Christian communities in Sagaing and Yangon Divisions said during the December convening that public Christmas festivities were prohibited in 2019.<sup>456</sup> Multiple interviewees also highlighted difficulties obtaining approval to renovate and build new places of worship for non-Buddhist religions.<sup>457</sup> Furthermore, interviewees noted that religious minority vendors have been consistently denied permits to operate their businesses during Buddhist festivals.<sup>458</sup> CSOs stated that places like Shwedagon Pagoda and other sacred sites have ousted businesses of religious minorities after 969 and *Ma Ba Tha*’s aggressive campaigns, physical threats, and intimidation.<sup>459</sup> In its totality, the cumulative effects of the hate speech paint a picture of both the pervasive reach of the harms and the extent and depth of those harms on the fabric of not only ethnic minority communities but the society as a whole.

## Closing Civil Society Space – Increasing Difficulties in Combatting Hate Speech

In order to combat hate speech and counter its cultural underpinnings, there needs to be both a robust space for freedom of expression and an enforcement of those protections. Instead, Myanmar has experienced the opposite – increasing restrictions on expression and the selective enforcement of laws against those who oppose the positions and policies of those in power. The result has been a weaponization of the law as a tool to oppress rather the law being used to protect rights. The overall

451 001-R1-01, 5.

452 FGD (January 2019).

453 002-R4-04, 2.

454 Ibid.

455 FGD (January 2019).

456 FGD (December 2019).

457 Ibid.; See, e.g., YGN-R3-03, 1-4.

458 Ibid., 1.

459 Ibid., 2-3.

trends of targeting those who speak out and the resulting chill on speech has made it much more difficult to combat hate speech.

Hate speech by state and non-state actors and a crackdown on dissent more broadly has made it harder for HRDs to carry out their work generally, including as it relates to hate speech.<sup>460</sup> They reported obstacles including increased risks, physical violence, and threats to their security.<sup>461</sup> Furthermore, there has been a pattern of cracking down on legitimate expression that questions or challenges key government and military policies.<sup>462</sup>

The Myanmar government's corresponding failure to hold ultranationalist groups accountable for perpetuating hate speech has led to increased risk and obstacles for both targeted communities and their supporters. While groups like 969 and *Ma Ba Tha* have been permitted to disseminate their messages of hate and operate with impunity, CSOs and HRDs that speak out on behalf of ethnic and religious minority communities have been regularly threatened by ultranationalists.<sup>463</sup>

## A Weaponization of the Law to Suppress Dissent

The Myanmar authorities have effectively mobilized the law to suppress dissent. The government, military, and judiciary have all played a role. At times, the law has been used actively against artists, civil society, journalists, and political opponents. At other times, it has been the lack of enforcement of laws or lenient sentences against those aligned with the authorities that stands out. The selective use of the law has been wide ranging, and its effects have diminished civil society space generally as well as efforts to combat hate speech.

### Domestic Laws Currently in Effect and Constraining Freedom of Expression

- Constitution of the Republic of the Union of Myanmar 2008, Article 354(a) and 348
- Legislation
  - 1860 Penal Code, Section 124A (sedition), 153A (promoting enmity), 295A and 298 (insulting religion), 499-500 (defamation), and 505 (incitement)
  - 1996 Computer Science Development Law, Section 35(a)
  - 2004 Electronic Transactions Act, Section 33(a), 34(d)
  - 2013 Telecommunications Law, Section 66(d), 68(a)
  - 2014 Printing and Publishing Law, Section 8(a), 8(b)
  - 2014 News Media Law, Sections 9(g), 13(a), 25
  - 2016 Peaceful Assembly and Peaceful Procession Law, Section 10
  - 2017 Amendment of the Telecommunications Law
  - 1923 Official Secrets Act
  - 1908 Unlawful Associations Act

460 See Human Rights Watch, *Dashed Hopes: The Criminalization of Peaceful Expression in Myanmar* (2019).

461 *Ibid.*; FGD (December 2019).

462 *Ibid.*

463 Human Rights Watch, "Myanmar: Surge in Arrests for Critical Speech," April 29, 2019, <https://www.hrw.org/news/2019/04/26/myanmar-surge-arrests-critical-speech>.

Many of the weaponized laws are overbroad, and the government has enforced these provisions inconsistently, selectively prosecuting certain persons while allowing hate speech by the military and ultranationalists to go unchecked.<sup>464</sup> (See Box on Domestic Law Currently in Effect and Constraining Freedom of Expression). These laws have been routinely used to target HRDs and CSOs, who question government policies, curb free expression, and restrict peaceful assemblies.<sup>465</sup> Even though they could be utilized to prosecute prominent ultranationalist figures for their hate speech and prohibit nationalists convenings, not a single case, trial, or ban has taken place in Myanmar.<sup>466</sup> Thus, any possible protection for targeted minority groups offered by Myanmar's law has been rendered virtually meaningless, while the crackdown on dissent, CSOs, and HRDs has increased.

## Penal Code

Instead of protecting Myanmar's minority groups, the government has utilized the Penal Code provisions to punish protesters and dissidents. For example, in December 2018, a Myanmar court found three Kachin activists guilty of defaming the military under Article 500, sentencing each to six months in prison and imposing a fine.<sup>467</sup> The activists had organized a protest drawing attention to civilian displacement resulting from fighting between the *Tatmadaw* and the Kachin Independence Army, an EAO in Kachin State, and criticized the military's actions.<sup>468</sup>

According to Human Rights Watch, "[t]he use of Penal Code section 505(b) to enhance the possible sentence for protesters appears to be common practice."<sup>469</sup> Human Rights Watch has also criticized the "lack of clarity" in the provision, arguing that the broad and ambiguous phrasing allows for "abuse by officials looking for a way to silence critics of the government or others who are making statements to which officials object."<sup>470</sup> As the offence is considered non-bailable, the government has also used it to detain such individuals for long periods before trial.<sup>471</sup>

In fact, restrictions on expression appear to be used to bolster those in power.<sup>472</sup> With the rise of religious extremism in the country, for example, groups of monks have increasingly been invoking Penal Code provisions on religious insults against individuals to silence leaders of minority ethnic communities and HRDs for allegedly insulting the majority Buddhist population.<sup>473</sup>

## Telecommunications Law

Activists also cited their concerns for potential prosecutions under the Telecommunications Law.<sup>474</sup> With its vague language, Section 66(d) quickly became a major tool to stifle political dissent against

464 Human Rights Watch, *Dashed Hopes*, 76–77.

465 *Ibid.*, 12–14, 18, 62.

466 *Ibid.*

467 Human Rights Watch, "Myanmar: Quash Conviction of Kachin Activists," December 8, 2018, <https://www.hrw.org/news/2018/12/08/myanmar-quash-conviction-kachin-activists>.

468 *Ibid.*

469 Human Rights Watch, *They Can Arrest You at Any Time: Criminalization of Peaceful Expression in Burma* (June 29, 2016), 4.

470 *Ibid.*, 50.

471 *Ibid.*, 51.

472 *Ibid.*

473 *Ibid.*, 9.

474 FGD (December 2019).

the government.<sup>475</sup> In January 2017, the UN Special Rapporteur on the situation of human rights in Myanmar reported that over 40 individuals faced prosecution under the provision, “many of them merely for speaking their minds.”<sup>476</sup>

Following heavy criticism, Section 66(d) was amended in August 2017,<sup>477</sup> limiting the unlawful acts to “extorting, defaming, disturbing or threatening” others via telecommunications networks.<sup>478</sup> However, as the language of the provision remains both vague and broad, the amendment has been criticized for having “no discernible impact” in stopping the abuse.<sup>479</sup>

Section 68(a) of the Telecommunications Law has also been used by authorities as a tool to target those who speak out against the military and the government.<sup>480</sup> This section establishes that whoever communicates, receives, transmits, distributes, or conveys incorrect information with dishonesty or participation shall, on conviction, be subject to a fine or imprisonment for a term not exceeding one year or both.<sup>481</sup> Like Section 66(d), this Section is extremely broad and leaves journalists and others who “communicate or convey incorrect information” vulnerable to selective enforcement.<sup>482</sup> Section 66(d) has been a particular source of concern due to its broad restraints on online expression.<sup>483</sup>

## Printing and Publishing Law

In addition to laws regulating online expression, the government has also established restrictions on expression in the media specifically. The 2014 Printing and Publishing Law prohibits publishing works “expressing things which can racially and culturally do violence to each other among ethnic people or citizens”<sup>484</sup> or “showing things which can harass national security, rules of law, [and] public order of the rights of every citizen such as equality, freedom, and balance of law.”<sup>485</sup> The 2014 News Media Law makes it a crime to circulate news that “deliberately affects the reputation of a specific person or an organization.”<sup>486</sup> The law also establishes a press council to regulate all forms of media, but this council expressly includes three government appointees and is partially funded by the government.<sup>487</sup> Instead of advocating for journalistic freedom by defending journalists from arrests or complaints, the council has earned serious criticism for “being too close to the government.”<sup>488</sup> In fact,

475 Human Rights Watch, *They Can Arrest You*, 5.

476 Office of the United Nations High Commissioner of Human Rights, “End of Mission Statement by Special Rapporteur on the situation of human rights in Myanmar,” January 17, 2017, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21107&LangID=E>.

477 Joe Freeman, “Myanmar Moves to Amend Controversial Online Defamation Law,” VOA, July 25, 2017, <https://www.voanews.com/a/myanmar-moves-to-amend-controversial-online-defamation-law/3958206.html>.

478 Amendment of the Telecommunications Law (2017), <http://freexpressionmyanmar.org/wp-content/uploads/2017/01/Telecommunications-Law-Amendment-EN.pdf> [unofficial English translation].

479 “Amendment made no difference, says report urging repeal of 66(d),” *Frontier Myanmar*, December 11, 2017, <https://frontiermyanmar.net/en/amendment-made-no-difference-says-report-urging-repeal-of-66d>.

480 Telecommunications Law, Section 68(2a) (2013), [http://www.burmalibrary.org/docs23/2013-10-08-Telecommunications\\_Law-en.pdf](http://www.burmalibrary.org/docs23/2013-10-08-Telecommunications_Law-en.pdf).

481 *Ibid.*

482 Article 19, Myanmar Briefing Paper: Criminalisation of Free Expression (May 2019), 2, <https://www.article19.org/wp-content/uploads/2019/06/2019.06.6-A19-Criminalisation-of-Free-Expression-final.pdf>

483 *Ibid.*; See also 002-R3-02, 1.

484 Printing and Publishing Law, Section 8(a) (2014), <http://freexpressionmyanmar.org/wp-content/uploads/2017/02/Printing-and-Publishing-Law-EN.pdf>.

485 *Ibid.*, sec. 8(b).

486 News Media Law, Sections 9(g) (2014), 25, <http://freexpressionmyanmar.org/wp-content/uploads/2017/07/News-Media-Law-EN.pdf>.

487 *Ibid.*, sec. 13(a).

488 Human Rights Watch, *Dashed Hopes*, 72.

as of 2019, the council was led by journalist Ohn Kyaing, who has previously stated as the council's vice chair that "the *Tatmadaw* and the media are of the same mind and aim."<sup>489</sup> In effect, both laws have served to limit media independence and content.

### Peaceful Assembly and Peaceful Procession Law

Another major area in which the government has established expansive constraints has been assemblies and processions. The 2011 Peaceful Assembly and Peaceful Procession Law criminalized a number of acts in which organizers and protesters cannot engage.<sup>490</sup> The list covers an alarming breadth of conduct, including "disturb[ing], annoy[ing], endanger[ing], caus[ing] harm or forc[ing] the public"; "say[ing] things or behav[ing] in a way that could affect the country or the Union, race, or religion, human dignity and public morality" or "could lead to discrimination or defamation based on differences of human beings;" "spreading incorrect news or incorrect information;" and "commit[ting] any harmful act against anyone."<sup>491</sup> Although the law has been twice amended since enactment, the law is still in effect and imposes criminal penalties of up to six months' imprisonment for failure to comply with its requirements.<sup>492</sup> One such requirement is that protesters must provide notice to the authorities at least 48 hours before any planned assembly.<sup>493</sup>

The original law required permission before assembling, but the notice requirement prevents spontaneous gatherings.<sup>494</sup> In addition, while international standards only require assemblers to provide information that is necessary for authorities to make preparations to facilitate necessary logistics for the assembly along with a notification, the Peaceful Assembly and Peaceful Procession Law requires submission in advance of information far beyond that necessary for facilitation, such as the content of all slogans and signs to be used.<sup>495</sup> The law has frequently been used to arrest numerous organizers and participants of peaceful protests against the government, and serves as yet another tool for punishing dissent.<sup>496</sup> Interviewees noted that this law has also been used against organizers of workshops and discussions that do not resemble large-scale gatherings or protests.<sup>497</sup>

### Official Secrets Act

Section 3(1) of the Official Secrets Act of 1923 establishes criminal penalties of up to 14 years' imprisonment for a range of activities.<sup>498</sup> Prohibited activities include entering a "prohibited place;" making sketches, plans, models, or notes that may be "useful to an enemy;" and obtaining, collecting,

489 "Judge Dismisses Second Defamation Case Against Myanmar Now Editor," Coconuts Yangon, April 24, 2017, <https://coconuts.co/yangon/news/judge-dismisses-second-defamation-case-myanmar-now-editor/>.

490 "Surprise protest law amendment a return to dark past," Frontier Myanmar, February 26, 2018), <https://frontier-myanmar.net/en/surprise-protest-law-amendment-a-return-to-dark-past>.

491 2016 Peaceful Assembly and Peaceful Procession Law, Section 10.

492 Article 19, Criminalisation of Free Expression, 4.

493 Progressive Voice, Time to Hear Our Voices: Freedom of Assembly and the Youth Peace Movement in Myanmar (July 2018), 1, [https://progressivevoicemyanmar.org/wp-content/uploads/2018/07/PV\\_Briefing\\_Final\\_Web.pdf](https://progressivevoicemyanmar.org/wp-content/uploads/2018/07/PV_Briefing_Final_Web.pdf).

494 Ibid.

495 Ibid., 8.

496 Human Rights Watch, Dashed Hopes, 61–68.

497 001-R2-02, 1.

498 Article 19, Criminalisation of Free Expression, 3–5.

recording, publishing, or communicating “any secret official code or password, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy.”<sup>499</sup> This overly broad language has been used frequently to prosecute journalists and others, often in relation to their reporting on military activities.<sup>500</sup> Recently, the Act was used to target two Reuters journalists, Wa Lone and Kyaw Soe Oo, who were charged in December 2017 with exposing state secrets after they investigated the killing of Rohingya civilians.<sup>501</sup>

Presidential Directive on “Prevention of incitement to hatred and violence (or) Prevention of proliferation of hate speech.

Lastly, on April 20, 2020, the Myanmar authorities issued a Presidential Directive on “Prevention of incitement to hatred and violence (or) Prevention of proliferation of hate speech.”<sup>502</sup> Though late in coming, it is an important statement and the first of its kind regarding hate speech. It defines hate speech broadly as “communications of any kind that denigrate or express animosity towards a person or a group on the basis of religion, ethnicity, nationality, race, gender or other identity factor. Incitement to violence may constitute hate speech.”<sup>503</sup> If read carefully, however, the directive does not prohibit such incitement as required by international law;<sup>504</sup> it only asks authorities to “denounce and prevent” hate speech.<sup>505</sup> Indeed, like the broadly worded laws above, the directive is short on specifics and provides no information on what the government will actually do to protect and promote its ethnic and religious minority communities and safeguard civil society space from hate speech.<sup>506</sup> Given the lack of the rule of law generally in the country<sup>507</sup> as well as trends to suppress freedoms as discussed below, the concern is that either the directive will be ignored in practice or reinforce previous practices against those that the Myanmar authorities see as a threat to them.

## Targeting Civil Society and Freedom of Expression

The targeting of civil society and those exercising their freedom of expression has manifested beyond the use of prosecutions as the government and authorities have utilized other tools to monitor, harass, and intimidate those who are critically important in a society’s efforts to counter hate speech. The gendered element of the targeting has been disturbing as well, and the overall effects of the targeting

499 Ibid., 3.

500 Ibid.

501 Ibid., 3-4.

502 Myanmar Office of the President, Directive No. 3/2020, 13th Waning of Tagu, 1382 ME (April 20, 2020), <https://www.president-office.gov.mm/en/?q=briefing-room/news/2020/04/21/id-10007> (hereinafter Directive No.3/2020).

503 Ibid., para. 4.

504 See Section IV.A *infra* for further discussion of human rights standards, including the requirement to prohibit incitement to discrimination, hostility, violence, and genocide.

505 Directive No. 3/2020, para. 3 (“Therefore, all Ministries and all Regions and States Governments are to ensure that its personnel, officers, staff — whether military or other security forces, or civil services — and local people under its control or direction shall take all possible measures to denounce and prevent all forms of hate speech. All ministries, their agencies, departments and offices shall further encourage all personnel to participate in and support anti-hate speech activities.”).

506 Ibid.

507 See Section IV.B *infra* for further discussion of the importance of the rule of law and having independent adjudicators to evaluate hate speech cases given the threat that hate speech frameworks will be abused by authorities to suppress legitimate speech.

and suppression has chilled speech, divided civil society, and discouraged activists who would otherwise seek to build tolerance and inclusions.

To start, CSOs have been met with difficulty registering their organizations and activities, as the government frequently denies them permission to host events, conferences, and trainings.<sup>508</sup> One CSO documented government bans on peaceful assemblies and gatherings in 11 townships of Yangon in November of 2017, for example.<sup>509</sup> As a result, organizations working on the issue of hate speech and other sensitive topics have been forced to “keep a low profile.”<sup>510</sup> One activist explained the recent shift in circumstances:

In the past, we could organize meetings or workshops in villages with the understanding of village headmen; we didn’t need any permission from the authorities. Now, the authorities require us to have “permission” if we organize any activities. It is not easy to get permission. It is really sad as the government doesn’t even allow the workshops or discussions like this [on hate speech] to take place freely. It becomes a huge challenge for us.<sup>511</sup>

CSOs and HRDs also spoke of increased government surveillance, including *Sa Ah Pa* (Office of Military Security Affairs) visits to their offices to ask about their work: “The more we talk about sensitive issues like peace and human rights for all, the more we’re being watched,” one interviewee said.<sup>512</sup> Other groups have noticed being monitored after partaking in protests, as well.<sup>513</sup>

### Closing Civil Society Space

Below are a few examples of the consequences for individuals or groups who have challenged the *Tatmadaw* or ultranationalists, or spoken out on behalf of ethnic and religious minorities (spanning 2017 to 2020):

- U Ko Ni, a prominent Muslim lawyer and legal advisor to Daw Aung San Suu Kyi and the NLD, was assassinated at the Yangon International Airport in January 2017.<sup>514</sup> He had been advocating for Constitutional reforms to remove the military’s role in government.<sup>515</sup> As one of Myanmar’s leading lawyers, he found the legal solution to circumvent the Constitutional bar that prohibited Daw Aung San Suu Kyi from becoming President and instead enabled her to become the State Counsellor.<sup>516</sup> A trial that took more than two years found Kyi Lin and his conspirators, Aung Win Zaw, Aung Win Tun, and Zeya Phyo, all ex-military officers, guilty of

508 Ibid.

509 Athan, Mid-Term Report on Freedom of Expression (October 28, 2018), 101, <https://equalitymyanmar.org/wp-content/uploads/2018/10/Mid-term-Report-on-Freedom-of-Expression-Eng-Version.pdf>.

510 Ibid; 002-R3-02, 1.

511 001-R2-01, 1

512 FGD (December 2019); 002-R3-01 p.2

513 See, e.g., 002-R4-04, 1

514 “Myanmar: Leading Lawyer Ko Ni Assassinated at Yangon Airport,” BBC News, January 30, 2017, <https://www.bbc.co.uk/news/world-asia-38788669>.

515 Ibid.

516 Ibid.

his murder. Kyi Lin and Aung Win Zaw were sentenced to death, while Aung Win Tun and Zeya Phyo received a three-year sentence for harboring a fugitive.<sup>517</sup> At the time of writing, the alleged mastermind of the plot, Lieutenant Colonel Aung Win Khaing, still remains at large.

- Reuters journalists Wa Lone and Kyaw Soe Oo were set up and arrested by police for their investigative work implicating security forces in the killing of 10 Rohingya men and boys in Rakhine State.<sup>518</sup> They were charged under the Official Secrets Act, convicted, and received seven-year sentences.<sup>519</sup> The two reporters' appeal to the Yangon High Court was rejected in December 2018, and the Supreme Court similarly upheld the lower courts' decisions in April 2019.<sup>520</sup> The two journalists had served 511 days in jail before they were released by presidential amnesty in May 2019.<sup>521</sup> The two journalists received a 2019 Pulitzer Prize for their work.<sup>522</sup>
- Pulitzer-winning Associated Press journalist Esther Htusan received death threats for her critical reporting of the military operations in Rakhine State and the civilian government's handling of the Rohingya crisis.<sup>523</sup> The death threats, and accompanying calls to action against Htusan, were shared widely on Facebook. These threats, coupled with incidents of in-person intimidation, forced her to flee Myanmar in 2017.<sup>524</sup>
- The Voice Daily's editor-in-chief Kyaw Min Swe and satire columnist Kyaw Zwa Naing were arrested and charged with defamation in May 2017.<sup>525</sup> The latter had written an article entitled "Oath of the Nation of Bullets," which mocked a military propaganda film entitled, "Union Oath."<sup>526</sup> The Voice Daily published a formal apology and issued a correction.<sup>527</sup> The charges were dropped four months later.<sup>528</sup>
- Three journalists, Aye Naing, Pyae Phone Naing, and Thein Zaw, who worked for the Democratic Voice of Burma and *The Irrawaddy* were arrested for covering an EAO's drug-burning ceremony held as part of the UN's International Day Against Drug Abuse in June 2017.<sup>529</sup> They were charged under the 1908 Unlawful Associations Act and if convicted, could face up to three years in prison.<sup>530</sup>

517 San Yamin Aung, "Two Sentenced to Death for Killing NLD Lawyer U Ko Ni," *The Irrawaddy*, February 15, 2019, <https://www.irrawaddy.com/news/burma/two-sentenced-death-killing-nld-lawyer-u-ko-ni.html>.

518 "Wa Lone and Kyaw Soe Oo: Reuters Journalists Freed in Myanmar," *BBC News*, May 7, 2019, <https://www.bbc.co.uk/news/world-asia-48182712>.

519 Ibid.

520 Ibid.

521 Ibid.

522 "Wa Lone and Kyaw Soe Oo Honored with the Pulitzer Prize," *DW*, April 17, 2019, <https://www.dw.com/en/wa-lone-and-kyaw-soe-oo-honored-with-the-pulitzer-prize/a-48367961>.

523 Shawn Crispin, "Threats, arrests, and access denied as Myanmar backtracks on press freedom," *Committee to Protect Journalists*, February 12, 2018, <https://cpj.org/2018/02/threats-arrests-and-access-denied-as-myanmar-backt/>.

524 Ibid.

525 "Editor and columnist detained on criminal defamation charges in Myanmar," *Committee to Protect Journalists*, June 5, 2017, <https://cpj.org/2017/06/editor-and-columnist-detained-on-criminal-defamati/>.

526 Ibid.

527 Human Rights Watch, *Dashed Hopes*, 19-20.

528 Ibid.

529 Ibid., 41-44.

530 Ibid., 44.

- In April 2018, eight students were convicted of criminal defamation for performing a satirical anti-war play.<sup>531</sup> The man who live-streamed the play on Facebook was sentenced to three months in jail for violating section 66(d) of the Telecommunications Law.<sup>532</sup>
- 17 activists were charged in May 2018 for organizing a peace protest in Tarmwe township of Yangon. They had been calling for an end to fighting between the Myanmar military and ethnic armed groups. Riot police and officers in plain clothes, violently apprehended the protestors and charged them under the Peaceful Assembly and Peaceful Procession Law. According to one of the main organizers on trial, the process has been 2 years and 60+ court appearance and a verdict is expected in July 2020.
- Forty-seven youth anti-war activists were arrested in Meiktila and Yangon in July 2018 for participating in a peace protest highlighting the plight of internally displaced persons (IDPs) in northern Myanmar.<sup>533</sup> The three main youth organizers were found guilty of criminal defamation under the penal code.<sup>534</sup> The court handed down a six-month sentence and fined them.<sup>535</sup>
- Min Htin Ko Ko Gyi, a filmmaker and co-founder of the Human Rights, Human Dignity International Film Festival in Yangon, was arrested, tried and sentenced to one year for defaming the *Tatmadaw* in August 2019.<sup>536</sup> His lawyer's request for bail on medical grounds during the trial was routinely denied, despite his failing health due to liver cancer.<sup>537</sup> He had written a series of Facebook posts criticizing the 2008 Constitution and the military's dominant role in politics.<sup>538</sup> Min Htin Ko Ko Gyi was released in February 2020 after serving ten months in Insein prison.<sup>539</sup>
- Kay Khine Tun, Zeyar Lwin, Paing Ye Thu, Phoe Thar, and Paing Phyo Min of the *Daungdoh Myoset* ("Peacock Generation") performance troupe were arrested in April 2019.<sup>540</sup> They were tried under section 505(a) of the Penal Code and section 66(d) of the Telecommunications Act for performing and livestreaming a satirical *Thangyat* on Facebook.<sup>541</sup> *Thangyats* are satirical songs, chants, and dances that critique political and social issues and behaviors, and they are typically performed during Myanmar's new year Water Festival. Five township courts have already convicted and sentenced the *Daungdoh Myoset* troupe to one year in

531 Ibid., 27-28.

532 Ibid.

533 Ibid., 28.

534 Ibid.

535 Ibid.

536 Naw Betty Han, "Filmmaker Min Htin Ko Ko Gyi Sentenced to One Year of Hard Labour," *Frontier Myanmar*, August 29, 2019, <https://www.frontiermyanmar.net/en/filmmaker-min-htin-ko-ko-gyi-sentenced-to-one-years-hard-labour/>.

537 "Myanmar: Drop Charges against Detained Filmmaker," *Amnesty International*, August 1, 2019, <https://www.amnesty.org/en/latest/news/2019/08/myanmar-drop-charges-detained-filmmaker/>.

538 Ibid.

539 Khin Moh Moh Lwin, "Filmmaker Min Htin Ko Ko Gyi Freed from Prison," *Myanmar Now*, February 21, 2020, <https://myanmar-now.org/en/news/filmmaker-min-htin-ko-ko-gyi-freed-from-prison>.

540 "Peacock Generation: Satirical Poets Jailed in Myanmar," *BBC News*, October 30, 2019, <https://www.bbc.co.uk/news/world-asia-50238031>.

541 "Myanmar: Satire Performers Who Mocked Military Face Prison in 'Appalling' Conviction," *Amnesty International*, October 30, 2019, <https://www.amnesty.org/en/latest/news/2019/10/myanmar-satire-performers-who-mocked-military-face-prison-appalling-conviction/>.

prison with hard labour to be served consecutively.<sup>542</sup> There is a possibility that more township courts could try and sentenced them further for the same incident.

- Nine student leaders from the Arakan Student Union were charged in February 2020, under the Peaceful Assembly Law for organizing a public protest calling for an end to the nearly year-long internet shutdown in Rakhine state.<sup>543</sup> If convicted, they could face up to three-months imprisonment.

Myanmar has also pursued problematic, months-long internet shutdowns, which has been on and off since June 2019. The internet shutdowns have affected nearly one million people across nine townships in Rakhine and Chin States.<sup>544</sup> Myanmar's Ministry of Transport and Communications ordered mobile phone operators to stop mobile internet traffic following intensified clashes with the Arakan Army, claiming that it needed such measures due to "disturbances of peace and use of internet services to coordinate illegal activities" and to "maintain the stability and law and order in these areas."<sup>545</sup>

However, local human rights groups, journalists, Rakhine lawmakers, international NGOs and aid agencies in Myanmar including the UN called for restoring services as it has exacerbated the humanitarian crisis, cutting off communications and endangering the lives and safety of local communities. The former UN Special Rapporteur Yanghee Lee expressed concern that civilians in the affected area have been cut off from all means of communication and with no media access or humanitarian access. She believes that the internet shutdowns could be utilized as "a cover for committing gross human rights violations against the civilian population."<sup>546</sup> At the time of writing, the internet shutdown remains in the aforementioned states.

As discussed, a number of individuals have also been criminally prosecuted and imprisoned for work that threatens the military and government positions. (See Box on Closing Civil Society Space.) State-initiated prosecutions and arrests have not been the only risks that HRDs and activists have faced as a result of their work. CSOs also noted that their activism has come under attack from citizens as well, citing the risk that "if other segments of society don't like us, they can report our work to the authorities."<sup>547</sup> In addition, civil society actors have faced targeted threats against them via social media posts that circulate hate speech and false news about both their personal and professional lives.<sup>548</sup>

542 Ibid.

543 "Myanmar Students Face Charges Over Internet Shutdown Protest: Student Union" Reuters, February 24, 2020, <https://www.reuters.com/article/us-myanmar-internet/myanmar-students-face-charges-over-internet-shutdown-protest-student-union-idUSKCN20116X>

544 "Myanmar Again Cuts Rakhine State's Internet," Human Rights Watch, February 5, 2020, <https://www.hrw.org/news/2020/02/05/myanmar-again-cuts-rakhine-states-internet>.

545 "Myanmar Reimposes Internet Shutdown in Conflict-Torn Rakhine, Chin States: Telco Operator," Reuters, February 5, 2020, <https://www.reuters.com/article/us-myanmar-rakhine/myanmar-reimposes-internet-shutdown-in-conflict-torn-rakhine-chin-states-telco-operator-idUSKBN1ZZ0LC>

546 "Myanmar: UN Expert 'Fears for Civilians' after Internet Shutdown," Office of the United Nations High Commissioner for Human Rights, June 24, 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24733&LangID=E>

547 002-R3-03, 1.

548 Ibid.; See also Shawn Crispin, "From Conflict Zones to Courtrooms, Myanmar's Journalists Are under Fire," Committee to Protect Journalists, July 31, 2019, <https://cpj.org/2019/07/myanmar-press-freedom-restricted-laws-conflict/>.

Activists described also receiving physical threats, such as warnings that they would be killed.<sup>549</sup> One activist described that in response to a critical post on Facebook in which he criticized how the government has handled gold mining and natural resources in Shan State, he “was threatened by a businessman telling him, ‘Old man, your life is not even worth 50,000 Kyat.’”<sup>550</sup>

Hate speech directly calling for violence has also led to dangerous attacks on individuals whose identities have become known to oppose ultranationalists or the authorities. For instance, Journalist Kyaw Lin was stabbed by two individuals while reporting in Sittwe, Rakhine State.<sup>551</sup> In another example, one activist explained that before an anti-war protest was held in Tarmwe, Yangon on May 12, 2018, “*Ma Ba Tha* nationalists were publicly declaring that they would beat and crack down on the protestors.”<sup>552</sup> After police surrounded the protestors on site, “they jumped into the crowd and started pulling, beating, and arresting the protestors” while the police watched.<sup>553</sup> Another representative of a CSO described a personal experience that almost escalated to violence:

The anti-Muslim nationalist U Nay Myo Wai, one of the many who spread hate speech online, accused us of relating to ISIS [Islamic State] because the flag on our religious buildings [mosques] looks similar to ISIS’s flag. . . . They claimed that ISIS arrived in Yangon, and a big angry group of nationalists showed up at our mosque and demanded to remove the flag. There was an angry crowd on the street. We had to finally agree to remove the flag to avoid the conflict. When that happened, we also realized that no one was trying to protect us, and even our Muslim community couldn’t do anything.<sup>554</sup>

## Gendered Violence and Social Media Targeting

As mentioned earlier in the report, women activists, journalists, human rights defenders, politicians and leaders in minority communities are particularly vulnerable to gendered attacks against them. This includes calls and threats of physical and sexual violence, sexual harassment online, lurid sexist language, the posting of demeaning imagery and morphed sexual images, and sharing of personal information online without their consent.<sup>555</sup> One female activist described how these tactics were utilized against her:

People are using a different strategy. When people want to attack me, they might send me a direct message, not public, and threaten me through private messages so I can’t report it. At the same time, they post a status indirectly saying something, but not using any hate speech. They are more experienced—they are getting more aware that

549 Ibid.; FGD (January 2019 and December 2019).

550 001-R2-02, 3-4.

551 Reed, “Hate Speech, Atrocities and Fake News.”

552 002-R4-04, 2.

553 Ibid.

554 002-R3-03, 1.

555 FGD (January 2019 and December 2019).

if they post something like that, their post will be taken down and people can't share anymore. People wouldn't blindly share something like "please kill her," but they are [using] different strategy[ies] to escalate [things]. . . . They got into my photo albums . . . and got one of the photos I took with one of my friends . . . [who] looks like a Muslim . . . [and] posted it saying, "Look, who is she coupling with?"<sup>556</sup>

Other interviewees echoed the sentiment that women activists have been frequently targeted with rumors that they are dating Muslim men, which has been spread in posts that come with accusations such as being a traitor or being a Muslim's wife.<sup>557</sup> Another HRD described that in response to their work:

I was followed by many people and my photo was being taken. Then it was spread on social media, mentioning where I had been and what my activities were. . . . Some of my close friends dare not talk to me anymore. They started to avoid me.<sup>558</sup>

In an interview with the Southeast Asian Press Alliance, journalist Esther Htusan described accounts by other local women journalists who said that they did not receive additional safety when reporting from the field despite their heightened vulnerability.<sup>559</sup> Htusan's critical reporting of the Rohingya crisis and Daw Aung San Suu Kyi made her a personal target of such attacks. For instance, an ultranationalist with more than 300,000 followers on Facebook posted that she was a "bitch" and advocated that she be murdered.<sup>560</sup> Htusan reported being stalked and threatened in person following the viral post, and she eventually left Myanmar out of fear for her safety.<sup>561</sup>

## Chilling Activism

The increasingly antagonistic and restrictive environment for civil society actors has also resulted in a number of personal impacts – from feelings of divisions in civil society to self-censorship to experiencing a sense of fear, isolation, discouragement, or loss of hope. All these impacts have affected the collective civil society community's ability to combat hate speech effectively.

Among some within the activist community, criticism of the government—and its treatment of the Rohingya—remains a contested issue. "Having a strong sense of ethnicity is also a challenge inside our network too," said one activist, "We used to have some members only based on their own ethnic people who didn't want to work for others. . . . One of our network's members is Rakhine, and even though he believes in human rights, he doesn't believe in Rohingya—doesn't even mention them. So when we talk about our common understanding of the Rohingya crisis, it is a huge struggle."<sup>562</sup> In

556 002-R1-01, 6-7.

557 002-R4-04, 2.

558 001-R2-01, 6.

559 "Reporting While Female: A Talk with Pulitzer Winner Esther Htusan," January 5, 2017, <https://gijn.org/2017/01/05/reporting-while-female-a-talk-with-pulitzer-winner-esther-htusan/>.

560 Shawn Crispin, "Threats, Arrests, and Access Denied."

561 Ibid.

562 002-R1-01, 2.

response to current events, CSO representatives noted, individuals have retreated further into their own communities, an impulse to which activists have not been immune.<sup>563</sup>

Activists also mentioned that CSOs have been self-censoring themselves in choosing what issues they should cover and be vocal about.<sup>564</sup> Certain news agencies, some noted, have used the word “Bengali” in their Burmese-language coverage, and only used the term “Rohingya,” which is politically charged inside Myanmar, in their English-language reporting.<sup>565</sup>

Members of Muslim communities in particular said they have had a palpable fear of speaking out and engaging in human rights activities. “We are Muslim, so if we collect data and things, the Government will arrest us on fake charges like rape,” one activist reported.<sup>566</sup> As a result, they explained, some Muslim organizations and leaders have thought “silence is the best possible way for Myanmar, for security. If we speak out or if we work on this issue, the military or *Ma Ba Tha* will try to incite violence, so silence . . . is the choosing of Muslim society.”<sup>567</sup>

Beyond violence, some interviewees cited being ostracized from the community as a distinct disincentive to engage with community activism.<sup>568</sup> “For some people, they fear being kicked out of their society more than being physically attacked,” one interviewee described. “So even if people disagree with ultranationalism, they prefer to stay silent.”<sup>569</sup>

Many interviewees mentioned feeling psychological effects of the hate speech and racism they have encountered.<sup>570</sup> Some reported having lost friends for standing up for their principles, and a few described having tense relationships with their family members.<sup>571</sup> According to one activist, explained the mental toll that hate speech has taken:

[It’s] torturing people’s mind and spirits. 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.<sup>572</sup>

A related challenge, one activist stressed, has been “to stay strong among these struggles, because many activists break down actually. They don’t have any places to go and get psychosocial support. . . . It is really hard for the young activists. They don’t want to do anything anymore.”<sup>573</sup> Other interviewees shared this concern, noting “situations where our staff refuse to go to the field because they don’t want to deal with hate speech. When they only hear about people being beaten, burned, or discriminated against, it has a negative impact on their mind and drains their energy.”<sup>574</sup>

563 FGD (January 2019 and December 2019).

564 Ibid.

565 Ibid.

566 001-R1-01, 2.

567 Ibid., 3.

568 FGD (January 2019); See, e.g., MS-R3-02.

569 002-R3-02, 2.

570 FGD (January 2019 and December 2019); 002-R1-01; 002-R3-02.

571 Ibid.; MS-R3-04.

572 002-R3-01, 8.

573 002-R1-01, 9.

574 Ibid., 9.

Interviewees also described feeling the weight of the broader community standing against them and their work. Activists noted that feeling that the more they stand up against hate speech or the government actions enabling it, the more likely they may be directly targeted by its supporters or groups like *Ma Ba Tha*.<sup>575</sup> One interviewee stressed an uneasy uncertainty regarding how their work will be received in the present and future:

In the past, we knew clearly who our enemy is: We only had to deal with the military government. But now . . . there are a lot of civilians who are pro-NLD, so we can't ignore it. My biggest concern is that one day they will call us traitors and turn to us as their enemy. . . . We worry that someone will turn us against our society to the point where we can't live there anymore.<sup>576</sup>

Still, the activists interviewed for this report expressed determination to continue countering the impact of hate speech and ultranationalist groups. "It is the duty of our generation to teach ourselves, teach each other and learn from each other," one interviewee said. "This is how we grow. So I feel hopeful."<sup>577</sup>

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575 FGD (January 2019).

576 002-R3-01, 3–4.

577 Ibid., 9.



# 4

## **Legal Framework: An International Human Rights Approach to Addressing Hate Speech and Protecting Free Expression in Myanmar**

**F**or local CSOs and HRDs, who are at the heart of this report, they demand that the government of Myanmar combat hate speech as defined as:

Violent or dehumanizing speech that calls for exclusion or segregation of, incitement to violence against, or discrimination against individuals or groups based on their race, ethnicity, national origin, religious or political affiliation, sexual orientation, caste, sex, gender, gender identity, or disability.<sup>578</sup>

As the previous discussions show, the forms of hate speech have ranged from individual statements to coordinated campaigns to incite distrust and violence build on deeply divisive and hateful narratives. The drivers of hate speech have also been deeply rooted in the country's history and its most powerful institutions from the government to the military to ultranationalist groups. The legal apparatus in Myanmar, with a set of overly broad laws that have been selectively enforced to suppress dissent, has only exacerbated the situation. Hate speech also has profound effects on society – from individuals and communities who have felt isolated, ostracized, silenced, and psychologically affected to the entire ethnic and religious minority populations, who at their most extreme have experienced mass displacement and genocidal acts of violence.<sup>579</sup> Given the depth and pervasiveness of the hate speech problem, a multi-faceted approach will be needed to first reverse the current trends and eventually build a society rooted in tolerance and inclusion to prevent further hate speech, especially in its most virulent and violent forms.

International human rights law and standards articulated during the last decade are instructive and offer a way forward for Myanmar to establish an appropriate legal and policy framework that would combat hate speech and better ensure more tolerance in society. First, human rights standards help identify a fundamental challenge in regulating hate speech. As the UN Special Rapporteur on freedom of opinion and expression said in 2012, the challenge with any hate speech framework is, “in identifying ways to reconcile the need to protect and promote the right to freedom of opinion and expression, on the one hand, and to combat discrimination and incitement to hatred, on the other.”<sup>580</sup> The 2013 Rabat Plan of Action on the prohibition of incitement to national, racial and religious hatred emphasized the same need to balance these rights.<sup>581</sup>

Second, human rights standards provide guidance on the legal and policy tools that are required to tackle a range of hate speech activity from offensive statements to acts of incitement to violence. The Rabat Plan of Action and UN Special Rapporteurs have all noted a combination of criminal, civil, and administrative legal sanctions, particularly narrowly crafted criminal ones, are needed alongside non-legal tools to take on the root causes of hate and intolerance.<sup>582</sup> Human rights now also provides

578 FGD, January 2019.

579 See Zachary Laub, “Hate Speech on Social Media: Global Comparisons,” Council on Foreign Relations, June 7, 2019, <https://www.cfr.org/background/hate-speech-social-media-global-comparisons>.

580 A/67/357, para. 2.

581 Office of the United Nations High Commissioner for Human Rights [OHCHR], Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred, A/HRC/22/17/Add.4 (January 11, 2013) [hereinafter “Rabat Plan of Action”].

582 *Ibid.*, para. 2 (“underscor[ing] the importance of non-legal measures to take the root causes of hatred and intolerance.”); see also A/67/357; A/74/846.

guidance on corporate behavior, which is also particularly relevant given the use of online platforms like Facebook to spread hate speech in Myanmar.<sup>583</sup>

Third, human rights documents have noted how hate speech frameworks have been consistently misapplied and even abused by governments. The Rabat Plan of Action stated presciently that there was unfortunately as stark “dichotomy of (1) non-prosecution of ‘real’ incitement cases and (2) persecution of minorities under the guise of domestic incitement laws seems to be pervasive.”<sup>584</sup> In 2019, the UN Special Rapporteur noted: “Many Governments use ‘hate speech’, . . . to attack political enemies, non-believers, dissenters and critics” but fail to “address genuine harms, such as the kind resulting from speech that incites violence or discrimination against the vulnerable or the silencing of the marginalized.”<sup>585</sup> Finally, the fact that hate speech frameworks have been so regularly misapplied also highlights the importance of independent judicial oversight given the need to balance rights, consider the local context, and prevent misapplication of the hate speech principles to suppress dissent and target vulnerable communities and the media.<sup>586</sup>

The sections that follow explore and analyze these above issues in the context of Myanmar. The first section outlines the underpinnings of the human rights framework relevant to hate speech, including prohibitions on incitement to genocide. The section also includes the key legal test for determining when criminalization is appropriate and articulates relevant non-legal tools that could help counter hate speech. The second section examines safeguards to prevent abuses of hate speech frameworks that instead suppress freedom of expression. This section emphasizes how the current lack of independent judiciary or any other body is an inherent flaw in the system at present. The final section addressing hate speech with regards to regulating corporate behavior, particularly drawing on the UN Guiding Principles on Business and Human Rights. Ultimately, the human rights analysis is damning -- existing laws are overly broad and have resulted in selective targeting of voices that are critical of the government and the military, rather than providing much-needed accountability for state and non-state perpetrators of hate speech and the failure to counter hate speech has led to genocidal violence but also left a profound effect throughout the society, particularly on ethnic and religious minorities.

## A. Regulating and Combatting Hate Speech in Myanmar

Despite the lack of a universally recognized definition for “hate speech,” human rights standards have emerged during the past decade on how to regulate and combat such speech. Hate speech includes a wide range of speech, including “illegal types of expression,” such as incitement to discrimination, hostility, violence, or genocide.<sup>587</sup> Under international law, states are required to pro-

583 See, e.g., Rabat Plan of Action; Guiding Principles.

584 Rabat Plan of Action, para. 27.

585 A/74/846, para. 1; See also Rabat Plan of Action, para. 27.

586 A/74/846.

587 A/67/357, para. 2; See also A/66/290, paras. 26-30.

hibit these types of hate speech.<sup>588</sup> Hate speech, however, also includes speech that is “considered harmful, offensive, objectionable or undesirable,” which may not be criminalized but still should be combatted by the state.<sup>589</sup>

## Prohibitions on incitement

At the root of efforts to counter hate speech are the principles of equality, dignity, and non-discrimination, which lie at the heart of the international human rights law. The human rights standards regarding hate speech regulation start with Article 20(2) of the International Covenant on Civil and Political Rights (“ICCPR”) and Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”).<sup>590</sup> Article 20(2) the ICCPR prohibits “advocacy of national, racial religious hatred that constitutes incitement to discrimination, hostility or violence.”<sup>591</sup> Article 4 of ICERD states that, “all propaganda . . . based on ideas of theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form.”<sup>592</sup> ICERD requires states to “adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end . . . declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin.”<sup>593</sup> The Rabat Plan of Action further defines and sheds light on several important terms:

“Hatred” and “hostility” refer to intense and irrational emotions of opprobrium, enmity and detestation towards the target group; the term “advocacy” is to be understood as requiring an intention to promote hatred publicly towards the target group; and the term “incitement” refers to statements about national, racial or religious groups which create an imminent risk of discrimination, hostility or violence against person belonging to those groups.<sup>594</sup>

Human rights law regarding hate speech also makes clear that freedom of expression can only be limited in “extreme cases, such as incitement to genocide and incitement to hatred.”<sup>595</sup> There is a critically important focus on “incitement.” For example, in discussing “two key elements” of Article 20(2) of the ICCPR, for example, a UN Special Rapporteur said:

[F]irst, only advocacy of hatred is covered, and second, it must constitute incitement to one of the three listed results. Thus, advocacy of national, racial or religious hatred

588 Ibid.

589 Ibid.

590 United Nations General Assembly, International Covenant on Civil and Political Rights (December 16, 1966), art. 20(2) [hereafter “ICCPR”]; United Nations General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination (December 21, 1965), art. 4 [hereafter “ICERD”].

591 ICCPR, art. 20 (2).

592 ICERD, art. 4.

593 Ibid.

594 Rabat Plan of Action, appx. footnote 5.

595 A/67/357, para. 75.

is not a breach of article 20, paragraph 2, of the Covenant on its own. Such advocacy becomes an offence only when it also constitutes incitement to discrimination, hostility or violence; in other words, when the speaker seeks to provoke reactions (perlocutionary acts) on the part of the audience, and there is a very close link between the expression and the resulting risk of discrimination, hostility or violence. In this regard, context is central to the determination of whether or not a given expression constitutes incitement.<sup>596</sup>

Incitement can be targeted at individuals or groups based on wide range of grounds, including those put forth by the local groups in their definition of hate speech for this report.<sup>597</sup> To address the most extreme form of hate, international law prohibits and criminalizes “direct and public incitement to commit genocide,” which is articulated in Article III(c) of the Genocide Convention.<sup>598</sup> Article II of the Genocide Convention defines genocide as acts “committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group” such as killing or causing serious bodily or mental harm to members of the group.<sup>599</sup> Article V imposes an obligation on the Contracting Parties like Myanmar to uphold its duty to prevent and punish genocide.<sup>600</sup>

As freedom of expression is a fundamental right, any criminalization of hate speech must be narrowly crafted under human rights law. The Rabat Plan of Action lays out six factors on whether particular speech may rise to the level of incitement, which can be criminalized.<sup>601</sup>

1. **Context:** “Analysis of the context should place the speech act within the social and political context prevalent at the time the speech was made and disseminated” in assessing whether the speech in question is likely to incite discrimination, hostility and violence.<sup>602</sup>
2. **Speaker:** Consider “the speaker’s position or status” in relation to the “audience to whom the speech is direct.”<sup>603</sup>
3. **Intent:** The pertinent international legal standard “anticipates intent” as the standard provides for “advocacy” and “incitement,” rather than “mere distribution or circulation of material”; therefore, more is required than recklessness or negligence.<sup>604</sup> Rabat also notes there is a “triangular relationship between the object and subject of the speech act as well as the audience.”<sup>605</sup>
4. **Content and form:** “Content analysis may include the degree to which the speech was provocative and direct, as well as the form, style, nature of arguments deployed in the speech or the balance struck between arguments deployed.”<sup>606</sup>

596 A/66/290, para. 28 (footnotes omitted).

597 A/74/486, para. 9.

598 Genocide Convention, art. III(c). See also A/66/290, para. 23 (also citing similar prohibitions under “article 25, 3 (e), of the Rome Statute of the International Criminal Court, article 4, 3 (c), of the statute of the International Tribunal for the Former Yugoslavia, and article 2, 3 (c), of the statute of the International Criminal Tribunal for Rwanda.”).

599 Genocide Convention, art. II.

600 Genocide Convention, art. V.

601 Rabat Plan of Action, para. 29.

602 Ibid., para. 29(b).

603 Ibid.

604 Ibid., para. 29(c).

605 Ibid.

606 Ibid., para. 29(d).

5. **Extent of the speech act:** This can include considerations such as “size of audience, method of dissemination, and the quantity and extent of communication.” Extent of the speech looks at the general public’s accessibility and whether the communication was circulated in a wide reaching or restricted manner.<sup>607</sup>
6. **Likelihood, including imminence:** “Incitement, by definition, is an inchoate crime.”<sup>608</sup> Courts must “determine that there was a reasonable probability that the speech would succeed in inciting actual action against the target group.”<sup>609</sup>

Two final points are important to ensure that there is an appropriate balance between upholding freedom of expression and prohibiting certain types of hate speech – namely incitement. First, there must be “a high threshold” so that any “limitation of speech must remain an exception”;<sup>610</sup> human rights law requires that the state justify that any restriction be: 1) based in law, 2) be done for legitimate aims, and 3) be necessary and proportional to meet the specified aim.<sup>611</sup> Second, given the sensitivity of the analysis involving hate speech, determinations should be made by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the State.<sup>612</sup> (Both of these points will be discussed in further detail in Part IV.B below.)

## Combating root causes of hate speech

The human rights discussion of regulating hate speech does not end with criminalization and prohibitions on incitement, however. Indeed, successive UN Special Rapporteurs have emphasized the need for a multi-pronged approach that combats hate speech in a comprehensive way.<sup>613</sup> Some offensive speech may fall short of incitement to discrimination, hostility and violence and may not meet the level of an extreme case when considered in light of the six factors from the Rabat Plan of Action. The lack of criminal sanction, however, does not mean that states should not take further action. In some situations, civil or administrative remedies may be appropriate to restrict speech, including: “restoring reputation, preventing recurrence and providing financial compensation.”<sup>614</sup> Finally, there is hate speech that may not trigger a specific sanction, be it criminal, civil, or administrative, but could be problematic and “raise concerns in terms of tolerance, civility and respect for others.”<sup>615</sup>

This latter category of speech is particularly important as it can help tackle the root causes of hate speech. The UN Special Rapporteurs and the Rabat Plan of Action have offered an array of non-legal tools to combat hate speech.<sup>616</sup> These tools include educating the general public and key stakeholders as well as policy makers and criminal justice actors about human rights and tolerance.<sup>617</sup>

607 Ibid., para. 29(e).

608 Ibid., para. 29(f).

609 Ibid., para. 11.

610 Ibid., para. 18.

611 See Part IV.B *infra* for a more detailed discussion of the test.

612 Rabat Plan of Action, para. 31; See Part IV.B *infra* for a more detailed discussion of the importance of an independent judiciary and adjudicators in the hate speech context.

613 A/67/357, para. 2.

614 A/67/357, para. 81.

615 A/67/357, para. 2; See also Rabat Plan of Action, paras. 20, 34; A/74/486, para. 18.

616 Rabat Plan of Action, paras. 35-48 (discussing similar tools listed in the rest of the paragraph in the text).

617 A/67/357, para. 58.

Other approaches include intercultural dialogue and societal programs that combat inequality and structural discrimination as other potential solutions towards promoting a culture of peace and tolerance.<sup>618</sup> The human rights framework also highlights the importance of condemning hate speech by government officials,<sup>619</sup> and emphasizes the need to give targeted communities the ability to “counter-speech” that showcase marginalized voices and alternative narratives and promote better understanding within society.<sup>620</sup> Fostering a healthy environments for the media has also been stressed as another way of ensuring people do not fall prey to hateful rhetoric.<sup>621</sup> The Special Rapporteur emphasized that national dialogue and debate requires a balanced, “objective, ethical, and informative media”.<sup>622</sup> Only with “multilayered approach” that includes laws, “a broad set of policy measures” and “political and social will” is there be a chance to achieve the “genuine changes in mindsets, perception, and discourse” necessary to fully address hate speech.<sup>623</sup>

## The Case of Myanmar

Myanmar has a dismal human rights record on hate speech regarding both prohibitions of incitement and its efforts to combat such speech generally. Despite the high threshold set under human rights law for restricting any freedom of expression, Myanmar should have pursued prosecutions against both state and non-state actors implicated in illegal incitement. Unfortunately, not a single domestic case has been brought against known disseminators of such hate speech.<sup>624</sup> Myanmar’s track record on actively taking steps to curtail both online and offline hate speech has also been defined by inaction.<sup>625</sup> Indeed, as Part III discusses, it has been the consistent experience of local CSOs and HRDs that state authorities have not only failed to prevent and punish harmful behavior, but instead have been supporting it, at least implicitly and in some cases, actively.<sup>626</sup>

As a starting point, Myanmar has not upheld its international commitments in the area of hate speech. Under the Genocide Convention, Myanmar has made commitments to prevent and punish genocide, including by prohibiting the incitement of this international crime.<sup>627</sup> The ICJ case brought by the Gambia alleges that Myanmar has violated its obligations and has committed genocide against the Rohingya and sought provisional measures which were ordered by the Court in January 2020 against Myanmar. (See Box “Domestic Rejection of “Biased” International Accountability Efforts” for additional details).

In addition to the Genocide Convention, Myanmar has also made commitments to the fundamental human rights principles of non-discrimination and equality through its ratification of the Con-

618 Ibid., para. 56.

619 Ibid., para. 64.

620 Ibid., para. 62.

621 Ibid., para. 70.

622 Ibid.

623 A/67/357, para. 76.

624 FGD (January 2019 and December 2019).

625 Ibid.

626 See e.g., FGD (January 2019, December 2019); Shawn Crispin, “Threats, Arrests, and Access Denied.”

627 United Nations General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide, A/RES/260 (December 9, 1940) [hereinafter “Genocide Convention”].

vention on the Rights of the Child (“CRC”),<sup>628</sup> CEDAW,<sup>629</sup> and the Convention on the Rights of Persons with Disabilities (“CRPD”).<sup>630</sup>

Assessing the six Rabat factors on incitement is telling. For the context parameter, groups in Myanmar have seen ultranationalists exploit historical ethnic and religious divisions and continue to fuel longstanding tensions and conflicts.<sup>631</sup> As discussed in Part III, the constructed hate narratives have perpetuated systemic discrimination and promoted Buddhist-Burman hegemony and a majority identity to the exclusion of minority communities.<sup>632</sup> The social and political climate includes historical and cultural narratives that are susceptible to exploitation for inciting violence and discrimination against Myanmar’s ethnic and religious minorities, including in places like Rakhine State where historical divisions can be mobilized by those whose aim is incitement.<sup>633</sup> The existence of active armed conflicts, and other factors such as persistent poverty have also helped create a context for hate speech to thrive.<sup>634</sup> The Myanmar government should be taking steps to intervene and curb such forms of hate speech. It has not.

Instead of addressing hate speech, it is the experience of local CSOs and HRDs that powerful state and non-state actors have been instead implicated in such speech -- from the Commander-in-Chief Senior-General Min Aung Hlaing, government officials, government administrators, to prominent politicians; nationalist parties; and non-state actors such as Buddhist monks like U Wirathu, U Sittagu and celebrities.<sup>635</sup> These actors have contributed to narratives that normalize a climate of intolerance, maintain systemic discrimination, and justify violence targeting ethnic and religious minority communities, including the Rohingya.<sup>636</sup>

Much of the hate speech has not been negligent or isolated incidents but rather has appeared to be coordinated to promote notions of a superior ethnic and religious group over others.<sup>637</sup> Furthermore evidence of the intentionality can be inferred from a number of chronicled facts -- the amount of resources used to maintain military-operated troll farms; the widespread and rampant nature of the coordinated, misinformation campaigns and inauthentic behaviors; the targeting against specific individuals, including death threats and derogatory statements aimed at journalists; nationalist rallies; and impunity for both state and non-state actors that have been either complicit or actively participated.<sup>638</sup>

In addition, there is the actual content and form of the speech. One only needs to examine the examples that has been provided in this report, to see that hate speech in Myanmar is designed to

628 United Nations, Convention on the Rights of the Child (20 November 1989), art. 13(1) [hereafter “CRC”]: “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.”

629 United Nations General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women (September 3, 1981) [hereafter “CEDAW”].

630 United Nations Committee on the Rights of Persons with Disabilities, Convention on the Rights of Persons with Disabilities, CRPD/C/ESP/1 (October 5, 2014), art. 21 [hereafter “CRPD”]: “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[.]”

631 FGD (January 2019 and December 2019).

632 Ibid.

633 Ibid.

634 FGD (January 2019 and December 2019).

635 Ibid.

636 Ibid.

637 See Mozur.

638 FGD (January 2019 and December 2019).

provoke, incite violence, discrimination and hatred; many others have reported similar hate speech.<sup>639</sup> Ethnic and religious minorities are routinely vilified and portrayed as being less than human.<sup>640</sup> The Rohingya's chosen identity and name for instance is completely denied, and instead they have been called "*Bengali*," the many derivatives of "*kalar*", and referred to as everything from fleas, dogs, weeds and carps that spread uncontrollably, to floating garbage of unknown origin (*Yay Myaw Kan Tin*).<sup>641</sup>

If the aforementioned hate speech were restricted to a small audience, then perhaps it may not warrant criminalization or trigger concern about international atrocity crimes. However, state and non-state actors have leveraged both online and offline platforms and multiple mediums to extensively reach and communicate with a large audience.<sup>642</sup> Many in the audience have little to no digital literacy and may not be equipped to critically examine the widely disseminated messages of incitement that have called on them to defend their race and religion using force.<sup>643</sup>

The final factor to consider is the likelihood and imminence of harm against a targeted group, including whether there is a reasonable probability that hate speech would lead to real world action against the targeted individual or communities. If there is such a risk, the state is obligated to intervene on their behalf.<sup>644</sup> For Myanmar, the country has moved far past imminence. For example, the world has witnessed actual harms unleashed by state and non-state actors in Rakhine State.<sup>645</sup> The FFM report pages are replete with testimonies from Rohingya refugees, detailing atrocity crimes following the violence 2012, 2016 and 2017 clearance operations which forced nearly a million Rohingya to flee to Bangladesh.<sup>646</sup> Part III also details additional examples, including the targeting of specific individuals who have since fled the country.<sup>647</sup>

After evaluating the Rabat Plan of Action factors in the context of incitement, there is little need to spend much time assessing the non-legal tools that Myanmar should be using to combat the root causes of hate speech. Indeed, if the state is not preventing and punishing incitement and instead has been linked to such activities, it is not surprising that the state has not been actively supporting education efforts, intracultural dialogues, or a healthy media environment to promote tolerance and counter hate speech. Part III catalogs the underlying drivers and how deeply entrenched they are in power structures in Myanmar. Ultimately, to date, whether the hate speech has been in its most extreme form of inciting genocide or in its systemic cultural form that pervades society, Myanmar has failed to address the problem. Instead, hate speech has helped fuel violations of Myanmar's ethnic and religious minority communities' human rights and in the case of the Rohingya, it has enabled genocidal violence and atrocity crimes. If left unaddressed, hate speech will only continue to threaten social cohesion, stability, and peace in Myanmar.

639 See, e.g., Fuller; Gravers; Mozur; "An Unholy Alliance," Al Jazeera; International Crisis Group, "Buddhism and State Power."

640 Ibid.

641 See generally Beech, "Across Myanmar"; A/HRC/39/64, paras. 35, 46, 86.

642 See Mozur.

643 BSR., 12-14.

644 See, e.g., Guiding Principles, para. 1; A/74/486, para. 24; Rabat Plan of Action, para. 14.

645 See generally Human Rights Watch, All You Can Do Is Pray.

646 See A/HRC/39/64.

647 FGD (January 2019 and December 2019).

## B. Safeguarding Expression and Preventing Abuse of a Hate Speech Framework in Myanmar

From the preceding section's discussion, it is clear that the government of Myanmar has failed to prosecute "real" incitement cases<sup>648</sup> and combat "genuine harms" associated with hate speech.<sup>649</sup> In addition to concerns about the lack of prosecution of perpetrator, there is a corresponding question -- whether "at the same time members of minorities are de facto persecuted, with a chilling effect on others, through abuse of vague domestic legislation, jurisprudence and policies."<sup>650</sup> Three issues flow from this concern: 1) the laws themselves, 2) the application of the relevant laws, and 3) the adjudication mechanisms, which implicate the independence and competence of the judiciary and the rule of law generally.<sup>651</sup> Myanmar has failed on all three fronts.

The commentary of the UN Human Rights Committee on Articles 19 and 20 of the ICCPR is instructive as far as restricting that well-established fundamental freedom of expression.<sup>652</sup> The commentary states that any limitation on freedom of expression must meet all three of the following conditions: 1) legality, 2) legitimacy, and 3) necessity and proportionality with the onus placed upon the authority rather than the individual claiming their right to expression.<sup>653</sup> First, legality requires that any restriction must be "provided by law."<sup>654</sup> The law must be sufficiently precise as to enable someone to regulate his or her conduct.<sup>655</sup> It also requires that the law must be subject to regular legislative or administrative processes and should not confer unlimited discretion on those charged with its implementation and enforcement.<sup>656</sup>

Second, in order for a restriction of expression to be legitimate, the law must protect one or more interests like: respect for the rights or reputations of others,<sup>657</sup> national security,<sup>658</sup> public order,<sup>659</sup> and public health or morals.<sup>660</sup> The underlying commentary is that any restrictions or limitations must be done in accordance with principles of human rights and non-discrimination. Thirdly, any restricting of speech is to be "necessary to protect the legitimate interest; and proportional to achieving the purported aim."<sup>661</sup> Restrictions cannot be overly broad and must be "clearly and narrowly defined . . . so that they do not restrict speech in a wide and untargeted way" and are appropriate to protect the interests at risk, utilizing the least intrusive means.<sup>662</sup>

648 Rabat Plan of Action, para. 27.

649 A/74/486, para. 1.

650 Rabat Plan of Action, para. 27.

651 A/74/486, 52.

652 ICCPR, arts. 19, 20.

653 ICCPR, General Comment No. 34, CCPR/C/GC/34, paras. 18, 22; A/74/486, para. 6; See also A/67/357, para. 41; A/74/846, para. 6; Rabat Plan of Action, para. 18.

654 *Ibid.*, art. 19(3).

655 *Ibid.*, para. 25.

656 *Ibid.*

657 *Ibid.*, para. 28.

658 *Ibid.*, para. 29–30.

659 *Ibid.*, para. 31.

660 *Ibid.*, para. 32.

661 *Ibid.*, para. 33–34; Rabat Plan of Action, para. 18 (noting that "the benefit to the protected interest [must] outweigh the harm to freedom of expression, including with respect to the sanctions they authorize").

662 Rabat Plan of Action, para. 18

Given the need to ensure that any restrictions are narrowly construed and applied, the human rights framework has emphasized the need for an independent judiciary and other adjudicatory mechanisms. For example, in discussing the six factors of the Rabat Plan of Action, one Special Rapporteur noted there is a need for “careful consideration by the judiciary of the context in which hatred is expressed,” which requires examination “of various factors, including the existence of patterns of tension between religious and racial communities,” and “discrimination against the targeted group.”<sup>663</sup> The Rabat Plan of Action reiterated that an independent, impartial, and objective judiciary is “vital” in hate speech cases because determinations require “contextual” analysis and “the individual circumstances of each case, such as local conditions, history, cultural and political tensions, must be taken into account.”<sup>664</sup> In short, without an independent and functional judiciary and the rule of law, the likelihood of successfully tackling hate speech is likely to be greatly reduced.

## The Case of Myanmar

Myanmar’s overly broad laws regarding restrictions of freedom of expression combined with their selective enforcement, which has been used to silence dissent and critique has infringed on human rights protections and made combatting hate speech much more difficult.<sup>665</sup> The lack of an independent judiciary and the rule of law has only made the situation worse.<sup>666</sup> The outcome has been predictable -- the suppression of legitimate speech and the continuation of hate speech.<sup>667</sup>

As a starting point, Myanmar’s legal framework that is relevant to hate speech does not meet human rights standards. Myanmar has domestic legislation that could be used to prosecute perpetrators of hate speech. The 2008 Constitution also prohibits “abuse of religion for political purposes” and clarifies that laws may be promulgated to punish “any act which is intended or is likely to promote feelings of hatred, enmity, or discord between racial and religious communities or sects.”<sup>668</sup> The Penal Code criminalizes incitement and expression that “by words, either spoken or written, or by signs, or by visible representations, or otherwise, promotes or attempts to promote feelings of enmity or hatred between different classes of [persons resident in the Union].”<sup>669</sup>

The various Myanmar laws used to curb dissent listed in Section III, however, fail to meet the required test of legality, legitimacy, necessity and proportionality. Firstly, they contain broad definitions and inherently vague phrases like: “incitement to offences that damage public tranquility”; “feelings of enmity or hatred”; “wounding the religious feelings”; “deliberately affects the reputation of a person or organization or that disrespects their human rights”; “likely to cause, fear or alarm to the public, or to any section of the public, whereby any person may be induced to commit an offence against the State or against the public tranquility”; “extortion of any person, coercion, unlawful restriction,

663 A/67/356, paras. 46, 76, and 82 (noting importance of judicial training regarding international standards).

664 Rabat Plan of Action, paras. 10, 27, 28 (noting how disadvantaged and vulnerable groups have “often very low recourse to judicial and quasi-judicial mechanism”).

665 See, e.g., Human Rights Watch, *Dashed Hopes*, 31-32.

666 See, e.g., International Commission of Jurists, “Myanmar: Independence and Impartiality.”

667 *Ibid.*

668 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”].

669 Myanmar Penal Code, Section 505, [http://www.burmalibrary.org/docs17/1861-Penal\\_Code-ocr-en+bu.pdf](http://www.burmalibrary.org/docs17/1861-Penal_Code-ocr-en+bu.pdf).

defamation, interfering, undue influence, or intimidation using a telecommunications network”; and “brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government.”<sup>670</sup> Instead of using such overly broad terms, legislation must instead articulate precise language as “the risks that legal provisions prohibiting hate speech may be interpreted loosely and applied selectively by authorities” could lead to misapplication and abuses of the law.<sup>671</sup>

Furthermore, in order for a restriction to meet the legitimacy prong, a law should protect one or more specific legitimate interests including respect for the rights and reputation of others, national security, public order, and public health.<sup>672</sup> The reputation of the military and government along with national security have often been raised by the Myanmar authorities, but the UN Human Rights Committee has said that “extreme care” must be taken by governments to ensure that provisions relating to national security are not excessively broad as to suppress public information of legitimate public interest or to prosecute journalists, activists, or researchers.<sup>673</sup> Finally, the UN Human Rights Committee has said that a restriction must be demonstrated by the state as necessary to protect a legitimate interest and to be the least restrictive.<sup>674</sup> In the cases that were discussed in Section III, there is no indication that the government of Myanmar pursued the least restrictive sanction, nor did they present why prosecutions was necessary and proportionate to the alleged offences.<sup>675</sup>

Instead, as Section III indicates, these broad laws and state power have been weaponized against civil society and journalists.<sup>676</sup> CSOs and HRDs at the consultations and interviews reported that while ultranationalists like U Wirathu are free to incite violence and remain free, activists must contend with: lengthy pre-trial detentions, protracted long trials without bail, expensive monetary fines, being charged across different townships for one act of peaceful protest, and having to serve consecutive sentences as opposed to concurrent ones.<sup>677</sup> The state has also deployed other powers to chill expression, including using surveillance and shutting down the internet which has affected more than a million people.<sup>678</sup> Cumulatively, the number of cases and widespread accounts exemplify a pattern of abuse and the violation of human rights standards with regards to protecting expression.<sup>679</sup>

Furthermore, just as the laws themselves must meet a strict test, the application of any restrictions must also meet a high threshold and remain the exception rather than the rule. Whether it be journalists reporting on war crimes, youth activists’ peacefully protesting, satirists performing plays, or Facebook posts in opposition to the military and government of Myanmar, none of these forms of expression meet the aforementioned high threshold of incitement or even the second category warranting civil or administrative sanctions.<sup>680</sup> Nor do they create a climate of intolerance and diminish

670 Excerpts taken from various provisions and laws listed in Section III that have been used to prosecute the activities of CSOs and HRDs. See, e.g., Telecommunications Law, sec. 66(3), 68(a); Peaceful Assembly and Peaceful Procession Law, sec. 19, 20; Penal Code, art. 124(a), 295(a), 499, 500, 505(b); Electronic Transactions Law, sec. 33, 34(d).

671 A/67/357, para. 42.

672 ICCPR, art. 19, sec. 3.

673 CCPR/C/GC/34, para. 28.

674 *Ibid.*, paras. 33-34.

675 See Shrinking Civil Society Case Study Box, 67-70.

676 *Ibid.*

677 FGD (January 2019 and December 2019).

678 See Human Rights Watch, *They Can Arrest You*.

679 *Ibid.*

680 See generally Shrinking Civil Society Case Study Box, 67-70; Human Rights Watch, *Dashed Hopes*, 19-20, 27-28, 41-44.

the rights of others.<sup>681</sup> Indeed, by all indications, these forms of expression are legitimate speech and should be encouraged by the state rather than sanctioned.<sup>682</sup> Ultimately, the broad laws, their misapplication, and abuse of state power have all infringed on the right to freedom of expression of numerous CSOs, HRDs, the media, and communities in Myanmar.<sup>683</sup> Myanmar should rectify these rights violations and should not subject those expressing legitimate forms of speech to criminal, civil or administrative sanctions.

A final word is in order regarding the rule of law and independence of judicial mechanisms in Myanmar given their importance in preventing the abuse of hate speech frameworks. Without proper judicial independence and the interpretation of the provisions contained in Myanmar's laws, state authorities' unfettered discretion has gone virtually unchecked inside the country.<sup>684</sup> The Myanmar judiciary as well as other administrative and oversight bodies should be able to properly discern and accurately categorize the speech in question. Decades of military dictatorship have dismantled Myanmar's judicial system, however.<sup>685</sup> In fact, under the 2008 Constitution, the civilian courts have no oversight over the *Tatmadaw* and security forces' conduct, which can only be reviewed by military tribunals.<sup>686</sup> Judges have had little to no judicial independence nor have they been able to exercise discretion free of the *Tatmadaw* and government's influence.<sup>687</sup> The courts have instead been utilized to silence dissent and opposition critical of the military and government's policies, enabling abuse and violations of CSOs and HRDs' fundamental right to freedom of expression while incitement to violence, discrimination and even potential genocide by state and non-state perpetrators have not been held accountable.<sup>688</sup>

### C. Corporations and Hate Speech

International law and human rights principles, including those related to hate speech, are also relevant to business operations. For example, states must protect civilians from abuses perpetrated by third parties, including corporations.<sup>689</sup> Companies are also expected to take steps themselves to prevent contributing to human rights violations.<sup>690</sup> Companies who may be complicit in genocide or other gross human rights violations could be held accountable in some jurisdictions if they have contributed to abuses in a substantial way. Finally, human rights standards have also emerged specifically with regards to regulating corporate behavior and hate speech, including online platforms.<sup>691</sup>

681 Ibid.

682 Ibid.

683 See, e.g., Human Rights Watch, *Dashed Hopes*, 31-32.

684 See, e.g., International Commission of Jurists, "Myanmar: Independence and Impartiality; Judicial Integrity and Accountability," March 25, 2014, <https://www.icj.org/cijlcountryprofiles/myanmar-introduction/judges/independence-and-impartiality-judicial-integrity-and-accountability/>.

685 Ibid.

686 Ibid.

687 Ibid.

688 Ibid.

689 Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*, HR/Pub/11/04 (2011), para. 1 [hereafter "Guiding Principles"].

690 Ibid., para. 13(b).

691 See, e.g., Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*, HR/Pub/11/04 (2011) [hereinafter "Guiding Principles"].

## The UN Guiding Principles on Business and Human Rights

The 2011 UN Guiding Principles on Business and Human Rights outline responsibilities of businesses relating to the protection of human rights across three pillars.<sup>692</sup> While these principles were not meant to create new legal obligations, they reflect a “global standard of expected conduct for all business enterprises wherever they operate.”<sup>693</sup> The first pillar outlines the state’s duty to “protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.”<sup>694</sup> They can and are able to use policies, legislation, regulations and adjudication to prevent, investigate, punish and provide remedies.<sup>695</sup>

The Guiding Principles’ second pillar highlights the responsibility of businesses to respect human rights, which “means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.”<sup>696</sup> The Guiding Principles elaborate further that such corporate responsibility requires businesses to (1) “avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur”, and (2) “seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products, or services by their business relationships, even if they have not contributed to those impacts.”<sup>697</sup> In addition to the Guiding Principles, a number of other international documents—such as the International Labour Organization Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy,<sup>698</sup> the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises,<sup>699</sup> and the UN Global Compact—also reflect how corporations should respect and abide by existing international human rights law.<sup>700</sup>

The Guiding Principles stress that corporate responsibility extends to all businesses regardless of their “size, sector, operational context, ownership and structure.”<sup>701</sup> Businesses should undertake due diligence;<sup>702</sup> express commitment to respect human rights through policy development that is clearly communicated to all personnel and partners;<sup>703</sup> involve affected communities and stakeholders through “meaningful consultation;”<sup>704</sup> assess “actual and potential” human rights impacts and respond to findings regarding impacts;<sup>705</sup> track the effectiveness of these responses;<sup>706</sup> and formally

692 Ibid.

693 Ibid., para. 11.

694 Ibid., para. 6.

695 Ibid., para. 1.

696 Ibid., principle 11.

697 Ibid., principle 13.

698 See International Labor Organization [ILO], Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (5th ed. 2017), para. 8: “[All parties] should respect the Universal Declaration of Human Rights (1948) and the corresponding International Covenants (1966) adopted by the General Assembly of the United Nations.”

699 See Organization for Economic Co-Operation and Development [OCD], OECD Guidelines for Multinational Enterprises (2008), General Policies II.2 (indicating that multinational enterprises should “Respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.”).

700 See United Nations, The Ten Principles of the United Nations Global Compact, principles 1-2 (outlining that “Businesses should support and respect the protection of internationally proclaimed human rights; and [...] make sure that they are not complicit in human rights abuses.”)

701 Guiding Principles, principle 14.

702 Ibid., principles 4, 5, 18.

703 Ibid., principle 16.

704 Ibid., principle 18.

705 Ibid., principle 17.

706 Ibid., principle 20.

report on how human rights impacts have been addressed, “particularly when concerns are raised by or on behalf of affected stakeholders.”<sup>707</sup>

The Guiding Principles lastly stress that victims of human rights violations have a right to remedy,<sup>708</sup> and they note that no matter the context, companies should “treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.”<sup>709</sup> The Guiding Principles note that national jurisdictions are creating an “expanding web” of potential civil liability,<sup>710</sup> as well as potential criminal prosecution as countries incorporate provisions of the Rome Statute that may “provide for corporate criminal responsibility.”<sup>711</sup> Of note to the situation of hate speech in Myanmar, the Guiding Principles also stress that in “complex contexts . . . business enterprises should ensure that they do not exacerbate the situation.”<sup>712</sup> Given the severity of the effects of hate speech in Myanmar, these principles are particularly relevant.

The Guiding Principles also provide helpful some guidance on what contributions are prohibited, including aiding and abetting abuses by “knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime.”<sup>713</sup> Indeed, companies that were alleged to have contributed grave human rights abuses in Myanmar have already faced legal action in the past. Villagers from Tanintharyi, Myanmar sued U.S. oil company Unocal in a United States court for its role in “aiding and abetting” the Myanmar army’s forced labor, forced relocation, murder, and rape of villagers in the area of Unocal’s work constructing a pipeline;<sup>714</sup> cases were also pursued against Total in France and Belgium on similar grounds.<sup>715</sup> In short, the absence of a binding international treaty<sup>716</sup> to adjudicate the human rights responsibilities of corporate entities does not mean

707 Ibid., principle 21.

708 Ibid., principles 25-31.

709 Ibid., principle 23 (stating in part “[s]ome operating environments, such as conflict-affected areas, may increase the risks of enterprises being complicit in gross human rights abuses committed by other actors (security forces, for example). Business enterprises should treat this risk as a legal compliance issue, given the expanding web of potential corporate legal liability arising from extraterritorial civil claims, and from the incorporation of the provisions of the Rome Statute of the International Criminal Court in jurisdictions that provide for corporate criminal responsibility. In addition, corporate directors, officers and employees may be subject to individual liability for acts that amount to gross human rights abuses. In complex contexts such as these, business enterprises should ensure that they do not exacerbate the situation.”).

710 Ibid., principle 23. Corporations have been sued in countries where they are headquartered for complicity in war crimes or human rights abuses abroad; for example, such suits have brought in the Netherlands, Switzerland, France, Canada, and the United States. See also Business & Human Rights Resource Centre, “Lawsuits against Companies,” <https://www.business-humanrights.org/en/corporate-legal-accountability/case-profiles/complete-list-of-cases-profiled>.

711 Ibid., principle 23. States like Switzerland, Germany, and the Netherlands have incorporated parts of the ICC Rome Statute into their domestic law, the domestic jurisdictions in which corporations may be held accountable for international crimes have increased. See “Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises,” A/HRC/4/035, para. 24.

712 Ibid., principle 23.

713 Guiding Principles.

714 See Earth Rights International, “Doe v. Unocal,” <https://earthrights.org/case/doe-v-unocal/>.

715 “Burma: Pressure mounts on Western oil companies profiting under repression,” Daily Mail, October 3, 2007, <https://www.dailymail.co.uk/news/article-485374/Burma-Pressure-mounts-Western-oil-companies-profiting-repression.html>.

716 In line with United Nations Human Rights Council [HRC], HRC Resolution 26/9, A/HRC/RES/26/9 (June 26, 2014), “Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights,” the Human Rights Council recently released a “Zero Draft” of the “Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Business Enterprises.” This draft is a step toward what the HRC aims to develop into a Business and Human Rights treaty that will impose binding legal obligations on businesses. See HRC, Zero Draft: Legally Binding Instrument

that companies or their executives may not be held accountable for human rights abuses. If businesses involve themselves in activities facilitating or furthering hate speech that result in human rights abuses or international humanitarian law violations, they may risk finding themselves facing legal claims for their contributions to violence.

## Human Rights, Corporations, and Hate Speech

Former UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, provided important guidance for states and business regarding corporate behavior, human rights, and hate speech.<sup>717</sup> Regarding the state's obligation to regulate corporate behavior for example, Germany's Network Enforcement Act is provided by the Special Rapporteur as a good faith attempt to deal with online hate.<sup>718</sup> It requires companies to remove unlawful speech (as defined in the German Criminal Code) from their platform within a set time of typically within 24 hours or even as brief as one hour.<sup>719</sup> Companies that fail to do so are liable under German law.<sup>720</sup> However, any the imposition of liability by the State must once again meet the necessity, proportionality and legitimacy test (as outlined in the preceding section), judicial oversight and the possibility of appeal by either the company and/or the affected user(s).<sup>721</sup>

Looking also to the UN Guiding Principles, the UN Special Rapporteur states that social media companies themselves should address hate speech on their platform by engaging in human rights due diligence and review.<sup>722</sup> Corporations are to carry out regular impact assessment on how their product might infringe on others' human rights. He also urged companies to be transparent and consult affected communities and other stakeholders including human rights experts.<sup>723</sup> This transparency is to also extend to their content moderation process, and any corporate policy must reflect human rights norms.<sup>724</sup> Like states, any restriction of freedom of expression, must meet the legality, necessity and legitimacy test.<sup>725</sup> The Special Rapporteur noted that company definitions of what constitute hate speech vary from different corporations.<sup>726</sup> However, a human rights compliant policy that meets the legality parameter, should list: who the protected persons or groups; what kind of speech will be restricted utilizing the ICCPR parameters and how they determine whether or not a user has violated their hate speech rules; categories of speech that will be prohibited beyond incitement (which may not meet the incitement threshold but foster intolerance nonetheless); whether certain groups (including journalists reporting on hate speech) will be exempt from the rule.<sup>727</sup> The Special Rapporteur

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to Regulate, in *International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises*, (July 16, 2018): <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/DraftLBI.pdf>.

717 A/74/486, paras. 40-55.

718 See *Ibid.*, para. 32.

719 *Ibid.*

720 *Ibid.*

721 *Ibid.*, para. 33.

722 *Ibid.*, para. 44.

723 *Ibid.*

724 *Ibid.*

725 *Ibid.*, para. 45.

726 *Ibid.*, para. 46.

727 *Ibid.*, paras. 31-33.

explicitly states that “politicians, government and military officials and other public figures” are not to be exempt from hate speech rules given their prominence.<sup>728</sup>

According to the Special Rapporteur, a user violating a company’s hate speech policy could be subject to sanctions. He lists a wide range of options, including:

[D]elete content, restrict its virality, label its origin, suspend the relevant user, suspend the organization sponsoring the content, develop ratings to highlight a person’s use of prohibited content, temporarily restrict content while a team is conducting a review, preclude users from monetizing their content, create friction in the sharing of content, affix warnings and labels to content, provide individuals with greater capacity to block other users, minimize the amplification of the content, interfere with bots and coordinated online mob behavior, adopt geolocated restrictions and even promote counter-messaging.<sup>729</sup>

Given the wide range of options, companies, like States, must utilize the least restrictive approach that permits legitimate expression while restricting incitement and other forms of hate speech.<sup>730</sup> Lastly, under the Guiding Principles third pillar, social companies have a responsibility to offer remedies.<sup>731</sup> The Special Rapporteur stated that any remedial process must enable individuals the ability to report violations of hate speech policies; the company process should safeguard against retaliation, and allow people to respond and appeal a decision in a public manner.<sup>732</sup> He further adds that company remedial policies could include education, permit counter speech, and direct engagement between the violating user making amends with those they harm.<sup>733</sup> The Special Rapporteur further adds that while less serious forms of speech may be addressed by the aforementioned remedies, under the Rabat Plan of Action, those whose human rights have been violated by incitement have a right to criminal, civil, and non-judicial remedies and States are obligated to act and intervene on their behalf.<sup>734</sup>

## The Case of Myanmar

The case of Myanmar is unfortunately a paradigmatic example of how corporations can contribute to the infringement on rights. Given social media corporations reach and the significant role it occupies in Myanmar society and hate speech, the state and companies alike must regulate such speech, including incitement. Both must ensure that the persecution and atrocities committed upon the Rohingya and facilitated by rampant hate speech and culture of intolerance festered online must not continue.

Unfortunately, Myanmar has failed again to uphold its human rights obligations. Rather than regulating corporate behavior and social media, the evidence indicates that the Myanmar authorities

728 A/74/486., para. 46.

729 Ibid., para. 51.

730 Ibid., para. 52.

731 Guiding Principles, paras. 30-31.

732 A/74/486., para. 53.

733 Ibid., para. 54.

734 Ibid., para. 55.

have been using social media platforms to extend the reach of hate speech.<sup>735</sup> Given the current deficiencies with the rule of law, legislative fixes are likely to be of limited use; however, eventually, Myanmar could potentially take a similar approach to Germany and regulate incitement on platforms like Facebook, YouTube, VK, WhatsApp, and require these companies to take down unlawful incitement content immediately and impose liability for those that do not.

The failure of the state to meet its obligations, however, does not diminish the responsibilities of corporations like Facebook to act. As the discussion in Section III on the online dissemination of hate speech and its adverse impact on the lives of Myanmar's ethnic and religious minorities and CSOs and HRDs shows, there are risks associated with the exponential growth and reach of social media corporations.<sup>736</sup> The international human rights community has already noted the role of social media corporations in human rights violations in Myanmar with the FFM directing recommendations at Facebook and other businesses active in the country for their failure to prevent the occurrence of hate speech on their platforms.<sup>737</sup> The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, similarly singled out Facebook for its role in incitement against the Rohingya in Myanmar.<sup>738</sup> Given that the Guiding Principles require corporations including social media corporations to "respect human rights" and "act with due diligence to avoid infringing human rights and adverse impacts,"<sup>739</sup> they are obligated to integrate human rights into their product in Myanmar.<sup>740</sup>

In the case of Facebook in Myanmar, human rights due diligence and review of their product's impact on the ground did not happen until after the genocidal clearance operations had occurred against the Rohingya.<sup>741</sup> CSOs and HRDs from the consultations spoke at length of reporting hateful content that violate the company's community standards to no avail.<sup>742</sup> Many said they met with Facebook employees following the waves of violence in Rakhine State.<sup>743</sup> Over the years they have highlighted how state and non-state actors have misused their platform, and continue to do so, but to no avail.<sup>744</sup> CSOs and HRDs shared information with the company, including identifying accounts, screenshots, and narratives but that the main removal of accounts did not happen until after the findings of the FFM and UN Special Rapporteurs publicized the company's role in the persecution of Myanmar's ethnic and religious minorities.<sup>745</sup>

Facebook finally commissioned BSR to conduct an independent human rights impact assessment on the role of Facebook in Myanmar in 2018.<sup>746</sup> They accepted BSR's findings that it was not doing enough to prevent "the platform from being used to foment division and incite offline violence,"

735 FGD (January 2019 and December 2019); See also Part III of this report's discussion of online dissemination via Facebook.

736 Ibid.

737 A/HRC/39/64.

738 A/74/846, para. 41.

739 Guiding Principles, para. 11.

740 A/74/846, para. 42.

741 See Mozur.

742 See, e.g., FGD (January 2019 and December 2019).

743 Ibid.

744 Ibid.

745 See BSR.

746 Ibid.

and the company announced it was taking corrective actions.<sup>747</sup> Facebook states that what is and is not allowed on their platform will be guided by international human rights principles, including the UDHR, ICCPR and as members of the Global Network Initiative’s (GNI) Principles on Freedom of Expression and Privacy; Facebook has further stated that it is committed to “engage governments and international institutions to promote the rule of law and the adoption of laws, policies and practices that protect, respect and fulfil freedom of expression and privacy.”<sup>748</sup> In addition to increasing Myanmar content reviewers, the company states that it has “improved proactive detection of hate speech” in Myanmar, and are “taking more aggressive action on networks of accounts,” and “extended the use of artificial intelligence to posts that contain graphic violence and comments that are violent and de-humanizing.”<sup>749</sup>

Only time will tell as to whether such measures prove to be effective at curbing hate speech. The lead up to the 2020 elections is a potential flashpoint for further incitement and offline violence.<sup>750</sup> Regardless, Facebook should apply the UN Guiding Principles and integrate human rights into their platform and comply with the Special Rapporteur David Kaye’s recommendation ensuring that it: (a) conduct periodic reviews of the impact of the company products on human rights; (b) avoid adverse human rights impacts and prevent or mitigate those that arise; (c) implement due diligence processes to identify, prevent, mitigate and account for how they address their impacts on human rights and have a process for remediating harm.<sup>751</sup> They should hold meaningful and substantial consultations on regular basis, seeking input and recommendations from CSOs and HRDs on the way forward, contribute to in-country digital literacy efforts, and be vocal in their zero tolerance for incitement and users violating their community standards. Only with such actions will corporations better ensure the promoting and protection of human rights of ethnic and religious minorities in Myanmar, rather than contributing to their violation as they did in the past.

747 Alex Warofka, “Response: An Independent Assessment of the Human Rights Impact of Facebook in Myanmar,” Facebook, November 5, 2008, <https://about.fb.com/news/2018/11/myanmar-hria/>

748 Ibid.; See also Global Network Initiative [GNI], GNI Principles on Freedom of Expression and Privacy (updated 2017), <https://globalnetworkinitiative.org/wp-content/uploads/2018/04/GNI-Principles-on-Freedom-of-Expression-and-Privacy.pdf>.

749 Ibid.

750 Hunter Marston, “The Hate Speech Threat to the 2020 Election,” Frontier Myanmar, April 6, 2019, <https://www.frontiermyanmar.net/en/the-hate-speech-threat-to-the-2020-election/>.

751 A/74/846, para. 42.



# 5

## Recommendations

**L**ocal civil society groups in Myanmar have already taken a range of steps to monitor, document, and counter the rise of hate speech and ultranationalism, often at great risk to themselves.<sup>752</sup> Those in Myanmar and international actors must support these efforts so that hate speech does not continue to spark violence and persecution.

This part provides recommendations, targeted at a variety of actors, that are designed to reduce and curb the effects of hate speech. These recommendations also seek to address the closing civil society space in Myanmar. The recommendations call in general for ending impunity, strengthening institutions, including the judiciary, repealing oppressive laws, prioritizing and promoting policies that counter hate and encourage diversity and tolerance, and increasing people's digital literacy. With concerted action and cooperation among actors, the country can course correct, and transform itself into a genuine rights-respecting democracy.

## To the Myanmar Government

### End Impunity and Protect Freedom of Expression

- Prosecute state and non-state perpetrators that incite violence against ethnic and religious minorities;
- End selective application of laws that chill speech and silence CSOs, HRDs, and the media, including dropping all charges against and releasing HRDs, activists, journalists, students, and other political prisoners that have been convicted under Myanmar's laws criminalizing freedom of expression;
- 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;
- Regulate corporations that may be contributing to hate speech or its dissemination;
- Promote and resource policy initiatives consistent with human rights frameworks, such as the Rabat Plan of Action to combat hate speech, including education, intracultural dialogue, condemnation of incidents of hate, and creating a healthy media environment;
- Cooperate with various international accountability mechanisms; and
- Protect ethnic and religious minority civilians and end grave human rights violations and atrocities.

### Law Reform

- Amend or repeal laws that restrict freedom of expression to be consistent with human rights standards, including but not limited to the Telecommunications Law, the News Media Law, the Printing and Publication Law, the Electronic Transactions Law, the Peaceful Assembly and

<sup>752</sup> See Search for Common Ground, Myanmar Impact Toolkit: Monitoring and Evaluating Counter Hate Speech Initiatives (2018), [https://www.sfcg.org/wp-content/uploads/2018/03/CFCG\\_Myanmar\\_Impact\\_Toolkit-English\\_version.pdf](https://www.sfcg.org/wp-content/uploads/2018/03/CFCG_Myanmar_Impact_Toolkit-English_version.pdf).

Peaceful Procession Law, the Law Protecting the Privacy and Security of Citizens, the Official Secrets Act, and the Penal Code—especially:

- Sections 66(d) and 68(a) of the Telecommunications Law;
  - Sections 19 and 20 of the Peaceful Assembly and Peaceful Procession Law;
  - Articles 124(a), 295(a), 499, 500, and 505(b) of the Penal Code;
  - Section 33 and 34(d) of the Electronic Transactions Law;
- Enact anti-discrimination laws to protect and promote the human rights of ethnic and religious minorities;
  - 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; and
  - Ensure that any judicial or quasi-judicial determination regarding restrictions on freedom of speech is made by an independent adjudicator; if this requires inviting international experts to assist with determinations given the deficiencies with the rule of law in Myanmar, the government should request assistance from the international community to help with such matters.

### **Counter Hate Speech in the Lead Up to the 2020 Elections**

- Ensure that the Union Election Commission prohibits all political parties from spreading hate speech and misinformation both online and offline;
- Enact a zero-tolerance policy for campaign content (including but not limited to: speeches, slogans, statements, and pamphlets) that are discriminatory and could incite violence; and
- Monitor hate speech and set up an early warning system for potential election violence targeting ethnic and religious minorities.

### **To the Myanmar Military**

- Adhere to the above recommendations made to the government of Myanmar;
- Place any military personnel implicated in incidents of hate speech, including incitement of discrimination, hostility, violence, and genocide on immediate administrative leave until an independent investigation can be completed; cooperate with all such investigations and support enforcement of any outcomes that result;
- Stop contributing to the circulation of hate speech that target ethnic and religious minorities and promote armed conflict in Myanmar;
- Stop military operations against ethnic and religious minorities, and end grave human rights violations and atrocities; and
- Stop endorsing or supporting ultranationalist groups that perpetuate narratives of hate.

## To Civil Society

- Monitor and counter hate speech by state and non-state actors;
- Raise public awareness to combat hate speech by highlighting its harmful narratives, its drivers and root causes, how such speech is disseminated, and the impact of such speech on ethnic and religious minority communities and society more generally; and
- Hold consultations and trainings on the impact of hate speech in Myanmar and support efforts to promote tolerance and peaceful coexistence.

## To the International Community

- Urge the Myanmar government and military to adopt and implement the above recommendations;
- Support local CSOs and HRDs who work to monitor and counter the harms of hate speech and ultranationalism; and
- Implement the recommendations made by UN Independent International Fact-Finding Mission on Myanmar in its reports in 2018 and 2019; and
- Support ongoing international accountability efforts, including at the International Court of Justice and International Criminal Court for gross human rights violations and atrocities.

## To Social Media Platforms, Telecommunication Companies, and Other Businesses Operating in Myanmar

- Ensure business practices in Myanmar adhere to human rights standards, including the UN Guiding Principles on Business and Human Rights, particularly with regards to avoiding, mitigating, and addressing adverse human rights impacts;
- Make sure that business operations/products do not facilitate hate speech or incitement of violence;
- Consider the adverse human rights impacts that may directly or indirectly result from operating in Myanmar and conduct due diligence to mitigate any risks; if operations cannot ensure adequate human rights protections, withdraw operations from the country to ensure they do not contribute to further harm and avoid being complicit in abuses;
- Rigorously and independently monitor speech that calls for or incites unlawful activity in accordance with international laws and standards, preserving digital copies of such content for the eventual use by domestic or international accountability mechanisms, including the Independent Investigative Mechanism for Myanmar, International Court of Justice, and International Criminal Court;
- Provide digital literacy training for Myanmar users and consult with local CSOs and HRDs, particularly with those advocating for protection of human rights and monitoring hate speech, to combat and respond effectively to new hate speech trends;

- 
- Provide CSOs assistance in countering efforts aimed at de-escalating violence and hate speech;
  - Publish company policies and standards in easy-to-read formats and/or short videos in local languages;
  - Be transparent on how content is flagged for removal from online platforms, including regularly publicly available Myanmar-specific data on removed content and distribution trends of online hate speech that is readily available in Burmese; and
  - Hire more content moderators who are fluent in Burmese and other ethnic languages that possess an understanding of hate speech and human rights, and are committed to protecting ethnic and religious minorities.



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