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**Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives**

### **Situation of human rights in Myanmar**

#### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur of the Human Rights Council on the situation of human rights in Myanmar, Yanghee Lee, submitted in accordance with Human Rights Council resolution 37/32.

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## **Report of the Special Rapporteur on the situation of human rights in Myanmar**

### *Summary*

The present report provides an overview of human rights developments and challenges in Myanmar. It contains recommendations to address them, including the establishment of an accountability mechanism proposed by the Special Rapporteur.

## I. Introduction

1. The present report, submitted pursuant to Human Rights Council resolution 37/32, covers developments in Myanmar since the previous report of the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, to the Human Rights Council in March 2018 (A/HRC/37/70) and oral update presented to the Council in June 2018.

2. The Special Rapporteur notes that executing the mandate and fulfilling the responsibilities entrusted to her by the Council have been extremely difficult owing to the continued denial of access to her by the Government of Myanmar. In preparation for the present report, the Special Rapporteur made a request to visit India in order to meet refugees from Myanmar who are present there. She received no response from the Government of India.<sup>1</sup>

3. As a result, the Special Rapporteur undertook a visit to Dhaka and Cox's Bazar, in Bangladesh, from 29 June to 8 July 2018. She held intensive discussions with government officials, the representatives of United Nations agencies, humanitarian actors and the diplomatic community. In Cox's Bazar, she visited the refugee camps and "no man's land" to meet refugees and civil society representatives. She held teleconferences with members of the United Nations country team in Myanmar and non-governmental organizations (NGOs), experts, human rights defenders and victims of human rights violations in Myanmar. She also held teleconferences with refugees from Myanmar in India and civil society representatives working on refugee matters there. She continues to seek opportunities for dialogue with the Government of Myanmar; following her mission, she sent a list of questions to which she has not yet received a response.<sup>2</sup>

## II. Shrinking democratic space

4. Democratic space in Myanmar today continues to shrink and is characterized by declining media freedom, increasing intimidation and harassment of those who speak out in favour of human rights and against injustices and an enveloping culture of silence and self-censorship. A survey of 200 journalists in Myanmar published in March 2018 indicated that they believe that media freedom is deteriorating. Since the violence that took place in Rakhine State in 2017, domestic broadcasting by the British Broadcasting Corporation and Radio Free Asia has ended, owing to their use of the word "Rohingya". Media access to Rakhine State and conflict-affected parts of Kachin and Shan States remains restricted. The Special Rapporteur calls for the immediate lifting of all restrictions to enable journalists to freely obtain information in those areas.

5. The Special Rapporteur has made repeated calls for greater political freedom and the objective application of laws to promote the legitimate exercise of democratic rights by political dissidents, young people and human rights defenders. A total of 8,541 prisoners, including 36 political prisoners, were pardoned and released in April. As at 31 July 2018, however, there were 33 political prisoners and 242 people, 53 of them in detention, being prosecuted for exercising their legitimate rights.

6. The Special Rapporteur deplores the ongoing, spurious prosecution under the Official Secrets Act of 1923 of Wa Lone and Kyaw Soe Oo, two Reuters journalists who uncovered a massacre at Inn Din village in the north of Rakhine State in 2017. In July 2018, the court decided to charge them, although it had previously heard

<sup>1</sup> See <https://www.ohchr.org/Documents/Countries/MM/AnnexesA7345400.pdf>.

<sup>2</sup> Ibid.

evidence from a policeman that their arrest had been set up and that his superiors had arranged for the journalists to be handed documents, the possession of which forms the basis of the charges against them. The journalists testified that, while in pretrial detention, they had been ill-treated and interrogated about their investigation in Rakhine State, not about the documents they are alleged to have possessed. The Special Rapporteur reiterates her call for the charges against the journalists to be dropped and for their unconditional release.

7. The Special Rapporteur condemns the conviction of former-child soldier Aung Ko Htwe, who was sentenced to two years' imprisonment under section 505 (b) of the Penal Code in March 2018 in relation to his interview about being a child soldier in the Tatmadaw (the armed forces of Myanmar). He was also convicted under section 228 of the Penal Code for insulting the judge. Immediately after his trial, he allegedly stepped on a copy of the 2008 Constitution and was charged under the Union Seal Law of 2010; he faces a further three years in prison if convicted. The Special Rapporteur calls for the withdrawal of all charges against him and his unconditional release.

8. Violations of the right to freedom of expression online are increasing. The Special Rapporteur recalls that restrictions on the freedom of expression online are acceptable only if they are provided for by law and are proportionate and necessary to protect an interest that is recognized under international law. She reiterates concerns about several problematic provisions of the Telecommunications Law of 2013, in particular section 66 (d), which does not accord with international standards for defamation offences, as they may result in imprisonment. At present, 57 people face prosecution under that provisions, including some who were charged in 2016; all charges should be dropped. In the ongoing trial of the journalist Swe Win in relation to an article he posted that was critical of the extremist monk U Wirathu, the court reportedly has accepted documents that were falsified by the plaintiff and Mr. Swe Win has been subject to harassment by supporters of Mr. Wirathu.

9. The Government recently set up a social media monitoring team, the purpose of which the Minister for Transport and Communications reportedly said was to identify those who instigate political instability on the Internet and on social media. There is little public information available as to its mandate, procedures and any safeguards in place to ensure that the rights to freedom of expression and privacy are not infringed. The Special Rapporteur is aware that social media, in particular Facebook, are used extensively by much of the population in Myanmar and that, for many people, Facebook is the main way of using the Internet. Facebook should be more transparent about operation of its platforms and commit more resources to combating content that violates its own standards, in particular posts that incite hostility, discrimination or violence.

10. The Special Rapporteur remains disturbed by consistently high levels of hate speech, especially targeting religious minorities. It has been reported that a young Muslim woman who participated in a peace demonstration in Yangon received death threats and was targeted with religious slurs and that her personal details, including a photograph of her identification card, were shared on Facebook nearly 2,000 times following the demonstration. As the Government attempts to assuage Buddhist ultranationalist sentiments, the Special Rapporteur is disturbed by information she has received about the ties of significant public and private entities, including the military, to extremists.

11. The right to freedom of religion and belief in Myanmar must be upheld for all, be they members of majority or minority religious groups or have no religion. The General Administration Department of the Ministry of Home Affairs in several townships in Yangon Region, Kachin State, Shan State and Ayeyarwady Region has issued an order restricting the teaching of Islam and Arabic and the building of new

places of worship for Christians and Muslims. Reportedly, under the order, religious teaching may be carried out only in the Myanmar language at mosques and madrasas approved by the Ministry of Religious Affairs using textbooks approved by the Ministry, and teaching at home is prohibited. The Special Rapporteur is concerned that that infringes the rights of all people to freely teach and study their religion in their chosen tongue and calls on the Government to withdraw the order. She is further alarmed by reports that at least 190 churches have been destroyed or damaged by the military in Kachin State since 2011 and that 22 have been destroyed or damaged in Myitkyina, Waingmaw and Chi Hpwi since April 2018.

12. The police cracked down on peaceful demonstrations in April and May 2018 led by youth movements to express their concern about the situation of civilians in conflict-affected areas. Most of those detained were charged under the Right to Peaceful Assembly and Peaceful Procession Act (Peaceful Assembly Act) of 2011, while three people in Myitkyina were charged under section 500 of the Penal Code for alleged defamation of the military. At the Yangon demonstration, the police, present in large numbers, is reported to have used force against peaceful protestors, accompanied by threats and violence on the part of so-called ultranationalist counter-protestors. In early July, the police violently suppressed a protest against the erection of a statue of General Aung San in Kayah State. Twenty-three youth activists were arrested and face charges under section 505 of the Penal Code, the Peaceful Assembly Act, or both. That is unacceptable; charges against all protestors should be dropped and the Government is again urged to ensure that any police action be in accordance with international human rights norms and standards. Furthermore, the trial of eight protestors from Rakhine State, who were arrested in January after the police violently suppressed a demonstration in Mrauk-U, continues. The Special Rapporteur encourages the Government to engage in open, inclusive dialogue with all communities, including minorities and marginalized groups, on the issues about which they are protesting so as to build trust and understanding, and refrain from action that may reinforce divisions.

13. The Special Rapporteur reiterates concerns she has previously raised about the Peaceful Assembly Act and notes that its provisions regarding the notification of assemblies, including the requirement that detailed but unnecessary information, such as the contents of signs and slogans that will be used, be submitted in advance, do not comply with international standards. She also notes that amendments to the Act proposed in February 2018 have passed the Amyotha Hluttaw (upper house of the parliament) and that their enactment would result in further undue restrictions on the right to freedom of peaceful assembly, including a requirement that organizers submit information about funding sources.

14. Section 17 (1) of the Unlawful Associations Act of 1908 is continually used against people found to be in possession of hunting rifles, walkie-talkies and driver's licences in conflict-affected parts of Shan and Kachin States. At the end of February 2018, eight men were sentenced to up to 10 years' imprisonment by Ho Pong Township Court for associating with the Restoration Council of Shan State, a signatory to the Nationwide Ceasefire Agreement of which membership is not illegal.

### III. Justice and the rule of law

15. The Special Rapporteur welcomes the launch of the Fair Trial Guidebook for Law Officers by the Office of the Attorney General, which incorporates the right to a fair trial as set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. She also welcomes the strategic plan of the Supreme Court for the period 2018–2022, which sets out a path for

achieving the highest quality justice for all and promoting public trust and confidence in the courts and the effective rule of law.

16. The rule of law is critical for a successful democratic transition and ensuring the human rights of all in Myanmar. The Constitution, although in need of amendment, already sets forth many rights that must be upheld by all branches of Government. The Special Rapporteur continues to receive information about the arbitrary, biased and opaque application of laws, many of which are vague, overly broad, incompatible with international standards and in contravention of constitutional rights. Those laws, including the Official Secrets Act, Unlawful Associations Act and Telecommunications Law, should not continue to be used as a weapon by the Government to suppress the legitimate exercise of fundamental rights, but should be amended or repealed. Despite attempts at reform in recent years, systemic and structural issues remain, such as the lack of judicial independence, the inability of law enforcement bodies to investigate cases and uphold law and order and the absence of transparency and predictability in the application of laws. The Special Rapporteur therefore encourages the Government, with international assistance, to foster a justice system that upholds the rule of law and in which the rights of all in Myanmar are respected.

17. Several draft laws that may affect freedom of expression are being developed, including the bill on protection against hate speech, the right to information bill, the news media amendment bill and the copyright bill. The broadcasting amendment bill has reportedly been adopted. None have been the subject of public consultation and, with the exception of the copyright bill, which is before the parliament, civil society and the public have no information as to where the bills are in the legislative process.

18. The Special Rapporteur welcomes the finalization of guidelines on gender-based violence by the Maternal and Reproductive Health Division of the Ministry of Health and Sports and looks forward to their dissemination. She reaffirms that draft legislation on the prevention of violence against women, which has not been finalized, should comply with international standards and the obligations of Myanmar under the Convention on the Elimination of All Forms of Discrimination Against Women and be enacted and implemented without delay.

19. The Special Rapporteur welcomes the proposed amendments to the Child Law of 1993, under which it is expected that diversion will be introduced as an alternative to detention, the principle of using detention only as a last resort will be reinforced, provision for protecting children associated with armed groups and armed forces will be made and those responsible for the recruitment and use of child soldiers will be held accountable. Under the amendments, the minimum age of criminal responsibility should be lifted from 7 to 12 years of age, the age for compulsory education should be raised incrementally to that of the minimum permissible age for employment, which is expected to be raised in all sectors to 14 years, and the worst forms of child labour should be prohibited for all children under the age of 18 years. She notes the commitment under the Union Accord entered into by the parties to the third session of the 21st-Century Panglong Conference to eliminate violations against children and abide by the provisions of the Convention on the Rights of the Child relating to the all-round development of children.

20. The Special Rapporteur welcomes the adoption of standard operating procedures on health care in prisons that were jointly developed by the Prison Department and the Ministry of Health and Sports, with support from the United Nations, and improvements in the health-care infrastructure in three prisons in Myitkyina, Lashio and Insein. She awaits the implementation of the standard operating procedures in all prisons from late 2018.

21. The Special Rapporteur commends the Government on its national drug policy and notes that Myanmar is the first country in South-East Asia to adopt the framework

of the special session of the General Assembly devoted to countering the world drug problem together. She welcomes the policy to promote and protect the health, safety and well-being of individuals, families, members of society in vulnerable situations and communities.

## **IV. Development, investment and natural resources**

### **A. Land rights**

22. The legacy of land confiscations and forced evictions under successive military Governments continues to have an impact. The Special Rapporteur repeats her recommendation to the Government to investigate ongoing and past cases of land expropriation and provide adequate remedies to the victims of illegal land confiscation. Issues relating to land in and around the Thilawa special economic zone that is said to have been seized in the 1990s without compensation, and much of which has not been developed by the Government, remain unresolved. Thirty-three farmers who had been farming part of the land for many years and stayed on it were convicted of criminal trespass under the Penal Code in May 2018. Some 39 families had been living on or farming part of that vacant land until 2017, when a company apparently controlled by Union of Myanmar Economic Holdings, which is owned by the military, fenced the land in such a way that it was often inaccessible, except by water. The families suffered numerous adverse consequences as a result, including the death of a woman when she could not leave the land in time to receive urgent medical treatment. The families faced violent police action in May 2018, during which two people were injured and three arrested and charged for allegedly injuring the police officers. All charges should be dismissed and the Government should ensure that people are relocated only following a fair land expropriation process and resettled with proper compensation and appropriate livelihoods.

23. The reform of land use and acquisition laws is vital and the Special Rapporteur welcomes information that the Government is drafting a law in accordance with the national land use policy. That should be done in a consultative manner and be consistent with international standards and the obligations of Myanmar under the International Covenant on Economic, Social and Cultural Rights, in particular with regard to the right to an adequate standard of living, which encompasses protection against forced eviction. The land rights of farmers, communities and ethnic minorities should be recognized and protected, and customary tenure and land management practices acknowledged, under the law.

24. The Special Rapporteur remains concerned about proposed amendments to existing land laws and about what their status will be, given the development of new land legislation. The Government should ensure that legislation is clear and free of inconsistencies that could arise from conflicting provisions. Proposed amendments to the Vacant, Fallow and Virgin Lands Management Law of 2012 that have been passed by the Amyotha Hluttaw raise questions. Of particular concern is the prospect of people facing criminal charges for being present on land that is classified as vacant, fallow or virgin, but for the use of which a permit is not required under the law. Proposed amendments to the Farmland Law of 2012 fail to recognize customary land use and could facilitate land-grabbing. Concerns remain with regard to draft land acquisition legislation: many provisions are vague; customary practices are not recognized, which could facilitate land grabs; the definition of “public purpose” is overly broad; and the urgent acquisition process contains few protections for landholders.

25. In Kachin State, large tracts of land belonging to internally displaced persons have been appropriated without their consent for agricultural use (particularly banana plantations), mining or military purposes, or have been claimed by other third parties under the land laws of 2012. The internally displaced persons, who are already vulnerable, are concerned that the longer they are displaced, the more likely it is that they will be unable to maintain or assert their rights to their land, to which they wish to return.<sup>3</sup> Under the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2, annex), internally displaced persons have the right to return to their homes and recover their property, or be compensated where that is not possible.

## B. Investment, business and natural resources

26. The Special Rapporteur understands the importance of investment and economic development for the achievement by Myanmar of the Sustainable Development Goals and is aware that several countries are investing in development in that country. All investments should be made responsibly and in line with the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (A/HRC/17/31, annex).

27. For investment to occur in a responsible and sustainable manner, the Government should, first, fulfil its duty to protect human rights through robust policy and regulatory frameworks, including in relation to land, thereby ensuring that businesses accept their responsibility to respect human rights. Second, all businesses investing in Myanmar should conduct rigorous human rights due diligence in accordance with international standards, and all the more so in areas affected by violence and conflict. They should pay special attention to the potential impact of their activities on the human rights of individuals that may be at a heightened risk of vulnerability or marginalization and to the different risks faced by women and men. The Special Rapporteur welcomes the fact that some multinational enterprises have engaged with the Government on those issues and that several corporations are piloting the implementation of the Voluntary Principles on Security and Human Rights. The home countries of companies that invest in Myanmar should work to ensure that those companies respect human rights throughout their operations. Third, the Government should ensure the availability of effective judicial and non-judicial remedies.

28. The Special Rapporteur is saddened by reports that, in July 2018, landslides in jade mines in Hpakant, Kachin State, led to the deaths of up to 100 people, with many more injured. She has received information about a considerable number of mine machines, possibly in the thousands, which have been sold by foreign companies and are used in jade and copper mines in Kachin State. Reportedly, use of such equipment has led to expanded mining activities, which have in turn had a severely adverse effect on communities and the environment and contributed to deaths in landslides and floods. Foreign companies that sell mining equipment have a responsibility to manage the human rights risks to which they are linked through provider-customer relationships. In accordance with the Guiding Principles, the companies involved should conduct human rights due diligence and use their leverage to address adverse impacts.<sup>4</sup> Additionally, the home governments of such corporations should require that they conduct due diligence to prevent abuses by their business partners.<sup>5</sup>

<sup>3</sup> Oxfam, “Displaced and dispossessed: conflict-affected communities and their land of origin in Kachin State, Myanmar”, 1 June 2018.

<sup>4</sup> Therese Sjöström, *Overlooked and Undermined*, SwedWatch, June 2018.

<sup>5</sup> See general comment No. 24 (2017) of the Committee on Economic, Social and Cultural Rights on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities (para. 33).

29. The gems policy is close to finalization, following an inclusive consultation process that involved external experts, civil society, the private sector and communities. Proposed gemstone legislation, which was drafted prior to the policy, remains before the parliament, having been passed by the Amyotha Hluttaw. The Government should ensure that the legal and policy frameworks are aligned, protect the environment and human rights of miners and communities and guarantee transparency to prevent corruption.

30. The Special Rapporteur welcomes the publication of the Myanmar Extractive Industries Transparency Initiative reports for the years 2014–2015 and 2015–2016 in March 2018. They contain much information about the oil, gas and mining (including gemstones) sectors and represent an important first step towards transparent natural resource extraction in Myanmar. The Government should now undertake policy reforms, including those recommended in the reports, to improve governance and regulatory performance across those sectors, so that revenues from natural resources are used for the benefit of the people of Myanmar. Meaningful discussions about the equitable sharing of natural resources and governance should take place as part of the peace process.

31. The development of special economic zones and related projects at Thilawa, Dawei and Kyaukphyu continue to be of concern. An independent vulnerability study in February found that the people relocated from the Thilawa site face a drastic increase in poverty, debt and food insecurity. While a complaints procedure has been developed, civil society groups are concerned about its legitimacy and whether it will provide access to a remedy for community members. In Dawei, it is feared that legal requirements of the environmental impact assessment process are not being followed and that communities are not being provided with sufficient information and properly consulted on decisions being made. Road building between the Dawei zone and Htee Khee on the Myanmar-Thailand border has reportedly led to land acquisition and the environmental impact assessment process has failed to address the concerns of the ethnic Karen community. The Special Rapporteur renews her call for the Government to carry out a strategic environmental impact assessment in Kyaukphyu and its surrounding areas to establish how the development would affect communities and the environment, in accordance with the recommendations of the Advisory Commission on Rakhine State.

32. The Special Rapporteur is aware of the announcement by the Government that economic cooperation zones will be developed in Kachin State and that plans to develop Maungdaw economic zone appear to be going ahead. Proper consideration should be given to conflict sensitivity when carrying out such projects. Moreover, the obligations of Myanmar under the International Covenant on Economic, Social and Cultural Rights must be met, the relevant national laws upheld and environmental impact assessments carried out. All affected communities need to be kept informed and genuinely consulted continuously and in a transparent manner so that they may participate in decision-making.

### **C. Economic and social rights**

33. The Special Rapporteur is pleased to see that the Government is continuing to take steps towards the realization of rights in accordance with the International Covenant on Economic, Social and Cultural Rights and 2030 Agenda on Sustainable Development. Under the Union Accord (see para. 19 above), commitments were made for the provision of an accessible and inclusive education system. It has been reported, however, that children in Kachin and Rakhine States encounter impediments to education. In Kachin State, fighting has led to a reduction in the quality of education available, in particular in areas not under Government control, and a lower retention

rate of students. Reportedly, 324 of 424 schools in the townships of Maungdaw, Buthidaung and Rathedaung, Rakhine State, that had been closed since the violence of August 2017 were reopened in March 2018. However, a lack of teachers, materials and facilities hinder access to education and limit its quality. Moreover, many schools continue to segregate students, limiting opportunities for dialogue and social cohesion. Restrictions on movement continue to hamper travel by Rohingya children for post-primary education.

34. Although the Government has committed itself to guarantee universal birth registration, inequities remain. There have been improvements in coverage in the areas that were prioritized, including south Shan State, Tanintharyi Region and Nay Pyi Taw, where an estimated 120,000 children have been newly registered. The Special Rapporteur calls for continued action and for the Government to conduct universal birth registration campaigns in all parts of the remaining areas, including parts of Shan, Kachin and Rakhine States, with adequate financial, technical and capacity support.

35. The Union Accord includes a commitment to provide accessible and inclusive universal health coverage. The Special Rapporteur is concerned, however, about the limited availability in Myanmar of mental health and psychosocial support services, which are especially important for conflict-affected populations. It is essential to build capacity and strong mechanisms to provide such services to those who require support. A lack of access makes it difficult for humanitarian actors to intervene to prevent maternal mortality and morbidity. Parts of Kachin, Shan and Rakhine States affected by violence and conflict have the highest maternal mortality ratios.

## **V. Conflict and violence-related rights violations and the peace process**

### **A. Armed conflict and situations of violence from March 2018**

36. The Special Rapporteur condemns the widespread and systematic violations of human rights and international humanitarian law that are alleged to have been perpetrated by the Tatmadaw in several places around the country for decades. Those violations, including killing, rape, torture, looting, arson, enforced disappearances and forced displacement, may amount to genocide, crimes against humanity and war crimes. Ethnic armed organizations are also alleged to have committed serious violations of international humanitarian law and human rights law, including the forced recruitment and use of child soldiers. The recurring clashes between the Tatmadaw and those armed groups, resulting in the loss of civilian lives and displacement, suggest that the parties to the conflict do not meet their obligations under international humanitarian law in the conduct of hostilities.

37. There is credible information that the 33rd and 99th Light Infantry Divisions were among those responsible for perpetrating extreme violence against the Rohingya population in northern Rakhine State from 25 August 2017 and that, in the first half of 2018, they and other units were active in Kachin and Shan States, where civilians were subjected to violence.

#### **1. Rakhine State from 25 August 2017**

38. The Special Rapporteur has previously reported on the heinous violence unleashed on the Rohingya of northern Rakhine State following alleged attacks by the Arakan Rohingya Salvation Army on 25 August 2017. Credible reports about serious violations that are alleged to have occurred and those alleged to be responsible continue to be published.

39. In August 2017, the 33rd and 99th Light Infantry Divisions were reportedly deployed to northern Rakhine State. They, along with soldiers from the 564th Light Infantry Battalion, which is based in northern Rakhine State under the Western Command, and other security forces, allegedly engaged in widespread and systematic human rights violations against the Rohingya population. The 564th Light Infantry Battalion reportedly carried out a massacre at the village of Maung Nu, Buthidaung Township, while the 33rd Light Infantry Division did the same at the village of Chut Pyin, Rathedaung Township, and the 99th Light Infantry Division at the village of Min Gyi, Maungdaw Township; all three massacres involved the killings of many men, women and children, beatings, rapes and the burning of houses.<sup>6</sup> That type of violence took place in villages across northern Rakhine State with varying degrees of severity and continued for weeks. In what was ostensibly a “counter-terrorism” operation, the entire Rohingya population of northern Rakhine State appears to have been targeted, leading the vast majority to flee to safety in Bangladesh.

40. The Arakan Rohingya Salvation Army has allegedly committed human rights abuses.<sup>7</sup> Its members allegedly kidnapped and killed dozens of Hindus in Ah Nauk Kha Maung Seik and several members of the Mro minority in Khu Daing, and conducted targeted killings of Rohingya accused of being informants to the authorities in the months between October 2016 and August 2017. The Special Rapporteur firmly believes that those allegations should be investigated. The Government, however, should not use such abuses to justify crimes allegedly committed against the entire Rohingya population.

## 2. Kachin and Shan States from December 2017

41. Following frequent clashes between the Tatmadaw and ethnic armed organizations in December 2017 and January 2018, armed conflict intensified significantly in northern Myanmar from April 2018, with devastating impact on civilians. Frequent, indiscriminate aerial bombings, mortar shellings and the use of landmines across nine townships and in the town of Laiza, Kachin State, which is controlled by the Kachin Independence Organization, in April and May 2018 resulted in the displacement of more than 8,000 people. In northern Shan State, fighting took place between the Tatmadaw and ethnic armed organizations, and among those organizations themselves.

42. There have been several cases of summary executions by the Tatmadaw. On 18 March, two civilians, one of whom was a human rights defender, were shot dead as they drove a motorbike near the Upper Yeywa dam site in Kyaukme Township, Shan State. In March, two men were found dead in Man Si Township, Kachin State; they had been missing since 31 January, when they were seen in the custody of the Tatmadaw. Members of the 88th Light Infantry Division of the Tatmadaw allegedly abducted, detained, beat, raped and killed six women medical staff from the Ta'ang National Liberation Army on 11 July 2018 near Awe Law, Manton Township. The women's severely mutilated bodies were found by villagers three days later. Those allegations should be the subject of a credible independent investigation; violence against and the killing of persons in detention are serious violations of common article 3 of the Geneva Conventions.

43. Reports of the indiscriminate use by the Tatmadaw of all kinds of weapon in civilian areas continue. On 14 March, four civilians died and 14 houses were destroyed by heavy artillery in the village of Tawphey, Kyaukme Township, in Shan

<sup>6</sup> Amnesty International, “We will destroy everything: military responsibility for crimes against humanity in Rakhine State”, 27 June 2018.

<sup>7</sup> Amnesty International, “Myanmar: new evidence reveals Rohingya armed group massacred scores in Rakhine State”, 22 May 2018.

State. On 11 April, the Tatmadaw regional operations command in Tanai reportedly launched mortar shells and airstrikes on several villages, killing at least two civilians. More than 2,000 civilians fled three villages in Tanai for the jungle as soldiers, allegedly wearing civilian attire, started a simultaneous ground attack. The civilians, including pregnant women who gave birth en route, were unable to leave the remote area, where some had to stay until June. In May, clashes between the Tatmadaw and the Ta'ang National Liberation Army around Mu Se Township reportedly left 19 people dead and more than 20 injured, including some Chinese nationals. On 28 June 2018, troops of the 88th Light Infantry Division reportedly fired eight mortar rounds at the village of Ma Nane Un, Kutkai Township, killing one child and injuring seven civilians. There had been no fighting in or around the village at the time.

44. The Special Rapporteur has received multiple distressing reports of what appears to be collective punishment and the use of human shields; both are prohibited by customary international humanitarian law. On 1 April in the village of Nam Wa, in Mu Se Township, Shan State, the military reportedly threatened to burn down the entire village unless families aligned with the Kachin Independence Army left immediately. While fleeing on 11 April, villagers from Lai Nawng Khu, Hpakant Township, Kachin State, were reportedly forced by the 424th Light Infantry Battalion to lead soldiers through the jungle while being monitored by a drone, and a civilian was injured by a landmine. In late April, the 33rd Light Infantry Division reportedly conducted operations in Njangyang Township, Kachin State, against the Kachin Independence Army, during which they burned two homes in the villages of Sani Tu Yang and Tangbau Yang after villagers had fled, allegedly to punish them for the activities of the Kachin Independence Army.

45. Hostilities in northern Shan State in March between the Ta'ang National Liberation Army and the Restoration Council of Shan State resulted in the displacement of nearly 4,000 people from three townships and the deaths of at least five civilians. Clashes between those groups and the Tatmadaw and the Shan State Progressive Party in July reportedly led to the temporary displacement of 3,000 people, mostly from Monewi, Namtu and Hsipaw. A further 800 people were displaced from Namtu in early August.

### **3. Kayin State from March 2018**

46. In March 2018, conflict resumed in Kayin State. More than 1,500 Tatmadaw soldiers reportedly went into civilian areas to repair a road in Hpapun District. That led to clashes between the Tatmadaw and the Karen National Liberation Army, a signatory to the Nationwide Ceasefire Agreement, and the subsequent displacement of more than 2,400 civilians, who have been unable to return home since. Those incidents were in violation of the ceasefire, under which troop reinforcement in ceasefire areas, other than for administrative or emergency medical support and the routine rotation of troops, is prohibited.

### **4. Chin State in May and June 2018**

47. In Paletwa Township, Chin State, clashes in May between the Tatmadaw and Arakan Army resulted in the deaths of five civilians. Further clashes in May and June led to the internal displacement of approximately 1,000 people, in addition to the approximately 1,300 people who had been displaced to India in late 2017 and who reportedly have not returned home.

### **5. Sexual violence**

48. The Special Rapporteur received troubling information concerning the alleged rape of a 73-year-old woman by a Tatmadaw soldier in Mong Phyak, eastern Shan

State, on 2 April 2018. The report of the Secretary-General on conflict-related sexual violence of March 2018 listed the Tatmadaw as being credibly suspected of committing or being responsible for patterns of rape or other forms of sexual violence in situations of armed conflict. Women and girls have reportedly been raped in Kachin State, northern Shan State and Tanintharyi Region by members of the Tatmadaw and ethnic armed organizations. The report found that the widespread threat and use of sexual violence was integral to the Tatmadaw's strategy of humiliating, terrorizing and collectively punishing the Rohingya community and a tool to force them to flee and prevent their return.

#### **6. Landmine use**

49. The use of landmines continues unabated, with 23 people killed and 136 injured from January to May in Kachin and northern Shan States. According to recent data, at least 3,337 casualties involving mines have been reported since 2007; Myanmar has the second highest number of antipersonnel landmine casualties in Asia.<sup>8</sup> The Special Rapporteur remains extremely concerned about the threat posed to civilians by mines and calls on all parties to cease laying mines immediately, increase mine-awareness education and clear mines without further delay.

### **B. Displacement and humanitarian aid**

50. The escalation of conflict has resulted in the displacement of approximately 20,000 people in Kachin and Shan States since the start of 2018, most of whom have since been able to return home. People who have been recently displaced reportedly have not been allowed to build shelters in camps and the Government has not recognized them as internally displaced persons. An estimated 106,000 internally displaced persons reside in camps and displacement sites in Kachin and northern Shan States. Many of them have been in those locations since 2011 and remain unable to return home safely.

51. Humanitarian access, including for national organizations, is increasingly constrained. On 23 April, a food convoy organized by the Myanmar Red Cross was prevented from entering the village of Man Wai, Kachin State. More than 100 civilians were trapped in that village for three weeks with little or no access to food, medicine and other items needed for survival. In June, the Kachin Baptist Convention, an organization that has been providing humanitarian assistance to displaced people in Kachin for many years, was threatened with prosecution under section 17 (1) of the Unlawful Associations Law if it continued to travel to territory held by the Kachin Independence Organization, where thousands of people in need are living. That and other restrictions imposed by the Tatmadaw and Government on access by international and national humanitarian actors are violations of the obligation of Myanmar under international humanitarian law to allow and facilitate the rapid and unimpeded passage of humanitarian relief for civilians in need.

52. Some 128,000 Rohingya and Kaman people have been confined to squalid camps in central Rakhine State since 2012. They include Kaman Muslims, who have full citizenship rights under Myanmar law, living in dire conditions in Kyaukphyu. Their situation remains precarious; they live without privacy in undignified, overcrowded longhouses and are subject to extreme movement restrictions. They are the subject of policies that prevent them from engaging in livelihoods, attending school or accessing health services and they regularly face exploitation by the authorities. In addition, 200,000 mostly Rohingya Muslims who live in villages in

<sup>8</sup> Myanmar Information Management Unit, "Townships with known landmine contamination (2017) and casualties in Myanmar (as of Dec 2016)".

central Rakhine State also face severe hardship brought about by movement restrictions that limit their access to livelihoods, education, health care and other basic services and have led to avoidable deaths in medical emergencies.

### **C. The closure of camps for internally displaced persons**

53. The Special Rapporteur is disturbed by the Government's recent announcement of a national strategy to close camps for internally displaced persons. Given that conflict continues in Kachin and northern Shan States, as do violence and discrimination against the Rohingya in Rakhine State, she has serious concerns about the Government's premature intention to close the camps and its capacity to facilitate the return of internally displaced persons to their places of origin in accordance with international standards.

54. There is a great need for an open and transparent conversation between the Government, the international humanitarian community and the internally displaced persons themselves. The Government is reportedly collecting data, including photographs, in Kachin State at the household level and internally displaced persons have not been told how the data will be used. Prior to any movement of people or closure of camps, it is critical that they be informed about locations, services, freedom of movement, livelihoods and security and express their free and informed consent to any relocation to their place of origin or elsewhere. Any relocation should be durable, so that their need for assistance is reduced. Their land and property should be restored to them or adequate compensation made. Special consideration, assistance and support should be provided to people with disabilities, women, children and persons in vulnerable situations. The Special Rapporteur calls on the Government of Myanmar to make public its precise plans for the closure process.

### **D. The peace process**

55. The Special Rapporteur welcomes the fact that the Government, the military and all ethnic armed organizations came together for dialogue about the nation's future at the third session of the 21st-Century Panglong Conference. However, she is concerned that several issues slated for discussion were deemed too sensitive and urges all stakeholders to resolve differences on substantive issues through negotiation and to build trust and mutual understanding, so that the nation might finally see peace.

56. The Special Rapporteur is disappointed by reports that women made up only 17 per cent of the delegates, a drop from the estimated 19 per cent who attended the previous session and falling well short of the 30 per cent target. Women should be afforded genuine opportunities for representation and participation, including in substantive discussions not only about their protection but also their roles and experiences in conflict-affected communities, conflict prevention and recovery and peacebuilding. The women and peace and security agenda (prevention, participation, protection and relief and recovery) should be seized upon to ensure sustainable peace. Under the Union Accord, 30 per cent involvement of women in each political sector and capacity-building for women is encouraged. The meaningful participation of women in all areas of life is essential for the country's future prosperity.

57. The Special Rapporteur was greatly troubled to receive reports of armed clashes taking place at the time of the conference and just as non-signatory groups were being encouraged to sign the National Ceasefire Agreement. The clashes, themselves in violation of the ceasefire, reportedly pitted the Tatmadaw against the Restoration Council of Shan State, a signatory to the ceasefire, in Mong Kung Township, southern Shan State, and led to the displacement of at least 450 civilians. The Special

Rapporteur reaffirms that the road to peace is through political dialogue and not violence.

## **VI. Rakhine State**

### **A. Dignity and the right to recognition**

58. Rohingya people have lived in Rakhine State for generations, alongside Hindus and members of the Rakhine, Mro, Daingnet and Kaman ethnic groups. It is accepted practice that nationality is acquired at birth, either through a parent or the country of birth. The right to nationality is guaranteed under international law, including human rights treaties to which Myanmar is a party.<sup>9</sup> States do not have an absolute right to decide who their nationals are and are prohibited from discriminatory or arbitrary deprivation of nationality.<sup>10</sup> The Citizenship Law of 1982 does not comply with the obligations of Myanmar under international law and the way in which it is applied results in discriminatory and arbitrary deprivation of nationality for many of the Rohingya. In addition, the law and its implementation contravene the rights to equality and non-discrimination enshrined in the Constitution of 2008. The Special Rapporteur is disturbed by reports that other Myanmar Muslims are being required to identify as “Bengali” on citizenship documentation.

59. The so-called “pathway to citizenship” that the Government has been promoting for the Rohingya applies to non-nationals; those who migrated from outside and are seeking status in an alien country. It does not apply to those who were born in the country, those who have been living in the country for decades, or those who were, or are the descendants of, citizens of the country. Moreover, it denies people dignity and does not provide a durable citizenship solution for the Rohingya. Their right to nationality should be recognized.

60. The status of Rohingya people in Cox’s Bazar as refugees should also be recognized. The definition of refugees contained in article 1 of the Convention Relating to the Status of Refugees of 1951, which has the status of customary international law, applies to Rohingya people living in Bangladesh and other countries. They fled Myanmar owing to a well-founded fear of persecution for reasons of their ethnicity, race and religion, and are protected from refoulement to Myanmar.

### **B. Human rights violations and abuses in northern Rakhine State**

61. By 31 July, a total of 12,120 individuals had so far crossed the border from Myanmar to Bangladesh in 2018. The statements by newly arrived refugees in Cox’s Bazar to the Special Rapporteur indicated that the situation in northern Rakhine State is far from stable or safe for them. They reported that conditions had worsened significantly since before the violence of August 2017 as a result of heightened movement restrictions, lack of access to livelihoods, education, health and basic services, and ongoing violence, intimidation and extortion by security forces. Discriminatory laws, policies and local orders, including those relating to freedom of movement, family registration, marriage and birth, remain in place and a curfew has been imposed in the townships of Maungdaw and Buthidaung since December 2016.

<sup>9</sup> Convention on the Rights of the Child (art. 7), Convention on the Elimination of All Forms of Discrimination against Women (art. 9), Convention on the Rights of Persons with Disabilities (art. 18).

<sup>10</sup> Convention on the Reduction of Statelessness of 1961 (art. 7).

62. The citizenship verification process, by which national verification cards are issued, is strongly opposed by the Rohingya community. The Special Rapporteur has received information that the cards are mandatory for obtaining fishing and boat licenses and for the right to participate in local elections. Pressure by security forces to accept the cards and threats against those who fail to do so have been reported as the reason for violence that has recently driven Rohingya people to Bangladesh and as a feature of the lead-up to the massacre at Chut Pyin village in August 2017. The Government has engaged in a degree of consultation in some areas but not widely and there has been no genuine implementation of the recommendations of the Advisory Commission on Rakhine State with regard to the cards. Most importantly, the cards do not confer full citizenship rights on their bearers and are therefore not a genuine solution for the Rohingya citizenship issue.

63. The Special Rapporteur is aware of significant reconstruction projects being undertaken across northern Rakhine State, where more than 360 Rohingya villages were allegedly systematically burned down and, in some many cases, bulldozed. The authorities state that development of the area is for returnees and established the Union Enterprise for Humanitarian Assistance, Resettlement and Development for the purpose. Since access to the area has been restricted for many months and given the lack of transparency about the activities of the body, it is difficult to obtain an accurate picture of what is happening on the ground. It is alleged that new bases for the security forces, reception and transit centres for repatriation and model villages have been built on land that was previously home to Rohingya. Model villages have historically been used to encourage the resettlement of Buddhists to Rakhine State and ethnic Rakhine community leaders are reportedly encouraging members of Buddhist ethnic groups to move to the model villages. There are also questions about the status of Rohingya land, including farming and paddy land, and whether property will be restored to refugees on their return.

64. The Special Rapporteur is extremely worried that the activities of the civilian and military authorities in northern Rakhine State are cementing the expulsion of the Rohingya, as development projects fundamentally alter the landscape. She is also concerned that development activities are fuelling fear and distrust between different ethnic and religious communities rather than helping to rebuild communal cohesion and harmony, which will be necessary for a sustainable return of the Rohingya. Indeed, as the Advisory Commission on Rakhine State found, members of all ethnic and religious groups in Rakhine State have been marginalized by successive central governments and face underdevelopment and poverty. Information received from individuals who have recently visited the area suggests that life for everyone in northern Rakhine State is extremely difficult.

### **C. The situation of refugees in Cox's Bazar**

65. The Special Rapporteur commends the Government of Bangladesh and the humanitarian community in Cox's Bazar for working tirelessly to support nearly 900,000 refugees, reinforce camp infrastructure and deal with the monsoon rains. The Special Rapporteur visited several camps and witnessed severe and inhumane overcrowding and extreme vulnerability to flooding and landslides. During her meetings with refugees, the Special Rapporteur heard troubling reports of violence in the camps, allegations of trafficking, exploitation and widespread sexual and gender-based violence, and was informed of the particular difficulties faced by people with disabilities. She urges all humanitarian actors to put human rights, protection and gender considerations at the forefront of their work, and donors to ensure that the humanitarian response is sufficiently funded.

## D. Repatriation

66. The Special Rapporteur has repeatedly said that the repatriation of refugees from Bangladesh to Myanmar is extremely premature. The Government of Myanmar has made no progress in dealing with or shown any real willingness to address the root causes of the crisis, including long-standing and systematic discrimination through the law, policy and practice, racist propaganda and dehumanizing hate speech, institutionalized anti-Muslim rhetoric and the denial of citizenship rights. Unless those issues are addressed, large-scale repatriation will be entirely antithetical to human rights norms.

67. The United Nations Development Programme, Office of the United Nations High Commissioner for Refugees and Government of Myanmar recently signed a memorandum of understanding to facilitate repatriation and access to northern Rakhine State. The memorandum of understanding remains unavailable publicly and the agencies have not been granted effective access. The Governments of Bangladesh and Myanmar continue to discuss repatriation but the Special Rapporteur is concerned about the lack of transparency and consultation in the process, including the selection by the Government of Bangladesh of approximately 8,000 refugees to be vetted by the Myanmar Government for possible return. Any discussion of repatriation should be consistent with international legal standards, including the participation of the refugees themselves in the process.

68. During her mission to Bangladesh, the Special Rapporteur was informed that the Government of Bangladesh plans to relocate refugees from Cox's Bazar to Bashan Char, an island that has recently appeared in the Bay of Bengal. In response to her request to visit the island, Bangladeshi officials informed her that that would be possible only after the monsoon season. The Special Rapporteur is gravely concerned, as there has been no technical or humanitarian assessment of whether the island is habitable. The refugees in Cox's Bazar are unaware how people will be chosen for relocation or moved to and from the island or how livelihoods, health care, education and other services will be provided. The Special Rapporteur cautions the Government of Bangladesh against the plan, as it appears not to be a sustainable approach to the situation of Rohingya refugees in the country.

## VII. Refugees and migrants in India and Thailand

69. The Special Rapporteur held teleconferences with Rohingya refugees and representatives of civil society organizations working with refugees in India. Approximately 17,000 Rohingya from Myanmar are registered as refugees and asylum seekers in India and live in Hyderabad, Jammu and Kashmir and New Delhi. The Government of India, however, asserts that 40,000 Rohingya are present in the country and has threatened to deport them. In addition, approximately 3,000 Chin refugees and asylum seekers are present in India. In New Delhi, Rohingya refugees live in extremely squalid conditions without access to water, health care, sanitation or education. Moreover, the areas in which they live were reportedly torched twice in the first half of 2018, resulting in further difficulties. The Special Rapporteur received troubling information about Rohingya women reportedly facing sexual and other exploitation in Jammu and Kashmir. She calls on the Government of India to respect the rights of the refugees, drop plans to deport them and protect them from further exposure to violence and persecution.

70. Many of the 121,000 people living in camps on the Thai border with Myanmar are from Kayin State and have been there since the 1990s, believing that it is unsafe to return home. Assistance to them is diminishing. Approximately 6,200 people living

on the border between Shan State and Thailand have not received international assistance since aid was cut in October 2017, even though they cannot return home. The Government of Myanmar should work to make the entire country safe for refugees to exercise their right to return home.

71. On 30 June 2018, the Government of Thailand implemented a new registration regime for migrant workers under which a work permit is granted following the applicant's nationality being verified by the Government of Myanmar. The Special Rapporteur is concerned about the situation of an unknown number of Myanmar migrant workers, particularly Muslims who have been denied citizenship by the Government of Myanmar, who face fines and deportation if they are found to be undocumented by the Thai authorities.<sup>11</sup>

## VIII. Accountability

72. The Special Rapporteur notes the statement made repeatedly by the Government of Myanmar following the violence of August 2017 in northern Rakhine State that it would not condone any human rights violations and would take action against perpetrators in accordance with the law where allegations were supported by sufficient evidence. In spite of those pledges and the abundance of evidence that crimes in violation of international law have been committed in Rakhine State, perpetrators have not been held accountable, with the exception of seven unnamed soldiers reportedly convicted by a military court for the massacre at Inn Din village. The Government recently set up a commission of inquiry "to investigate the violation of human rights and issues following the terrorist attacks by the Arakan Rohingya Salvation Army". The commission, however, appears not to have a mandate to advance accountability. The people of Myanmar continue to suffer waves of serious violations of international human rights and humanitarian law with no redress, and have done for the past seven decades.

73. The situation in Myanmar, where genocide, crimes against humanity and war crimes may have been committed, warrants the attention of the International Criminal Court or another credible international judicial mechanism. The international community should stand firm and promote accountability in Myanmar. Justice and the right of victims to reparation should not be contingent on any political or economic interest. Moreover, there can be no genuine or meaningful accountability unless the victims' concerns are addressed.

## IX. Conclusion

**74. The Special Rapporteur is convinced that the cycle of violence, injustice and impunity in Myanmar will end only if there is genuine accountability. The limited and insufficient steps that the Government of Myanmar has taken so far to establish accountability demonstrate that it is unable and unwilling to discharge its obligation to conduct credible, prompt, thorough, independent and impartial investigations and prosecutions. As part of her efforts to address those shortcomings, advance accountability and support the Human Rights Council and the General Assembly, the Special Rapporteur has presented a concept note for a proposed accountability mechanism and a supplementary note that clarifies**

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<sup>11</sup> Burma Human Rights Network, *Existence Denied*, 2018. Available at <http://www.bhrn.org.uk/en/report/1052-burma-reinforces-muslims-statelessness-as-thai-migrant-registration-deadline-looms.html>.

questions received from Member States and other stakeholders on the issue.<sup>12</sup> She reiterates that the onus is on the international community to take action. Any delay in instituting justice will only result in more violations. She urges the international community to establish the accountability mechanism under the auspices of the United Nations immediately.

## X. Recommendations

75. With regard to democratic space, justice and the rule of law, the Special Rapporteur recommends that the Government of Myanmar:

(a) Immediately cease the arbitrary arrest, intimidation and prosecution of individuals exercising their rights and release all those convicted or detained for doing so;

(b) Introduce comprehensive constitutional and legislative reform to amend laws that are inconsistent with the country's obligations and the international norms and standards highlighted in the Special Rapporteur's present and previous reports;

(c) Establish a systematic public consultation process for the drafting and review of amendments to existing legislation and new legislation, ensuring transparency and compliance with international standards, and consider drafting legislation on law-making;

(d) Ensure respect for the freedom of expression, including online, for all and allow free media access to all parts of the country;

(e) Guarantee the right to free and peaceful assembly;

(f) Investigate all allegations of excessive use of force by the police and other law enforcement officials and take necessary steps to ensure that perpetrators are held accountable;

(g) Guarantee the right to a fair trial and due process for all;

(h) Cease the inhuman and degrading treatment of prisoners and ensure that they are treated in accordance with the Standard Minimum Rules for the Treatment of Prisoners;

(i) Uphold the equal right to freedom of religion and belief of all in Myanmar, condemn publicly all acts of advocacy of national, racial or religious hatred that constitute incitement to discrimination, hostility or violence, including on social media, enact a law to prohibit such acts in accordance with the Rabat Plan of Action, and draft a comprehensive anti-discrimination law or policy;

(j) Cooperate fully with the United Nations, including through the opening of a country office of the Office of the United Nations High Commissioner for Human Rights with a full mandate and by resuming full cooperation with the Special Rapporteur on the situation of human rights in Myanmar.

76. With regard to development, investment and natural resources, the Special Rapporteur recommends that the Government of Myanmar:

(a) Continue to seek international assistance and cooperation to progressively realize the rights enshrined in the International Covenant on

<sup>12</sup> See <https://www.ohchr.org/Documents/Countries/MM/AnnexesA7345400.pdf>.

**Economic, Social and Cultural Rights in an inclusive, non-discriminatory manner;**

(b) **Ensure access to adequate health care (including psychosocial support), education and services for all without discrimination;**

(c) **Incrementally raise the age of compulsory education (currently age 10) to match the minimum age from which employment is permissible (14);**

(d) **Take a rights-based approach to implementing the Sustainable Development Goals, ensure that all development projects are undertaken in accordance with international standards and national laws and build environmental, social and human rights safeguards into those projects;**

(e) **Ensure that affected communities are consistently provided with information about development projects and participate in inclusive and meaningful consultations, including with regard to environmental impact assessments and resettlement plans, and establish effective feedback and complaint mechanisms;**

(f) **Ensure the inclusive and transparent participation of all stakeholders in natural resources and land policy development and law reform, and hold discussions on sharing resources as part of the peace process;**

(g) **Ensure the full implementation, through policies and laws, of the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework;**

(h) **Immediately stop all coercive measures used to appropriate land and ensure that proper compensation and livelihoods are provided to people who are resettled as a result of such land appropriation;**

(i) **Ensure that, in accordance with the Guiding Principles on Internal Displacement, internally displaced persons have the right to return to their homes and recover their property or be compensated where that is not possible.**

**77. With regard to Rakhine State, the Special Rapporteur recommends that the Government of Myanmar:**

(a) **Immediately stop the persecution and dehumanization of and discrimination against the Rohingya people and other violations and abuses against them and ensure that legislation, orders and policies that have been identified as discriminatory by the Special Rapporteur in the present and previous reports are repealed or amended, in line with international human rights norms and standards;**

(b) **Implement the recommendations contained in the interim and final reports of the Advisory Commission on Rakhine State fully and engage and consult all affected communities in so doing;**

(c) **Undertake measures to rebuild community trust, understanding and cohesion between different ethnic and religious groups and throughout Rakhine State, including by addressing long-standing grievances;**

(d) **Immediately allow unfettered access for humanitarian actors, national and international media and independent human rights monitors;**

(e) **Restore the citizenship of the Rohingya and ensure that all those whose citizenship is restored enjoy the same rights as all other citizens in Myanmar;**

(f) **Lift all curfew orders and restrictions on the freedom of movement in Rakhine State;**

(g) Cease construction of new infrastructure on land formerly occupied by Rohingya villages and ensure transparency in reconstruction activities in northern Rakhine State;

(h) Immediately seek durable solutions for the persons living in camps since 2012, ensuring that all solutions are identified in consultation with the affected communities and that any relocation is voluntary;

(i) Make public the number of people currently detained in Rakhine State and their whereabouts, uphold the rights of accused persons, keep their families continually informed and fulfil due process guarantees;

(j) Create conditions conducive to the repatriation of refugees from Bangladesh to Rakhine State, ensuring that returns are voluntary, sustainable, dignified and safe, allow refugees to return to their places of origin and provide compensation for burned, damaged or looted property.

78. With regard to the peace process, the Special Rapporteur recommends that the Government of Myanmar:

(a) Ensure greater meaningful participation of women and civil society in the peace process, particularly in leadership roles, with a minimum quota of 30 per cent women and integration of a gender perspective into sector-wide policy proposals;

(b) Hold inclusive, open dialogue on human rights-related issues in the peace process, including democracy, federalism, minority rights and self-determination;

(c) Take steps to earn the trust of ethnic stakeholders in the peace process, including by ensuring that ethnic groups may proceed with public consultations.

79. The Special Rapporteur recommends that the Government and all other parties to conflict:

(a) Cease all hostilities immediately and abide by all applicable principles of international humanitarian and human rights law, including those relating to the distinction between civilians and combatants and proportionality, and consistently take precautions to protect the civilian population and civilian objects;

(b) Immediately ensure prompt, thorough, independent and impartial investigations into allegations of violations committed in conflict areas and the prosecution and punishment of all perpetrators;

(c) Immediately ensure that humanitarian actors have regular, independent and predictable access to all those in need of humanitarian assistance, wherever they may be;

(d) Ensure access for the media and independent human rights monitors to conflict-affected areas;

(e) Release all children under the age of 18 years from the ranks of combatants immediately, refrain from recruiting children and take steps or strengthen measures to prevent underage recruitment, treat any association of children with armed groups as forced, not voluntary, release all children detained on spying or similar charges, ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and complete and adhere to all elements of the joint action plan;

(f) Stop laying new landmines immediately, ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel

Mines and on Their Destruction, hasten the clearance of mines and unexploded ordnance and marking and fencing activities and carry out systematic mine-risk and education activities;

(g) Take specific steps to develop a comprehensive support programme for victims and survivors of sexual and gender-based violence, including access to justice, health and psychosocial care and socioeconomic support;

(h) Ensure that the closure of any internally displaced persons camps takes place in accordance with international standards, including consultation and participation in the process, that it is durable and that prior land and property ownership is restored or compensation made available.

80. The Special Rapporteur recommends that the United Nations and the international community:

(a) Refer the situation in Myanmar to the International Criminal Court immediately;

(b) Establish an accountability mechanism to address human rights abuses and violations of international humanitarian law in Myanmar pursuant to the concept note and supplementary document presented by the Special Rapporteur<sup>13</sup> and ensure that perpetrators alleged to have committed international crimes are brought to justice immediately;

(c) Ensure that any decision to repatriate refugees to Myanmar complies with international refugee and human rights law and standards and provide financial and logistical assistance to humanitarian organizations in Bangladesh, India, Thailand and other countries where refugees from Myanmar are living;

(d) Ensure that no Rohingya refugees are returned to Myanmar from Bangladesh unless the root causes of the problems that drove them there are properly addressed and the environment in Rakhine State is conducive to their return;

(e) Ensure that any decision to return refugees from Bangladesh or relocate them from Cox's Bazar to other locations in Bangladesh is taken in consultation with individual refugees, based on their informed voluntary consent, and that such transfers are safe, dignified and sustainable;

(f) Recognize the Rohingya in Bangladesh as refugees, provide education for all refugee children and access to meaningful livelihood opportunities, capacity-building and vocational training for women and men and allow freedom of movement;

(g) Support the Government of Myanmar in complying with its human rights obligations, including in the areas of business and human rights, and economic, social and cultural rights;

(h) Provide adequate resources to the Government of Bangladesh and humanitarian agencies working in that country to shift their activities from emergency response to medium or long-term response and planning and make sure that refugees continue to receive food, shelter and other essential services;

(i) When investing in Myanmar, abide by the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework and other relevant standards regarding investments and business operations, and ensure that the home States of companies operating

<sup>13</sup> See <https://www.ohchr.org/Documents/Countries/MM/AnnexesA7345400.pdf>.

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**in Myanmar fulfil their duty to protect human rights, as called for by the Human Rights Council in its resolution 31/24;**

**(j) Engage and fund programmes in Myanmar on a principled basis, making parameters and funding contingent on genuine reform efforts, and find consensus on a strategy for engaging with the Government of Myanmar, in particular on the issue of human rights;**

**(k) Conduct a comprehensive independent review of actions by the United Nations system in the lead-up to and after the reported attacks of 9 October 2016 and 25 August 2017 in Rakhine State regarding the implementation of its humanitarian and protection mandates and within the framework of the Human Rights Up Front initiative, assess whether the United Nations and international community could have prevented or managed the situation differently and make recommendations for accountability if appropriate.**

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