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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 [40/29](#).

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\* [A/74/150](#).



## **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, and recommendations to address them.

## I. Introduction

1. The present report, submitted pursuant to Human Rights Council resolution [40/29](#), covers developments in Myanmar since the previous report of the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, to the Council ([A/HRC/40/68](#)) and the oral update presented to the Council in July 2019.
2. Myanmar continues to deny access to the Special Rapporteur, obstructing the execution of her mandate and fulfilling the duties tasked to her by the Human Rights Council. As a result of this denial of access, the Special Rapporteur conducted a visit to Thailand from 8 to 14 July and to Malaysia from 14 to 18 July 2019. In Thailand, she met government officials, United Nations agencies working in Thailand and the region (including Myanmar) and non-governmental organizations (NGOs). In Malaysia, she engaged with government officials and held discussions with the United Nations and refugees from Myanmar. She held teleconferences with the United Nations country team in Myanmar and NGOs, experts and human rights defenders in Myanmar.
3. The Special Rapporteur requested a visit to China, to which she did not receive a reply. She continues to seek opportunities for cooperation with the Government of Myanmar. Following her mission to Malaysia and Thailand, she sent a list of questions to the Government, to which she has not yet received a response.

## II. Positive developments

4. The Special Rapporteur commends the passage of children's rights legislation in July, marking a significant improvement in the legal protection of children's rights in Myanmar. She notes that the law provides for education for all children and places parameters on child labour. Under the law, no child shall be employed in the worst forms of labour and no child younger than 14 years of age is considered employable. All children have the right to birth registration, the minimum age for marriage is 18 years and the six grave violations against children in armed conflict are criminalized.
5. Myanmar has been undertaking substantial work to reduce barriers to access to health and legal services relating to HIV/AIDS. The Special Rapporteur notes that a bill on people living with and affected by HIV/AIDS is being developed and that the Drug Law of 2018 has had a positive impact in this area. Issues remain, however, in particular with regard to people continuing to be arrested for carrying used syringes containing drug residue, which discourages people from returning them, given that the police have not been provided with directives in relation to the Drug Law.
6. In June, the Government announced that the "other accounts" held by State-owned economic enterprises outside of the State budget and used without oversight would be closed. This is an opportunity for the Government to improve transparency in the economy and support the greater realization of the right to information. In addition, it should ensure that departments tasked with enforcing regulations are better resourced, in particular in sectors in which the Special Rapporteur has observed significant human rights issues such as natural resource extraction and power generation.
7. The Myanmar National Human Rights Commission has prepared a draft strategic plan for the period 2020–2024 and has shared it publicly in order to receive comment. The Special Rapporteur is encouraged that the Commission has, as one of its proposed strategic interventions, advocacy to strengthen its founding law, which would enable it to make an improved contribution to human rights in Myanmar. The Special Rapporteur recommends that the law be amended to fully align with the

principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), in particular that commissioners come from diverse backgrounds, including civil society, and are selected in a transparent process.

### **III. Development, business and human rights**

#### **A. Hydropower and development in Chin and Rakhine States**

8. The Special Rapporteur has observed a pattern preceding the construction of major hydropower projects, such as the Kengtawng dams on the Nam Teng River in Shan State and the planned Hatgyi dam on the Salween River in Kayin State. Both are near sites of brutal Tatmadaw campaigns conducted in the 1990s and 2000s that caused a combined total of hundreds of thousands of people from ethnic minorities to flee internally or to Thailand. Villages in both locations were burned, after which military facilities were constructed. Villagers remain displaced as a result of the dams and the associated militarization. There is insufficient information regarding these and other hydropower projects made publicly available by the Government and developers. Given this lack of transparency, the Special Rapporteur questions the role in hydropower development of the State-owned economic enterprise, Electric Power Generation Enterprise, which is under the Ministry of Electricity and Energy, and whether it has links to the military.

9. With this in mind, the Special Rapporteur is extremely worried to have received reports that surveying has been carried out in 2019 for two proposed dams on the Lemro River located in the conflict-afflicted townships of Paletwa, Chin State and Mrauk-U, Rakhine State. A feasibility study has reportedly been completed but not made public, and the government of Chin is inviting international investors for the swift development of the dam in the state. Villagers, however, have been displaced from the identified flood sites in recent months by the conflict between the Tatmadaw and the Arakan Army. The Dai ethnic minority live along the Lemro River and their entire culture and way of life are threatened by the project, which they have opposed since its inception. The Special Rapporteur has not yet received reports that public consultations, in line with the environmental impact assessment procedure, have been conducted.

10. As the Special Rapporteur has previously stated, the Government, having ratified the International Covenant on Economic, Social and Cultural Rights, should refrain from entering into investment treaties in which there is a conflict between its obligations under those treaties and the Covenant. In addition, the home Governments of international investors must recall that all States parties to the Covenant are required to take the steps necessary to prevent human rights violations abroad by business enterprises domiciled in their territory and/or jurisdiction. The irresponsible development of the Lemro River dams could undermine, for tens of thousands of people, their rights to an adequate standard of living, work, take part in cultural life, freely pursue economic, social and cultural development and adequate housing on a basis of non-discrimination.

11. The independent international fact-finding mission on Myanmar has found that the Government is making a concerted effort to fundamentally alter the landscape of northern Rakhine State in the name of development, following the alleged international crimes committed against the Rohingya (A/HRC/42/CRP.3). International financial institutions, development agencies and private investors must seriously question whether implementing projects in Rakhine, and now Chin State, at this time can be considered in line with their responsibility to respect human rights.

The Special Rapporteur is concerned about the proposed World Bank Rakhine recovery and development support project that is intended to fund, through the Government, employment and basic income-generating activities in Rakhine. An influx of aid and development before meaningful steps have been taken to address fundamental human rights issues risks further entrenching the discriminatory policies of and the ongoing segregation of Rohingya by the Government. The Special Rapporteur therefore welcomes the statement made by the World Bank in June, after issues had been raised by civil society, that the project would not be pursued if their due diligence revealed that conditions were such that the project could not be effective. The Special Rapporteur rejects the claim by the Government that development alone is the solution to the problems in Rakhine. Experience in other parts of Myanmar demonstrates that a failure to ensure the protection of human rights ahead of development will exacerbate the impact of conflict.

## **B. Jade mining**

12. On 22 April in Hpakant, Kachin State, more than 54 mine workers were reportedly killed by a mudslide that occurred owing to several companies illegally dumping waste into a disused mine and to heavy rain. Some of those companies were operating without permits and have alleged links to military-aligned militias and ethnic armed organizations. The Ministry of Natural Resources and Environmental Conservation responded by suspending mining in the vicinity of the collapse and announced that there would be a full moratorium on jade mining during the rainy season, from July to August. On 28 July, however, another deadly mudslide occurred, reportedly killing at least 17 people. These are not isolated incidents: such predictable and avoidable tragedies occur annually in Hpakant, where conditions pose a deadly threat, with the most economically disadvantaged – the formal and informal mine migrant workers and nearby communities – at greatest risk.

13. Gaps, inconsistencies and shortcomings in the legal and policy regulatory framework, combined with a lack of coordination at the Union Government and state government levels, and weak enforcement mean that the adverse environmental impact of jade mining in Hpakant is not being mitigated, and victims have few avenues for redress. Myanmar Gems Enterprise has indicated that an environmental management plan for the region, which addresses many of these failures, cannot be implemented until at least 2021, when all the remaining licences have expired.

14. The Special Rapporteur believes it is too dangerous for the situation in Hpakant to continue. She urges the Government to demonstrate the political will needed to address the complex crisis and consider declaring an environmental emergency under the Environmental Conservation Law and to suspend all mining indefinitely. She recommends that the Government build its understanding of the situation on the ground in Hpakant and of how environmental and human rights harm can be addressed by engaging broadly, in particular with local civil society groups and affected communities. The Government should then harmonize the regulatory framework on the basis of those consultations, improve the legislation to ensure that comprehensive and appropriate environmental protections are in place and ensure that sufficient resources are allocated to build the capacity of government departments tasked with enforcing regulations.

## **C. Land rights**

15. The Special Rapporteur is informed that progress in implementing the 2016 national land use policy has stalled. Its implementation is urgently needed in order to

reach its main objectives of recognizing and protecting customary land tenure rights and procedures in ethnic minority regions, developing and implementing a fair process for land restitution and adopting a national land law aligned with the policy. In the absence of such a law, there is no adequate legal framework for recognizing, registering and protecting rights to customary and communal land use. Meanwhile, the Government is actively implementing policies nationwide designed to maximize land use as a means of generating income through agriculture, industry, infrastructure and tax revenue. Rather than enacting a single land law that protects rights, the Government has proceeded with implementing the 2018 amendments to the Vacant, Fallow and Virgin Lands Management Law, and, in August, parliament passed a new land acquisition law that is awaiting presidential ascent. Both laws prioritize land acquisition for commercial purposes, which is making it more difficult to resolve long-standing cases of land confiscation and provoking protests by affected communities. Civil society monitors report that the number of new cases of land confiscation is increasing as a result of this approach.

16. Land insecurity undermines multiple rights contained within the International Covenant on Economic, Social and Cultural Rights and can amount to a violation of the prohibition on forced evictions. The Special Rapporteur repeats her call for the Government to immediately halt the implementation of regressive land laws. She strongly urges the National Land Use Council, which is tasked with drafting the national land law, to be transparent in its processes, engage meaningfully with all stakeholders and move decisively forward in its work.

## **D. Internet and rights**

### **1. Internet shutdown**

17. On 21 June, mobile Internet services were suspended in the townships of Ponnagyun, Rathedaung, Mrauk-U, Kyauktaw, Minbya, Myebon, Maungdaw and Buthidaung in Rakhine State and Paletwa in Chin State. This followed a directive issued by the Ministry of Transport and Communications to the four mobile Internet service providers: Myanma Posts and Telecommunications, Telenor, Ooredoo and Mytel. This is the first time that such an order has been made, and it was done under section 77 of the Telecommunications Law for the stated purpose of maintaining stability in the region. More than two months later, the suspension remains in place and is affecting more than 1,000,000 people in a region where few have access to grounded Internet. In the context of the conflict between the Tatmadaw and the Arakan Army, the Internet shutdown has a severe impact on multiple rights, including the rights to safety and security, health, education, food, shelter and livelihood. It also has implications for the rights to freedom of expression, information, participation, association and assembly. The Government has failed to justify the blanket shutdown as being necessary and proportionate to achieving the stated objective. The action is likely to amount to collective punishment and be in violation of international human rights and humanitarian laws. The Special Rapporteur calls upon the Government to immediately lift the suspension and amend section 77 to bring it into line with international standards.

18. Given that domestic and multinational Internet service providers are obliged to comply with directives of the Government, they have been required to implement the shutdown. Companies engaging in the information and communications technology (ICT) sector in Myanmar must now consider the precedent that has been set and the ongoing existence of a legal framework that enables the Government to take similar action in the future. Conducting human rights due diligence in line with the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect,

Respect and Remedy Framework”, which may lead to companies declining sales if the risk is found to be too high, is critical.

## **2. Regulation of expression**

19. The Special Rapporteur has concerns over the implications for democracy and rights of online content regulation by the Government and internet companies.<sup>1</sup> Legitimate expression is overmoderated, with several laws directly involved in regulating Internet use containing criminal provisions on defamation. At the same time, incidents of incitement to violence, discrimination and hatred online are undermoderated. The Special Rapporteur previously raised issues regarding the role played by Facebook in the atrocities committed against the Rohingya in 2017 and the way in which it conducts its operations in Myanmar. While Facebook reports that it has taken action, including removing accounts on several occasions, online incitement against ethnic and religious minorities in Myanmar, in particular Muslim communities, reportedly remains prolific. Since the escalation in the conflict between the Arakan Army and the Tatmadaw, civil society monitors report that they have observed an increase in incitement against ethnic Rakhines. They also report that the number of human rights defenders targeted by online abuse has been rising. The spread of misinformation and coordinated military propaganda and the extent to which it may shape public opinion is a further concern.

20. The Special Rapporteur is concerned that the anti-hate speech law currently being drafted without transparency could be used to further restrict freedom of expression if it were to contain provisions that criminalize speech. The Special Rapporteur again urges the Government to take wide-ranging action to combat incitement to violence, discrimination and hatred in accordance with the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. She strongly supports calls by civil society for the Government to adopt a comprehensive anti-discrimination and equality law and policy, drafted in close consultation with civil society and members of religious and ethnic minorities. The Government must also make concerted efforts to genuinely support interfaith and intercommunal harmony through education and other means, promote digital literacy and require that Internet companies respect human rights throughout all their operations.

21. The established principles of international human rights law must be adopted by Internet companies with operations in Myanmar as the basis of policies and processes for content regulation. It is imperative that companies develop and carry out these processes consistently and transparently. While automated processes will play a role in content regulation, the diversity and complexities of language, translation, culture and context in Myanmar dictate that human moderators remain essential, and it is critical that companies allocate sufficient resources to this.

## **IV. Civil and political rights**

### **A. Democratic rights and freedoms**

22. Civil society reports that the number of criminal complaints filed against individuals exercising their rights to freedom of expression, association and assembly has surged since April 2019. There are reportedly 45 political prisoners serving sentences and 472 people awaiting trial on politically motivated charges, 175 of them

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<sup>1</sup> An Internet company is any company that does the majority of its business online, such as social media companies.

in prison. The increase is due in large part to security forces personnel filing complaints against journalists reporting on the conflict between the Tatmadaw and the Arakan Army. In April, charges were reportedly filed under section 66 (d) of the Telecommunications Law against Ye Ni, editor of the Irrawaddy news outlet, for the publication's coverage of fighting in Mrauk-U, Rakhine State. Aung Marm Oo, editor of the Development Media Group, which has been reporting extensively on the conflict in Rakhine, remains in hiding after criminal complaints were reportedly filed against him by Special Branch police under the Unlawful Associations Act. Police have summoned six activists who held a "Rakhine Lives Matter" protest in Sittwe on 2 July. They had called for peace, an end to the targeting of civilians and justice for civilians who had died in military detention in 2019. They face unknown charges and reportedly fear being transferred to military custody should they comply with the summons.

23. Activists, journalists and ordinary people continue to be accused of defaming the military, and land, environment and ethnic minority rights defenders are also at risk of prosecution for speaking out. In late August, Min Htin Ko Gyi, a filmmaker and founder of the Human Rights Human Dignity International Film Festival, was convicted under section 505 (a) of the Penal Code for allegedly defaming the Tatmadaw on Facebook. He has been detained in Insein prison since 12 April and denied bail, despite having liver cancer. Eight members of the Peacock Generation Thangyat troupe have also been held in Insein prison, some since April and others since May, facing charges under the Telecommunications Law and Penal Code for a performance that satirized the Tatmadaw. Reporter Aung Kyi Myin, also known as Nanda, has been detained since May and is facing multiple charges under the Penal Code for covering a land and environmental rights protest outside a cement factory in Mandalay. In Kayah State, cases were filed against six Karenni activists under the Law Protecting the Privacy and Security of Citizens over their opposition to the construction of a statue of General Aung San in the state capital, Loikaw. Twelve farmers protesting the military's seizure of their land in Demoso township, Kayah, and three reporters who covered their protest, have also been charged under the Law Protecting the Privacy and Security of Citizens. The Special Rapporteur calls for all these spurious charges to be dropped.

24. These cases represent a deeply worrying trend ahead of the 2020 general elections, given that the suppression of democratic freedoms undermines the exercise of the right to participate in public affairs. The Special Rapporteur notes that equal participation is fundamental to the promotion of all human rights, democracy, the rule of law, social cohesion and inclusive, sustainable development. She therefore calls upon the Government to immediately cease criminalizing the rights to freedom of expression, association and assembly. The Government must urgently create an enabling environment for all to exercise their right to participate, by recognizing and protecting all human rights. This is essential if credibility is to be restored in the commitment of the Government to the democratic transition.

## **B. Religious freedom**

25. The Sagaing regional government approved the reopening of two mosques in Chauk township in 2018 that had been destroyed during anti-Muslim riots in 2006. Township officials, however, have tried to prevent this, including by holding a public vote, the results of which were posted on Facebook. In May, one of the mosques was finally reopened; the other one remains closed. In the same month, during Ramadan, three temporary Muslim prayer sites in Yangon were forced to close by a mob of nationalists. Worshippers were reportedly threatened with bats and knives as police and township officials stood by without intervening. Two leaders of the mob were

nevertheless later charged under the Penal Code with disturbing the peace. Following the closing of those Muslim prayer sites, a prominent Buddhist monk travelled to one of them and handed out white roses as a sign of solidarity with Muslim worshippers. Interfaith activists responded by launching the “White Rose Campaign” and handing out roses in Yangon, Sagaing and elsewhere in the country in the following days. The Special Rapporteur is encouraged by this and calls upon the Government to empower individuals and civil society for further interfaith solidarity activities.

26. The Special Rapporteur continues to receive reports of Christians facing discrimination and the curtailment of their right to freedom of religion owing to forced conversion to Buddhism. In May, three Christians from Ann township, Rakhine State, were forced to sign documents by village officials and local monks verifying their conversion to Buddhism after being threatened with eviction from the village tract should they refuse. She has also received reports that the parents of children from Chin Christian families continue to be coerced into sending their children to Buddhist boarding schools, known as Na Ta La schools. These schools operate under the authority of the military-run Ministry of Border Affairs instead of the Ministry of Education, and there are at least 10 in Chin State. These institutions offer free schooling and board to children of poor families who otherwise would have little access to education in rural parts of Chin. Once sent to these schools, children are not able to see their families, use their Christian names, attend church or use Chin dialects. Buddhist worship is compulsory, and many children are initiated into the monkhood or nunhood. After graduating, government employment is reportedly available only on the condition of conversion to Buddhism. The Government must address this State-sponsored programme of religious and cultural forced assimilation. Having ratified the International Covenant on Economic, Social and Cultural Rights, it has accepted the obligation to take immediate steps towards the progressive realization of the rights to education and livelihood on a basis of non-discrimination on religious, ethnic or other grounds.

### **C. Justice and rule of law**

27. Rule of law appears to continue to be the reality in Myanmar, given that law and order is prioritized over justice for all. Charges were recently dropped against journalist Swe Win, who had been forced to travel from Yangon to Mandalay repeatedly for more than two years to face proceedings brought by a complainant who did not attend court regularly. It is entirely antithetical to the principle of fairness to force someone to participate in such proceedings. The Reuters journalists Wa Lone and Kyaw Soe Oo were among thousands of prisoners who received presidential pardons in April and May and released. However, given that they were found guilty at first instance on spurious evidence and their appeals were dismissed at all levels, that case highlighted the lack of independence that exists throughout the judiciary. The Special Rapporteur recommends that all actors in the justice sector genuinely implement the reforms that have been undertaken, including the Code of Judicial Ethics for Myanmar Judges and the Fair Trial Guidebook for Law Officers, and meaningfully engage in further reforms to improve the independence of the judiciary and respect for fair trial rights. In particular, it should be possible for law officers (prosecutors) to withdraw cases that have been brought by complainants that are not in the interests of justice.

28. Reports indicate that the conditions faced by inmates continue to fail to meet the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Prison overcrowding remains a significant issue and, although the Government deals with this in part by the release of thousands of prisoners during the annual round of presidential pardons, more needs to be done to

improve conditions. The Special Rapporteur received very troubling reports of riots that had occurred in prisons in Shwebo, Maw Lite, Hpa-an, Myitkyina, Thayarwaddy, Tavoy and Patheingyi in May. The riot in Shwebo was reportedly suppressed violently by authorities, who used tear gas and shot at prisoners, leading to four deaths. An effective investigation must be carried out and any perpetrator held accountable.

29. The Special Rapporteur has received many reports of ethnic Rakhine individuals charged under the Counter-Terrorism Law. The Law has broad definitions that may easily be abused by authorities. It provides for an Anti-Terrorism Central Committee, headed by the Union Minister for Home Affairs, which may designate individuals and groups as terrorists, without effective oversight, and without the possibility for review of decisions. In August 2017, the Central Committee had publicly declared the Arakan Rohingya Salvation Army a terrorist organization under the law, the first and only time that had been done. It is therefore of significant concern that the Arakan Army has apparently also been so designated, but no public announcement was made, and people are being charged with terrorism offences. The Counter-Terrorism Law must be amended to bring it into line with international human rights standards, in particular by narrowing the definitions and instituting independent oversight of the Central Committee.

## **V. Law reform**

30. No steps have been taken to amend or repeal the problematic provisions of laws that the Special Rapporteur has repeatedly said need to be reformed for compliance with international human rights standards. These include the Penal Code, the Official Secrets Act, the Unlawful Associations Act, the Telecommunications Law and the Law Protecting the Privacy and Security of Citizens. With elections to be held in 2020, the Special Rapporteur urges the Government to prioritize reform, given that doing so will support debate and effective participation. It is incumbent on the Government to engage the political will necessary to bring about these changes, which will further the transition to democracy.

31. The proposed prevention and protection of violence against women law remains in draft form. The Special Rapporteur is concerned that the definitions of sexual violence and rape may not comply with the Convention on the Elimination of All Forms of Discrimination against Women. She urges the Government to redraft the bill, such that it complies in full with the Convention, and adopt it as law without delay.

32. The parliamentary committee tasked with proposing amendments to the Constitution submitted 3,765 suggestions in July. The Special Rapporteur urges parliamentarians to keep human rights and democratic principles at the forefront of their work in considering them. To ensure that Myanmar becomes a fully democratic State in the future, any process to enact an amended Constitution should bring about civilian control of all parts of the Government and the military and an end to the legal structures that perpetuate impunity in order to guarantee that mass, grave human rights violations will not occur into the future.

33. The right to gain access to information held by public bodies is an integral part of the right to freedom of expression and opinion. The Special Rapporteur is aware that a right to information bill has been drafted, and it should provide for easy, prompt, effective and practical access to information held by the Government that is in the public interest. In addition, she has received information concerning a proposed new law relating to national records and archives. Under that bill, the Government has broad discretionary power to classify information as “strictly confidential” and keep it secret for 30 years, without any possibility of review or independent oversight. The

bill requires that applications be made to review Government information but does not provide any grounds on which the Government would decide on those applications, and gaining access to information without permission is a criminal offence with a custodial sentence. The Special Rapporteur suggests that the Government not proceed with this bill but instead enact a law on the right to information that accords with international standards and best practices. Such a law should not contain criminal offences with custodial sentences.

## **VI. Armed conflict and violence**

### **A. Situation in Rakhine State**

34. The armed conflict between the Tatmadaw and the Arakan Army continues, and the Special Rapporteur spoke with numerous people from Rakhine and Chin States during her mission to Malaysia and Thailand about the worsening situation. The Government continues to deny humanitarian access outside main towns following the directive of the state government in January, with the exception of the Red Cross and World Food Programme. This applies to the conflict-affected areas of Ponnagyun, Kyauktaw, Rathedaung, Buthidaung and Maungdaw, to which Minbya was added in late June. This has significantly reduced assistance and basic services for at least 100,000 people. These restrictions must be lifted. The high security presence is making it difficult for people to move around the state, including to find safe passage, as is the curfew from 9 p.m. to 5 a.m. in Ponnagyun, Rathedaung, Kyauktaw, Mrauk-U and Minbya put in place by the state government. The suspension of mobile Internet data is also having a significant negative impact on the ability of civilians in conflict- and monsoon flood-affected areas to receive information about safety and security, communicate with one other and seek help. Civil society reports that up to 65,000 people have been displaced in northern Rakhine and southern Chin States since January as a result of the conflict, and more than 12,000 people were temporarily displaced or evacuated as a result of recent floods in those areas. In 2019, some 200 village administrators have reportedly resigned in fear in northern Rakhine. Village administrators play an important role in governance, including acting as a conduit for communication between the Government and the villagers, and the Special Rapporteur is concerned about the well-being of villagers in their absence.

35. The Tatmadaw and the Arakan Army have been using artillery and gunfire in several townships in northern Rakhine State, and the Tatmadaw is known to have used helicopter gunships. Landmines, indiscriminate shelling and gunfire have resulted in civilians, including children, being injured and killed. In one reported incident in late March, four members of the same family and an elderly woman were killed after indiscriminate shelling and gunfire in Sitaung village, Buthidaung. The Tatmadaw reportedly burned houses in Amyet Taung village, Rathedaung, and Alay Chung village, Buthidaung, early in July. The Tatmadaw has also targeted civilians: in late July, a humanitarian worker was shot by the Tatmadaw and later charged under the Counter-Terrorism Law while recovering from his injury in hospital, given that police claimed to have found him with a grenade. These cases, and many others, demonstrate that the parties to the conflict are violating their international humanitarian law obligations to protect civilians and civilian objects, to take precautions and to ensure that only military objectives are the targets of attacks. The Special Rapporteur is concerned that some incidents may amount to war crimes, and these allegations must be investigated and the perpetrators prosecuted.

36. The Special Rapporteur has received information about abuses committed by the Arakan Army, including abducting villagers and arbitrarily depriving them of their liberty. Some have reportedly been released recently. The Tatmadaw has been

detaining scores of men and boys on suspicion of association with the Arakan Army, with 36 people having been arrested in June alone. On 30 April, the Tatmadaw detained 275 men and boys between 15 and 60 of age at a school in Kyauktan village, Rathedaung. Three days later, after reportedly being deprived of adequate food and water and being subjected to interrogation, six people were shot dead and eight others wounded during a commotion, and two injured men later died. Subsequently, seven men and one 17-year-old boy were charged under the Counter-Terrorism Law. Although the military and the Myanmar National Human Rights Commission conducted investigations into the incident, information received following the investigations indicates to the Special Rapporteur that they fell short of international standards. On 3 July, the military detained and interrogated 40 villagers from Kan Pyin village, Rathedaung, in a school. The Special Rapporteur notes that schools must not be used for military purposes because, under international humanitarian law, they are protected objects and, under the Convention on the Rights of the Child, they are “zones of peace”.

37. A further seven people have reportedly died in police custody in Rakhine State since January, with serious allegations of torture and ill-treatment reported. In May, 27 men from Letka village, Mrauk-U, were arrested and charged under the Counter-Terrorism Law. In June, it was reported that three of them had died in custody in Sittwe, and the military claimed that they had died of a heart attack, from suicide by hanging and drug withdrawal. In the same month, another eight villagers were arrested in Mrauk-U, and two of them have reportedly died in detention. It is essential that independent and impartial investigations be undertaken with respect to each of these custodial deaths and that the perpetrators be held to account. Although the Tatmadaw has announced such an investigation, the Special Rapporteur notes that, on the basis of the results of previous investigations that it has undertaken, it is highly unlikely to meet the requisite standards of effectiveness.

38. The Special Rapporteur notes with concern that some men arrested by the Tatmadaw have been detained incommunicado, that is, being denied the possibility to contact their families or a legal representative. One man who was arrested on 8 August in Kyaukyan village, Buthidaung, was allegedly subject to electric shocks while in incommunicado detention, after which he confessed to being an associate of the Arakan Army. On 13 August, he was charged with several others under the Counter-Terrorism Law in court in Buthidaung. The Special Rapporteur is extremely concerned about the use of incommunicado detention because it may facilitate the use of torture and other cruel, inhuman and degrading treatment and punishment. She calls upon the practice to end and for fair trial rights to be upheld for all detainees.

39. The Special Rapporteur has received reports of people in Rakhine and Chin States being subject to forced labour. Since February, Tatmadaw troops have been forcibly recruiting people to carry rice sacks to stock their base in Khamaungwa village in Paletwa township, a long journey that involves travel by motorbike, boat and foot. In May, each family in four villages in Paletwa were reportedly forced to provide the Tatmadaw with a labourer to transport food for Tatmadaw troops.

40. The conflict with the Arakan Army is also affecting the remaining Rohingya in northern Rakhine State, whose living conditions remain dreadful. Given that they are subject to movement restrictions, they are unable to leave their villages and gain access to livelihoods. This results in their dependency on humanitarian aid, access for which has been so heavily diminished that their basic means for survival has been affected. The Special Rapporteur has also received reports of attacks against Rohingyas in the context of the conflict with the Arakan Army. In April, possibly dozens of Rohingyas were killed when Tatmadaw helicopters fired on them while they were collecting firewood in south Buthidaung. Reportedly in Sin Thay Byin village, Buthidaung, in April, a pregnant Rohingya woman was shot and miscarried,

and in the same village in late July, a Rohingya boy was injured with shrapnel when three shells landed in the village. The Special Rapporteur continues to receive reports of beatings and killings and the burning of houses and rice stores.

## **B. Situation in Kachin and Shan States**

41. The Tatmadaw's declared unilateral ceasefire has been in place since December 2018 in relation to five regional commands in northern and eastern Myanmar and was extended once more in June 2019 for a further two months. Notwithstanding that ceasefire, militarization and clashes have continued to occur sporadically between the Tatmadaw and ethnic armed organizations in those areas. In addition, clashes have occurred between ethnic armed organizations in northern Shan and Kachin States throughout the declared ceasefire period. This was particularly severe in northern Shan, where 11,000 civilians were temporarily displaced until April, and there were several clashes in Kutkai in June. On 15 August, the Arakan Army, the Ta'ang National Liberation Army and the Myanmar National Democratic Alliance Army conducted coordinated attacks in five locations in northern Shan that killed 14 people, including 2 civilians. Clashes reportedly occurred between those groups and the Tatmadaw in the proceeding days and involved artillery fire in civilian areas. As a result, several civilians were reportedly killed and injured and up to 1,500 civilians fled.

42. The Special Rapporteur continues to receive reports of civilians being killed or injured as a result of landmines in northern Shan State. This includes a 17-year-old boy from Mansi township who was killed when he was collecting firewood in May. She also continues to receive reports of women being killed in militarized areas. On 4 July, while both the Tatmadaw and the Kachin Independence Army were active in the area, Nang Htang, a displaced Kachin woman, was brutally killed in Namt Sung Kye in Kutkai, her body showing signs that her head, jaw, neck and hands had been injured.

## **C. Peace process**

43. During her mission, the Special Rapporteur spoke to people who expressed frustration with the status of the peace process, citing the Tatmadaw's failure to genuinely seek to build trust among all stakeholders or offer any compromise that might engender productive negotiations. The Tatmadaw has not completely halted its assaults on ethnic armed organizations in the north, notwithstanding its unilateral ceasefire declaration, which excludes Rakhine State, where it has vowed to "crush" the Arakan Army. In addition, the recent attacks and clashes in Shan State indicate that the Tatmadaw's unequal treatment of ethnic armed organizations will not lead to peace and that it will be very difficult to build trust while armed conflict continues there and in Rakhine. As the Special Rapporteur has said before, the peace process should be inclusive of participants and issues and ensure that women, young people and civil society are afforded the opportunity to meaningfully participate.

## **D. Internally displaced persons**

44. The Government has been developing its national strategy on the closure of camps for internally displaced persons and has consulted with the United Nations in doing so. The Special Rapporteur notes that it is essential that any camp closure follow the approval of the final strategy and involve transparent public consultation not only with the United Nations and humanitarian actors, but also with internally

displaced persons and civil society. While many aspects of the draft strategy appear to be positive, the Government must ensure that it is implemented in a rights-based manner. Closure must address the root causes of displacement, and any return or relocation must be voluntary and to internally displaced persons' place of origin or choice and not to a location that is unsafe or affected by ongoing conflict.

45. In central Rakhine State, 128,000 Rohingya and Kaman people remain interned in camps where they have lived in squalid conditions since 2012. The Special Rapporteur is distressed that families who live in the camps but are not registered with the Government do not receive food assistance. The Government has declared that three of the larger camps for internally displaced persons were "closed" and has said several others will also be closed. To date, closure has reportedly involved the construction of housing for internally displaced persons on or adjacent to the existing camps, without the lifting of movement restrictions, such that internally displaced persons remain effectively detained. The Government has presented this as part of its implementation of the recommendations of the Advisory Commission on Rakhine State. Under those recommendations, however, camp closure was to occur in consultation with the affected communities and involve a return to their place of origin or relocation to a place of their choice. The Commission also recommended that the Government ensure freedom of movement for all people in Rakhine. It therefore does not appear to the Special Rapporteur that the closure of these camps has been done according to the Commission's recommendations or international standards, or that it will result in the lives of internally displaced persons being improved. If the process being pursued continues, the Special Rapporteur fears that it will result in the permanent segregation of displaced Rohingya and Kaman communities in central Rakhine. She notes that the internally displaced persons in Myebon who participated in the pilot citizenship verification exercise in 2014 continue to be denied freedom of movement.

46. There remain 97,000 internally displaced persons in Kachin State and 11,000 in northern Shan State who have been living in difficult conditions in camps since 2011. The United Nations has been unable to gain access to some 40,000 people who are in areas controlled by ethnic armed organizations since 2016, and access is also increasingly challenging for national humanitarian organizations, in particular to rural areas. Humanitarian access restrictions must be lifted immediately.

47. In northern Shan State, more than 50 households from two camps in Namkham Jaw and one camp in Muse returned home in May 2019. In Kachin State, people have returned home from camps in Myitkyina, Waingmaw, Chiphwe and Bhamo. The Special Rapporteur is concerned that, although these returns were spontaneous, they occurred as a result of increasing pressure on internally displaced persons as humanitarian assistance continues to face growing constraints, notwithstanding basic needs remaining. She understands that internally displaced persons fear for their safety (including owing to landmines and new military posts near their villages), whether they will have access to adequate food, housing, health care, education and livelihoods and whether they will be able to recover their land and property. Most people who have returned home in Kachin do not have documentation for their land, nor do they have personal identification cards, and many do not have birth certificates for their children.

## **E. Human trafficking**

48. Myanmar is a source country for high numbers of men, women and children who are trafficked to neighbouring countries and beyond, as well as internally, for forced labour and sexual and other forms of exploitation. Several groups of Rohingya trafficked from Rakhine State and Bangladesh have been intercepted by authorities in

Indonesia, Malaysia and Thailand in 2019. The conflict in northern Rakhine and southern Chin States has also forced thousands from other ethnic minority communities into insecure situations in which they are vulnerable to traffickers.

49. The Special Rapporteur is distressed by the large and reportedly increasing number of women and girls from Kachin and Shan States being trafficked to China as “brides”. Most are deceived by the lure of employment and are transported into China by a network of traffickers, sometimes having been drugged, before being sold to a family. The majority are then locked in a room, repeatedly raped and forced to give birth. Some escape, having to leave their children behind. Many women and girls from Kachin and Shan are also being trafficked to the Lao People’s Democratic Republic, Malaysia and Thailand for sex work, some as young as 9 years of age.

50. Women and girls from Kachin and Shan States most at risk of being trafficked are those from ethnic minority communities that have been marginalized by the years of armed conflict and militarization. Particularly at risk are women and girls living in camps for internally displaced persons near the border, where they are unable to earn a living and are dependent on humanitarian assistance. The influence of the military, ethnic armed organizations and militias and the illicit cross-border trade in natural resources and narcotics create the conditions for criminal trafficking networks to thrive.

51. Women victims of trafficking who returned to Kachin and Shan States have to contend with trauma, medical complications and a lack of adequate social, health and legal services. Social stigma exacerbates these impacts, isolating victims from their communities and preventing them from having access to what little support is available. A general mistrust of the police, the low number of investigations and the prevalence of corruption mean that most victims do not seek or receive justice.

52. The Special Rapporteur calls upon the Government to implement existing legislation and bilateral and regional anti-trafficking agreements immediately. Local police, border police and specialized units must receive comprehensive training in recognizing and combating trafficking. The Ministry of Social Welfare, Relief and Resettlement must ensure that the Department of Social Welfare receives the resources necessary to expand its services to meet the comprehensive needs of victims of trafficking, with attention paid to the specific needs of women and girls. The Government, ethnic armed organizations and international donors should facilitate anti-trafficking education and awareness-raising in displacement camps and communities and provide support to civil society organizations working on prevention, victim recovery and rehabilitation, as well as access to justice.

## **F. Refugees in neighbouring countries**

53. There are approximately 121,000 Myanmar refugees living in camps on the Myanmar-Thailand border. Those Governments have been facilitating a repatriation programme since 2016, together with humanitarian agencies. In February, a third group of some 500 refugees returned to Myanmar. The Special Rapporteur has received information that the returnees have experienced difficulties in their resettlement locations, given that there are inadequate health and education facilities and concerns about livelihoods and secure land tenure. In addition, there are significant worries about the proximity of a Tatmadaw base and the presence of unexploded ordnance on the agricultural lands that have been allocated for livelihoods in Mae La May Ler Moo. Mine risk education is needed for returnees. In July, a fourth group of more than 300 refugees returned to Myanmar.

54. In Bangladesh, there are 912,852 Rohingya refugees in Cox’s Bazar, and refugees continue to arrive, with 1,089 having arrived between January and July 2019.

The Special Rapporteur was troubled by the decision in August of the Governments of Bangladesh and Myanmar to repatriate 3,450 refugees who had been verified as residents of Rakhine State by Myanmar from a list of 22,000 people. Her view remains that, to date, Myanmar has entirely failed to dismantle the system of persecution under which the Rohingya in Rakhine continue to live. While this situation persists, it is not safe or sustainable for refugees to return. The Special Rapporteur notes that the household-counting exercise has continued to take place in Rohingya villages in northern Rakhine and is concerned that this is an effort to erase the Rohingya from administrative records and make their return less possible. The Government of Myanmar continues to require any refugee who returns to be issued with a national verification card, which is not a real solution to citizenship for the Rohingya and must not be issued compulsorily. Myanmar needs a new citizenship regime that does not grant citizenship on the basis of ethnicity or create a hierarchy of classes, which accords with its international obligations and human rights.

55. The Special Rapporteur is disturbed by recent information received that national verification cards will be issued after returnees' biometric data are collected. Myanmar does not have a legal framework for data collection, usage and storage, meaning that there are no safeguards in place to protect the right to privacy. She is very concerned about the possibility that any biometric data collected could be used to place further controls on Rohingya who return to Myanmar.

56. The Special Rapporteur continues to be extremely concerned by the deportations to Myanmar by the Government of India, with 135 Rakhines having been violently forced to return to Myanmar from Assam in July. She requests that India respect the rights of people from Myanmar in India and cease further deportations.

57. While she was in Malaysia, the Special Rapporteur met refugees from different ethnicities and areas of Myanmar, some of whom have been there for many years and others who had arrived recently. They told her of their wishes to have access to education, work and health care in Malaysia. The Government of Malaysia is endeavouring to provide education to Rohingya refugees, and the Special Rapporteur calls upon it to continue those efforts and ensure that all refugees have access to education.

58. The Special Rapporteur was distressed by the deportation by the Government of Singapore of six Rakhine men in July, whom it alleged were supporters of terrorism. She is informed that those men were arrested and detained on their arrival in Yangon and were held incommunicado for nearly one month before their families saw them. They were reportedly charged under the Counter-Terrorism Law, along with two others, while a ninth man remains without charge in incommunicado detention. The Special Rapporteur is very concerned about the situation faced by the remaining Rakhines in Singapore and calls upon Singapore to uphold its customary international law obligation not to return people to a place where they may be subject to torture.

## **VII. Accountability and dealing with the past**

59. The Special Rapporteur remains firm in her belief that only accountability will ultimately end the widespread, grave human rights violations that continue to be seen throughout Myanmar. It is for that reason that she continues to call upon the Security Council to refer Myanmar to the International Criminal Court. Alternatively, the international community should establish an international criminal tribunal to try alleged perpetrators of international crimes in accordance with international law. The international community must use all the means available to it to achieve accountability in Myanmar. This includes individual Member States and the Council imposing targeted financial sanctions against Tatmadaw-owned companies and their

subsidiaries and the six senior Tatmadaw commanders and their family members identified by the independent international fact-finding mission on Myanmar as being most responsible for the serious violations that have occurred since 2011. She also urges Member States to impose targeted sanctions against associates of these individuals in situations in which they may be acting as surrogate business owners or proxies to evade sanctions.

60. The work of the Independent Commission of Enquiry continues, and its mandate has reportedly been extended until 29 January 2020. This is another delaying tactic on the part of the Government, given that it is unable and unwilling to bring about accountability. The Commission announced in May that it had undertaken investigation training and it visited Bangladesh in August. The Special Rapporteur has grave concerns about the Commission's interaction with victims and witnesses there and whether it has the capacity to protect them from reprisals. The military has also announced that it is undertaking an investigation to "scrutinize and approve the respective incidents" in Rakhine State and to respond to allegations by the United Nations and NGOs. This will be done by an "investigation court" comprised of three military officers that was announced in March. It is unclear what the function of this body will be and how the officers will conduct both investigative and judicial functions in a manner that would comply with international law.

61. While the Special Rapporteur supports the progress made on international accountability, much more needs to be done by the international community to achieve justice for victims. In July, the Prosecutor of the International Criminal Court finished her preliminary examination and requested authorization from the Pre-Trial Chamber to commence an investigation into the situation in Bangladesh/Myanmar from 9 October 2016. The Prosecutor submitted that she believes, on a reasonable basis, that crimes against humanity, including deportation, and other inhumane acts, including violations of the right to return and persecution, were committed by the Tatmadaw, border guard police and Myanmar police forces, with some participation of civilians.

62. The Independent Investigative Mechanism for Myanmar that was established by the Human Rights Council in September 2018 is not yet operational, notwithstanding the resolution being adopted nearly one year ago. The Special Rapporteur is disappointed that this is the case and repeats her call for it to become operational as soon as possible, with the United Nations offices involved expediting recruitment and administrative processes. Once it is finally collecting information and preparing case files for prosecution, the Special Rapporteur urges Member States to consider commencing cases under universal jurisdiction. She also reiterates that any victims who interact with the Mechanism should be provided with urgent interim relief to provide them with support in their pursuance of justice that would provide access to livelihoods, health, trauma and psychosocial care, education and legal assistance.

63. Further transformative processes and mechanisms should also be developed to fully serve justice, including to achieve reconciliation and realize equality and rights in Myanmar. This should occur with international assistance by comprehensively examining the root causes of the conflicts and the violations and abuses of the full spectrum of rights that have occurred over many decades. Any processes and mechanisms should be holistic, locally owned, context-appropriate, victim-driven, consider gender and be appropriate for the Myanmar context. They should be developed with affected communities and recognise that individuals and communities have faced varying impacts and have differing needs that will change over time. It will be necessary for any measures to deal with the harm faced by individual victims and provide them with reparations, including by way of rehabilitation, restitution (including both economically by returning land and property, but also the restoration of liberty, rights, nationality and citizenship status) and compensation. In addition,

they should contend with the damage done to society, including by public acknowledgement and apology, truth-seeking, memorialization, judicial and administrative sanctions and institutional reforms to guarantee non-recurrence. Security sector reform, including bringing the military under civilian control, will be integral.

## VIII. Conclusion and recommendations

64. The human rights situation in Myanmar continues to deteriorate in many areas, notably in the context of the transition to democracy, armed conflict, the peace process and several business sectors and industries. It could not be more urgent for the decline to be halted immediately and for the international community to assist Myanmar in undertaking the difficult work to bring about genuine reform, including by dismantling the military's power over many spheres and institutions. In his brief and independent inquiry into the involvement of the United Nations in Myanmar from 2010 to 2018, published in May 2019, Gert Rosenthal found a systemic and structural failure of the United Nations. He found that the collective membership of the United Nations bore part of the responsibility for that failure. This being the case, the Special Rapporteur urges all Member States to remedy that failure by engaging with Myanmar now and in the future on a principled basis to assist its transformation into a truly democratic, pluralist, federal society that is governed by civilians and upholds human rights for all. She also believes a more comprehensive, independent review is needed following that brief review.

65. The Special Rapporteur notes that many of her previous recommendations to the Government of Myanmar have not yet been implemented. She repeats them now and makes further recommendations, which are outlined below.

66. With regard to development, business and human rights, the Special Rapporteur recommends that the Government of Myanmar:

(a) Ensure that all hydropower projects are developed in full compliance with relevant laws and the environmental impact assessment procedure, and uphold the duty to protect human rights;

(b) Refrain from entering into investment treaties in which there is conflict between those treaties and obligations under the International Covenant on Economic, Social and Cultural Rights;

(c) Halt the implementation of the Vacant, Fallow and Virgin Lands Management Law and the enactment of the new land acquisition law, and adopt an overarching national land law in line with the national land use policy and relevant provisions of the Nationwide Ceasefire Agreement, in consultation with civil society;

(d) Consider declaring an environmental emergency in Hpakant and suspend jade mining indefinitely; consult affected communities and civil society and improve and harmonize the legal framework for environmental protection on the basis of those consultations; and allocate sufficient resources to departments tasked with enforcing regulations;

(e) Lift the order to suspend mobile Internet services in Rakhine and Chin States and amend the Telecommunications Law, including provisions for the arbitrary disconnection of Internet access, to ensure compliance with international law;

(f) **Guarantee the right to freedom of expression online; undertake comprehensive action against online incitement to hatred, discrimination and violence, in line with the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence; and, in consultation with civil society, consider enacting anti-discrimination and equality legislation.**

**67. With regard to civil and political rights, justice and rule of law, the Special Rapporteur recommends that the Government of Myanmar:**

(a) **Ratify all core international human rights instruments;**

(b) **Uphold the rights to freedom of expression and opinion, association and peaceful assembly; cease using laws as instruments of repression against dissidents, land, environmental and human rights defenders and minorities who are exercising their rights legitimately; and immediately release all political prisoners and redress the psychological and physical harm caused to them;**

(c) **Undertake broad and comprehensive legislative reform and prioritize amending or repealing the problematic laws that have been flagged by the Special Rapporteur many times, including but not limited to the Penal Code, the Official Secrets Act, the Unlawful Associations Act, the Telecommunications Law, the Law Protecting the Privacy and Security of Citizens and the Counter-Terrorism Law;**

(d) **Guarantee the right to freedom of religion for all and take immediate steps towards the realization of all rights contained in the International Covenant on Economic, Social and Cultural Rights for all on a basis of non-discrimination on religious, ethnic or other grounds;**

(e) **Engage all actors in the justice sector to undertake meaningful reforms to improve the independence of the judiciary and fair trial rights for all;**

(f) **Improve prison conditions and undertake an independent and impartial investigation into deaths that occurred during a riot in Shwebo prison in May;**

(g) **Take a human rights approach to amending the Constitution to bring it fully in line with democratic principles, including by dismantling structural impunity and putting in place guarantees that mass grave human rights violations will not occur in the future;**

(h) **Enact a right to information law to provide easy, prompt, effective and practical access to information held by the Government that is in the public interest;**

(i) **Amend the founding law of the Myanmar National Human Rights Commission in line with the principles relating to the status of national institutions for the promotion and protection of human rights;**

(j) **Open a fully fledged office of the Office of the United Nations High Commissioner for Human Rights.**

**68. With regard to armed conflict, violence and the peace process, the Special Rapporteur recommends that the Government of Myanmar, together with ethnic armed organizations:**

(a) **Immediately cease hostilities and, while hostilities are ongoing, comply with international humanitarian law, including the principles of distinction, proportionality and precautions, and human rights law;**

(b) Cease violations against civilians, including children, including targeted and indiscriminate killings and injuries, rape, arson, forced displacement, forced labour and damage to civilian objects;

(c) Immediately stop laying landmines; ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction; and clear mines and unexploded ordnance, mark and fence mine areas and carry out systematic mine-risk and education activities;

(d) Immediately release all children under 18 years of age who have been recruited as combatants; refrain from recruiting children and take measures to prevent underage recruitment and treat any association of children with armed groups as forced; and 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;

(e) Undertake prompt, independent, impartial and thorough investigations into all allegations of violations of human rights and international humanitarian law, and ensure that perpetrators are punished;

(f) Immediately lift restrictions on access for humanitarian actors to people in need, as well as for the media and human rights monitors, in areas affected by conflict and violence;

(g) Immediately lift movement restrictions and curfews in Rakhine State;

(h) Immediately end violence, intimidation, harassment and discrimination against the Rohingya in Rakhine;

(i) Cease arbitrary arrest and detention, including incommunicado detention, of people suspected of being associates of armed groups and uphold their right to a fair trial, and cease any torture or ill-treatment in detention and undertake independent and impartial investigations into any deaths in custody;

(j) Undertake genuine measures to build trust in the peace process; ensure that the peace process is conducted inclusively and that women, young people and civil society are afforded the opportunity to meaningfully participate; and include human rights issues in the peace process negotiations;

(k) Strengthen the implementation of anti-trafficking laws and agreements, including the Anti-Trafficking in Persons Law; the 2009 “Memorandum of understanding between the Government of the Union of Myanmar and the Government of the People’s Republic of China on strengthening the cooperation on combating human trafficking”; the Coordinated Mekong Ministerial Initiative against Trafficking; the ASEAN Convention against Trafficking in Persons, Especially Women and Children and the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

69. With regard to refugees and internally displaced persons, the Special Rapporteur recommends that the Government of Myanmar:

(a) Ensure that any closure of camps for internally displaced persons addresses the root causes of displacement and that any return or relocation is voluntary, safe, dignified and respects their rights, and ensure that any closure does not result in further segregation of the Rohingya and Kaman communities in Rakhine State;

(b) Fully implement the recommendations of the Advisory Commission on Rakhine State;

(c) Bring about conditions for the voluntary, safe, dignified and sustainable return to the country of all Myanmar refugees and ensure that returning refugees may enjoy their fundamental rights, including to citizenship, to return to places of origin and to compensation for burned, damaged or looted property, as well as adequate access to livelihoods, education and health care;

(d) End the national verification card process; reform the citizenship regime to accord with the international human rights obligations of Myanmar; and restore citizenship for the Rohingya and members of other minority groups who have been denied citizenship or face arbitrary hurdles to their citizenship being recognized.

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

(a) Refer the situation in Myanmar to the International Criminal Court immediately or, alternatively, consider establishing an international tribunal to try alleged perpetrators of international crimes in accordance with international law;

(b) Operationalize the Independent Investigative Mechanism for Myanmar as soon as possible and provide urgent interim relief for victims who interact with the Mechanism, including protection, access to livelihoods, education, health, psychosocial and trauma care and legal assistance;

(c) Impose targeted financial sanctions against Tatmadaw-owned companies and their subsidiaries and the six senior Tatmadaw commanders and their family members and associates identified by the independent international fact-finding mission on Myanmar as being most responsible for the serious violations that have occurred since 2011;

(d) In addition to criminal accountability measures, work with civil society to develop transformative processes in accordance with the pillars of justice, truth, reparations and guarantees of non-recurrence to deal with the damage done to victims and society and assist Myanmar in achieving justice, reconciliation, equality and rights for all;

(e) Conduct a transparent and comprehensive independent review of action taken by the United Nations system and ensure that any final report and recommendations are made public, and ensure that the review includes action taken 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 the United Nations humanitarian and protection mandates and within the framework of the Human Rights Up Front initiative, and an assessment of whether the United Nations and international community could have prevented or managed the situation differently, and make recommendations for accountability, if appropriate;

(f) Protect refugees from Myanmar who are within their States and uphold the principle of non-refoulement; provide refugees with adequate access to livelihoods, education and health care; and ensure that refugees are fully engaged in repatriation discussions and that any repatriation is voluntary, safe, dignified and sustainable and in accordance with international law;

- (g) To Internet companies:**
    - (i) Adopt policies for content regulation on the basis of principles of international human rights law and implement them consistently and transparently in consultation with civil society;**
    - (ii) Ensure that sufficient resources are allocated to content moderation so as to meet the business responsibility to respect human rights in line with the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework;**
    - (iii) Ensure that human rights due diligence is conducted prior to and throughout the process of engaging the Myanmar ICT sector, in line with the Guiding Principles on Business and Human Rights;**
  - (h) To international financial institutions, development agencies and private investors: undertake comprehensive conflict-sensitivity and human rights due diligence, in line with the Guiding Principles on Business and Human Rights, prior to implementing projects in conflict-affected areas, in particular Rakhine and Chin States, and suspend projects and investment on the basis of due diligence, where necessary;**
  - (i) To home Governments of multinational companies investing in Myanmar: take all the steps necessary to prevent human rights violations in Myanmar by business enterprises domiciled in their territory and/or jurisdiction.**
-