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

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the situation of human rights in Myanmar, prepared pursuant to Council resolution 34/24. In the report, the Special Rapporteur builds on previous reports to identify human rights progress and challenges, and makes recommendations for the furtherance of human rights of all people in Myanmar.

* The present report was submitted late in order to reflect recent developments.

** The annex to the present report is reproduced as received, in the language of submission only.

I. Introduction

1. The present report, submitted pursuant to Human Rights Council resolution 34/24, covers developments in Myanmar since the previous reports of the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, to the Human Rights Council in March 2017 (A/HRC/34/67) and oral progress report in June 2017; and to the General Assembly in October 2017 (A/72/382).

2. On 18 December 2017, the Government of Myanmar, just weeks before her planned seventh country visit, informed the Special Rapporteur that all access to the country had been denied and cooperation withdrawn for the remaining duration of her tenure. The Special Rapporteur was due to visit Myanmar in January 2018 to help prepare her report to the Human Rights Council. While the Government had responded positively to all past requests to visit, the Special Rapporteur notes that access to some areas was consistently refused by the authorities citing security concerns. Moreover, she expresses disappointment regarding the Government's irregular request that the undertaking of her July 2017 country visit was contingent on no association with the Independent International Fact-Finding Mission on Myanmar.¹

3. The Government formalized its withdrawal of cooperation on 3 January 2018 in a letter to the Human Rights Council, which stated that they would no longer extend cooperation to the Special Rapporteur and requested the President of the Council to replace the Special Rapporteur on the mandate. The Special Rapporteur expresses her appreciation to the Government for their previous cooperation and for a relationship of mutual respect. She continues to extend opportunities for the Government to cooperate in addressing human rights concerns, as she sent to the Government a list of questions ahead of this report to which she has not yet received a response.² The Special Rapporteur sincerely hopes the Government will revisit their decision and is ready to assist them in endeavors to protect and promote human rights in Myanmar.

4. With no access to Myanmar, the Special Rapporteur conducted visits to neighboring countries: Bangladesh from 18 to 24 January, during which she travelled to Dhaka and Cox's Bazar; and Thailand from 24 to 30 January where she visited Bangkok, Mae Sot and Chiang Mai. In both Dhaka and Bangkok, she met with government officials. The Special Rapporteur extends gratitude to the Governments of Bangladesh and Thailand for facilitating her visit.³

5. While in Bangladesh, the Special Rapporteur held extensive discussions with actors such as the United Nations and humanitarian workers, including the senior leadership of United Nations Country Team (UNCT) for Bangladesh and UNCT Myanmar, the Inter Sector Coordination Group, non-government organizations, and diplomats. She met with military and civilian leadership in Cox's Bazar. In Thailand, she met with the UNCT, the diplomatic community and organizations. The Special Rapporteur appreciated the contributions made to her work by the Office of the High Commissioner for Human Rights (OHCHR), non-government organizations, and human rights activists.

¹ See Annex

² Id.

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<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22619&LangID=>

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II. Situation of Human Rights

6. Recalling the proposed Joint Benchmarks between the Special Rapporteur and the Government of Myanmar as outlined in her report in March 2017 to the Human Rights Council, the Special Rapporteur notes limited progress on some items but reminds of the critical need for improvement in other areas.

A. Rule of Law

7. In the two years since the victory of the National League for Democracy (NLD) in national elections, the Government has yet to make any real progress on legal and judicial reform. The Special Rapporteur reiterates previous calls for the development of a comprehensive programme of legislative reform to bring Myanmar's domestic legal system into compliance with international human rights norms and standards, providing protection for the rights of the entire population. The Government must take steps to ensure full and inclusive participation from civil society and ethnic groups. The NLD's election promise of constitutional reform appears to have taken a backseat to the peace process, and the Special Rapporteur reminds the Government that legal reform, including constitutional reform, will serve only to further peace in the country. In this regard urgent action is needed by the Government to erase from the statute books all provisions which are used to unfairly target the people of Myanmar, including but not limited to: Section 66(d) of the 2013 Telecommunications Law, Section 17(1) of the 1908 Unlawful Associations Act, Section 19 of the 2011 Peaceful Assembly and Peaceful Procession Law, Sections 500, 505(b) and 505(c) of the Penal Code, Section 25 of the 2014 News Media Law, and Section 3 of the 1923 Official Secrets Act.

8. The Special Rapporteur recalls Recommendation 17 of the Final Report of the Advisory Commission on Rakhine State (Rakhine Commission Report) which calls for a review and revision of the 1982 Citizenship Law to bring it into line with international standards and best practices, including through the abolition of distinctions between different types of citizenships. She reiterates that the four laws comprising the so-called protection of race and religion package adopted in 2015 needs overhauling, including the removal of existing provisions that undermine the rights of women, children and religious minorities. The Special Rapporteur takes note of the Rakhine Commission Report's recommendation that Myanmar actively combat hate speech including through a robust legal framework. However, she is concerned that the third draft of the Bill for Protection Against Hate-Speech contains sweeping provisions that threaten to undermine protection for human rights and provide a legal basis for censure of legitimate expression by the executive branch. She is also concerned by the lack of transparency in the legislative process surrounding this bill and calls for wide consultation with the public, including religious organizations and civil society.

9. The Special Rapporteur previously welcomed steps towards the conclusion of a Law on the Prevention of Violence Against Women. However, with a draft law before the Office of the Attorney General for six months that is not publicly available, this raises concerns as to whether civil society will have the opportunity to provide further input before the draft comes before parliament. Steps must be taken to ensure that that draft complies with international standards, including the Convention on the Elimination of All Forms of Discrimination Against Women to which Myanmar is party.⁴

⁴ The Committee on the Elimination of All Forms of Discrimination Against Women has requested an exceptional report from Myanmar on the situation of Rohingya women and girls.

10. With the draft Child Rights Law entering the parliamentary review, it is imperative that parliament proceeds towards adoption without further delay, and consults with UNICEF and specialized organizations, ministries and parliamentary committees. The law must uphold Myanmar's obligations under the Convention on the Rights of the Child and International Labour Organization (ILO) Conventions to include provisions that will see an end to child recruitment. The Special Rapporteur welcomes the establishment of a National Committee on Child Labour, and the Government's work with the ILO to develop a National Action Plan on Child Labour, including finalizing the list of hazardous work prohibited for children. Additionally, she repeats her call to raise the age of compulsory education incrementally to match the minimum employment age.

11. Regarding the draft Prisons Law, the Special Rapporteur is concerned that the current draft requires serious revision to bring it into line with international standards, including the United Nations Standard Minimum Rules for the Treatment of Prisoners. The draft, expected to go before parliament soon, fails to protect against torture and other cruel, inhuman and degrading treatment and punishment, and to ensure an independent mechanism for the oversight of prisons and prison staff.

B. Democratic Space

12. While the historic election of a civilian government for Myanmar promised a new era of openness, transparency and the expansion of democratic space, the Special Rapporteur has only seen that space shrink, with journalists, members of civil society and human rights defenders placed in an increasingly perilous position. The repressive practices of previous military governments are returning as the norm once more.

13. The Special Rapporteur was informed that by the end of January 2018, there are 45 political prisoners and 184 people facing trial for exercising their rights.⁵ She notes that more than a year has now passed since the killing of Ko Ni and Nay Win. The trial of those alleged responsible has been ongoing for nearly a year, with the alleged ringleader still not apprehended.

14. The Special Rapporteur is aware that an increasing number of people are being targeted by the authorities for speaking out about human rights violations and abuses and is troubled that people are being prosecuted under laws with repressive provisions, some of which were enacted recently during the period of democratic transition while others belong to the legacy of the colonial era. Although Section 66(d) of the Telecommunications Law was amended in August 2017, the very existence of a criminal offence of defamation is problematic, and other provisions that may affect freedom of expression remain, including provisions for the arbitrary blocking or filtering of online content and arbitrary disruption to internet access. Over 100 cases have been brought under the Telecommunications Law since it was enacted. The vast majority of them under the NLD Government, with 100 per cent of verdicts resulting in convictions.⁶ The Special Rapporteur remains concerned about high levels of hate speech and incitement to hostility, discrimination and violence, particularly on social media and how this has a stifling impact on assertion of sensitive and unpopular views.

15. The colonial-era Penal Code, provisions of which the Special Rapporteur has repeatedly said are problematic, is continuing to be used against those who speak out about abuses perpetrated by the military. Human rights defender Khaing Myo Htun was convicted of disturbing public tranquility and incitement under Sections 505(b) and (c) in October 2017 for allegations he made about forced labour by the Myanmar Armed Forces, the

⁵ AAPP January 2018 Chronology.

⁶ Free Expression Myanmar, 66d: no real change

Tatmadaw, and after 19 months he was finally released on 22 February 2018. Former child soldier Aung Ko Htwe has reportedly been charged with disturbing public tranquility under Section 505(b) after speaking to journalists about his experiences as a child soldier in the Tatmadaw. The Special Rapporteur calls for the charge to be dropped.

16. The Special Rapporteur is concerned that at least 12 journalists were arrested in 2017, and that these arrests have created a culture of fear, silence and self-censorship. She notes the apparent increasing use of Section 17(1) of the 1908 Unlawful Associations Act by the military. Three journalists who attended a drug burning ceremony by the Ta'ang National Liberation Army (TNLA) had charges against them dropped in September 2017. Nevertheless, Kachin pastors Dumdaw Nawng Lat and Langjaw Gam Seng were convicted under Section 17(1) in October 2017 in relation to speaking to journalists about the bombing of a church. The Special Rapporteur calls for their immediate release. Over 100 people in Kachin State were reported to have been charged under Section 17(1) since the beginning of 2016, with most cases having been brought by the Tatmadaw.

17. Access for journalists to Rakhine, Kachin and Shan States is restricted, and is becoming increasingly challenging and dangerous to obtain information about events in those areas of the country. The Special Rapporteur is alarmed by the ongoing detention of and proceedings against Reuters journalists Wa Lone and Kyaw Soe Oo who were arrested in December 2017 under the 1923 Official Secrets Act for their investigation of a massacre in Inn Din village in Rakhine State. The Special Rapporteur is particularly troubled by their incommunicado detention for a period of two weeks after their arrest and by the allegation that they were detained for possessing documents that were allegedly given to them by police immediately before their arrest. The Special Rapporteur views it as unconscionable that two journalists remain detained for uncovering information about a massacre for which the Myanmar military has accepted responsibility and calls for their immediate and unconditional release.

18. The right to freely and peacefully express dissenting opinions and opposition to government policy, including collectively and publicly, is a cornerstone of democracy. The Special Rapporteur was deeply saddened to learn that seven demonstrators were shot dead by police at a demonstration in Mrauk U, Rakhine State in January 2018. Other injured protestors were reportedly arrested in hospital and handcuffed to their beds. Two Rakhine men, parliamentarian Aye Maung and nationalist writer Wai Hin Aung, were accused of organizing the demonstration and consequently have been arrested and charged with high treason, an offence that carries the death penalty. Shortly after the demonstration, the former township administrator of Mrauk U, Bobo Min Theik was stabbed to death as he traveled to Sittwe. In line with international standards, there must be an effective, independent and impartial investigation into the use of lethal force against demonstrators. Additionally, the Special Rapporteur urges the Government to ensure that any police action is in accordance with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and to take immediate measures to reduce political tensions in Mrauk U.

19. January 2018 saw a spate of demonstrations by students calling for an increase to the education budget. Given Myanmar's history of student activism, the Special Rapporteur was disturbed to receive reports that 56 students from a number of universities around Myanmar were expelled. She calls for the students to be reinstated and for the rights of all students to freedom of expression be upheld. The Special Rapporteur is further troubled by the directive issued by the Yangon Region Security and Border Affairs Minister that instructs police to refuse permission for peaceful assemblies in 11 townships reportedly to "avoid public annoyance and anxiety" and traffic disturbance, contrary to the Peaceful Assembly and Peaceful Procession Law. This broad and arbitrary measure contradicts the right to freedom of peaceful assembly. The Special Rapporteur is still further concerned by reported proposed amendments to the Peaceful Assembly and Peaceful Procession Law that provide additional broad grounds for authorities to stop a demonstration, and include a new

vaguely worded criminal offence. She reiterates her call that amendments are to be in line with international standards.

C. Sustainable Development and Economic, Social and Cultural Rights

1. Economic, cultural and social rights

20. The Special Rapporteur welcomes Myanmar's ratification of the International Covenant on Economic, Social and Cultural Rights on 6 October 2017 as an important step forward in Myanmar's work towards achieving universal human rights. The Special Rapporteur urges the Government to continue to seek international assistance and cooperation to progressively realize the rights set out in the Covenant. She, nevertheless, notes that Myanmar made a declaration in relation to the right of self-determination, and calls on the Government to implement the provisions of the Covenant inclusively and without discrimination.

21. The Special Rapporteur welcomes Myanmar's extension of its forced labour complaints mechanism with the ILO and its Action Plan on Forced Labour for 2018; however, she continues to hear reports of forced labour by the Tatmadaw. The Special Rapporteur is aware of the National Minimum Wage Committee's recommendation to increase the minimum wage from 3,600 to 4,800 Myanmar kyats, which will be implemented after consultation with stakeholders.

22. The Special Rapporteur appreciates the significant challenges faced by Myanmar in improving health for the population, and welcomes the Presidential announcement that the Government aims to achieve universal health coverage by 2030, and calls for a federal system that incorporates existing ethnic health structures for the benefit of all ethnic groups. She was concerned to hear reports from ethnic groups about the lack of access to midwives and nurses in rural areas, and very low rates of birth registration, particularly in the conflict-affected areas of Kachin and Shan. She notes the Government's recognition of the right to universal birth registration as of October 2017, and calls on the Government to further its efforts to expand birth registration to all parts of Myanmar.

23. The Special Rapporteur is concerned that the Maternal and Child Cash Transfer (MCCT) programme currently in place in Chin State and newly started in Rakhine State, may further exacerbate existing disparities in different ethnic communities' access to health services. Additionally, it may affect women's reproductive rights because financial support, while welcome and necessary, is conditional on birth spacing of two years. The Special Rapporteur welcomes that the Department of Social Welfare is operating safe houses and One Stop Crisis Centres, and that the Ministry of Health and Sport is establishing crisis centres in township hospitals to support survivors of gender-based violence.

2. Business and human rights, and land rights

24. While the Government continues to push forward with its development agenda around the country, the Special Rapporteur remains concerned about governance and transparency, and the impact of economic development projects on peoples' lives and rights. She repeats her call for Myanmar to address human rights issues in tandem with efforts to achieve the Sustainable Development Goals, and to ensure that safeguards are in place to avoid adverse impacts to communities and the environment.

25. The Special Rapporteur welcomes information that the Government is engaging in a multi-stakeholder consultation process with civil society and the private sector to develop a gem mining policy, but notes that the status of the proposed Gemstone Law that passed the upper house in 2017 is now unclear. She reiterates her call for the gem mining legal and policy framework that is adopted to contain safeguards for environmental protection, guard against corruption, ensure transparency and protect the rights of communities and miners.

Additionally, given that competition over natural resources is one of the drivers of conflict in Myanmar, she calls for meaningful discussions about equitable resource sharing and governance in the peace process. The Special Rapporteur further welcomes reports that Myanmar has re-engaged in the Extractive Industries Transparency Initiative.

26. Those who voice opposition to the Government's development agenda continue to be the target of repressive actions. During her mission, the Special Rapporteur spoke to civil society representatives who informed her that villagers in Hpa-An Township, Kayin State have faced threats to personal security and safety by quarry operators following expressing their objections to a quarry at Mount Lun Nya. The villagers are concerned about the negative impact of the quarry on their livelihoods and damage to the environment, with the mountain holding significant historical and cultural value for the community. The Special Rapporteur reiterates what she has said in the past in relation to all development projects: there must be genuine and transparent consultation with communities, environmental impact assessments should be undertaken, and environmental safeguards must be put in place.

27. The Special Rapporteur observes a lack of clarity in the status of the Special Economic Zones at Dawei and Kyaukphyu. In relation to Dawei, she notes the statement by 36 civil society organizations calling on the Government to address previous problems, conduct an environmental impact assessment and provide information to stakeholders. In relation to Kyaukphyu, in line with the Rakhine Commission Report recommendations, she calls on the Government to carry out a strategic environment assessment in Kyaukphyu and its surrounding area to garner expert analysis and enable public discussion about how the Special Economic Zone may affect communities and the environment.

28. The Special Rapporteur is concerned that the development of Myotha Industrial Park in Mandalay, which reportedly led to confiscation of 1,000 families' farmland, is being carried out without engagement with communities or adequate compensation for those impacted.⁷ Community relocation must occur after an inclusive planning process, which involves all stakeholders to mitigate the social, economic and environmental impacts. With a range of ambitious economic projects in the pipeline, including 55 hydropower dams, that are likely to have far-reaching economic and social impacts, it is crucial that the Government ensures consultation with communities to ensure that Myanmar's development is for the benefit and not the detriment of all people.

29. The Special Rapporteur was alarmed by the reported mob killing of Htay Aung, a member of the Federation of National Peasant Union who challenged land grabbing in northern Shan State, and calls for an investigation into his death and for those responsible to be held accountable. Land confiscation continues to be a significant issue, with the Central Committee for Re-scrutinizing Confiscated Farmlands and Other Lands having settled only 543 out of 5,735 complaints by November 2017. She welcomes information that the Government is attempting to resolve land issues but is concerned about proposed amendments to the 2012 Vacant, Fallow and Virgin Lands Management Law that fail to address major issues in the current law. Additionally, she is concerned that the amendments could lead to criminal charges against many farmers who work on land classified as vacant, fallow or virgin but is not the subject of a permit under the Law.

30. The draft Land Acquisition Law is of further serious concern. It would replace the 1894 Land Acquisition Act, and would remove protections contained in the colonial-era law. The new draft law provides for urgent acquisitions for a broadly defined public purpose to occur with only 48 hours' notice with no compensation payable in advance of acquisition. There are also concerns that the law does not comply with existing laws, including Myanmar's Constitution, and the National Land Use Policy. The Special

⁷ FIDH, Land of Sorrow.

Rapporteur welcomes the establishment of the National Land Use Council with a duty to formulate the National Land Law. As she has previously stated, an over-arching land law that is in line with international human rights and environmental standards, and adopted after transparent, inclusive consultation would solve many of the problems that relate to land confiscation.

D. Conflict-related rights violations and the peace process

31. As the world's attention is drawn to the recent crisis in Rakhine State, scant attention has been afforded to continued and escalating violence in Kachin, Shan and other conflict affected States in Myanmar. These armed conflicts continue to have a devastating impact on civilian populations, with clashes occurring in close proximity to civilian areas and internally displaced persons (IDPs) camps. The Tatmadaw is accused of using advanced military hardware, including fighter jets and helicopter gunships, as well as unmanned drones for surveillance. In 2017, approximately 15,000 people were newly internally displaced in Kachin and Shan States, two-thirds of whom were in Shan State. Many of these people have been able to return to their place of origin. However, approximately 5,000 IDPs were re-displaced following fighting in late December 2016 while an additional 20,000 people were displaced into China. It was reported in November 2017 that 1,300 people fled Chin State into Mizoram State in India following clashes between the Tatmadaw and Arakan Army.

32. In Kachin State, where sporadic violence and intermittent killings have been the norm in recent years, there has been an increase in the frequency and intensity of clashes between the Tatmadaw and Kachin Independence Army (KIA) since October 2017, resulting in deaths and the displacement of the civilian population. In January 2018, the Tatmadaw claimed to have seized 22 outposts, 4 main camps, and 18 small camps belonging to the KIA between mid-November 2017 and early January 2018. For its part, the KIA has carried out attacks on Tatmadaw bases, including an attack on a base in Shaduzut on 30 December 2017 in which two Tatmadaw soldiers are reported to have been killed; and destroyed bridges on the Myitkyina-Putao highway in January 2018. In late December 2017, the Tatmadaw conducted air attack on KIA positions along the Shan and Kachin border, and on 19 January 2018, heavy artillery fire by the Tatmadaw, reportedly sent 700 IDPs fleeing camps in Sumprabum Township, Kachin State, to seek cover in a nearby forest. Aerial bombing by the Tatmadaw in an amber mining area in Tanai killed four civilians and trapped up to 5,000 civilians in the area.

33. In central and southern Shan, ongoing clashes between Tatmadaw and the Restoration Council of Shan State, a signatory of the Nationwide Ceasefire Agreement (NCA), continue to impact civilians. In northern Shan State, armed clashes between the Tatmadaw and the TNLA has also displaced civilians. Fighting in Namtu township on 22 and 23 December 2017 displaced 300 people while clashes in Namshan township resulted in the displacement of 1,300 people to Kyaukme and Mongngawt townships. As of mid-February, all those displaced have been able to return home. Two helicopter gunships were allegedly used by the Tatmadaw in an attack on TNLA forces in Kutkai township on 5 February 2018. The Special Rapporteur calls on all parties to the conflict to respect the principle of distinction and to take immediate steps to protect civilians.

34. Civilians, including children, continue to be killed and maimed by landmines and other explosive devices in different parts of the country. In 2017, a total of 176 casualties were reported, with 52 deaths, including eight children. Over the last two years, there was a landmine victim on average every three days, with a child victim out of every three. In 2017, there were reports of the new use of landmines and resulting casualties along the Myanmar and Bangladesh border affecting the Rohingya population fleeing the post-25 August 2017 violence. The Special Rapporteur calls on all parties to immediately stop

laying new mines, and urges the Government to make speedy progress on eradication of mines and increasing mine awareness.

35. Humanitarian access by international agencies continued to decline throughout 2017 and is currently at the lowest point in four years and there are close to 99,000 people displaced in Kachin and Shan. Since May 2016, the Government has not permitted international humanitarian access to non-government controlled areas to deliver assistance. Access to areas under Government control also declined in 2017. National humanitarian organizations have become the mainstay in the delivery of humanitarian support to nearly 100,000 people in Kachin and Shan, but the needs of the most vulnerable are not being met. These actors too have faced increased restrictions in reaching IDPs and other affected civilians in conflict-affected areas of Kachin State, including Hpakant, Tanai and Sumprabum. There continues to be over 100,000 refugees on the Thai-Myanmar border, some since the 1990s, and who need continued assistance. Additionally, there are 6,200 displaced people living on the Thai border with Shan State in Myanmar for whom aid was cut by international donors in October 2017, but report they are unable to return home because of ongoing conflict and militarization.

36. In January 2018, a military tribunal sentenced six Tatmadaw soldiers to 10 years' imprisonment for the killing last year of three IDPs from Maing Hkawng, Mansi township. The Special Rapporteur welcomes any efforts to achieve accountability but notes with concern the widespread impunity that prevails for offences by the Tatmadaw, including for ranking officers.

37. On 30 October 2017, a 14-year-old boy, Mai Cho Min Htwe, known as Aik Yan, was sentenced to two years in prison without a trial for alleged association with an armed group in Shan State. The charge arose after a soldier found a picture on Aik Yan's phone showing him in a TNLA uniform. Aik Yan was reportedly beaten in detention, deprived of sleep, food and water, and did not have legal assistance for nearly a month, which is in contravention of the Convention on the Rights of the Child to which Myanmar is party. The Special Rapporteur calls for his unconditional release. In 2017, at least 20 children were arrested and detained for being allegedly associated with armed groups under the 1908 Unlawful Associations Act.

38. In December, the fourth Report of the Secretary-General on children and armed conflict in Myanmar was submitted to the Security Council pursuant to resolution 1612 (2005). From 1 February 2013 to 30 June 2017, cases of recruitment and use of child soldiers by the Tatmadaw reduced, although 856 complaints were verified by the Country Task Force on Monitoring and Reporting. The Special Representative for Children and Armed Conflict has been tasked with undertaking a one-year update to be published in August 2018 to examine the use of child soldiers in relation to the recent violence in Rakhine State.

39. On 20 December 2017, three Karenni National Progressive Party (KNPP) soldiers and a civilian were shot dead by the Tatmadaw. The Special Rapporteur has received conflicting accounts, with the Tatmadaw claiming that they were killed in a shootout but the KNPP, which signed a bilateral peace agreement with the Government in 2012, says they were summarily executed after being detained by the Tatmadaw. The Special Rapporteur calls on the authorities to initiate a credible investigation into the killings in Kayah State by a body that is independent of the Tatmadaw and to hold perpetrators responsible regardless of rank or position. At least eight men, including the leader of the Kayah National Party, were subsequently arrested and five were sentenced to 20 days in prison after leading demonstrations in the State capital against the Tatmadaw. They were convicted under Section 19 of the 2011 Peaceful Assembly and Peaceful Procession Law for holding a demonstration without prior approval from the authorities.

40. Against this background, the peace process appears to be losing its momentum. Ethnic armed organizations have complained that the reason for this is largely due to the

failure of the Government and the Tatmadaw to take steps to earn the trust of stakeholders. In December 2017, the Government and Tatmadaw blocked national dialogues to be held by the Arakan Liberation Party in Rakhine State and elsewhere, and armed Tatmadaw soldiers interfered with and barred township level consultations with members of the public in Shan State from taking place. The consultations had been organized by the Committee for Shan State Unity, chaired by Nationwide Ceasefire Agreement (NCA) signatory group the Restoration Council of Shan State and agreed to by the Government. The third meeting of the 21st Century Panglong Conference has been postponed to early May 2018. On 13 February 2018, the New Mon State Party (NMSP) and Lahu Democratic Union signed the NCA. This is a welcome development in the peace process, however the Special Rapporteur is disturbed by information that the NMSP signed following pressure from the Tatmadaw who had reportedly returned to areas under the NMSP control for the first time in decades despite the two parties having a longstanding bilateral ceasefire agreement. She also calls on the Government to take measures to ensure meaningful participation of women in the peace process, reminding it that only 17 per cent of participants were women in the last 21st Century Panglong Conference.

E. Rakhine State

1. Violence following 25 August 2017 in northern Rakhine

41. Prior to the reported attacks of 25 August 2017, the Special Rapporteur had raised alarm at escalating tensions and a military build-up in Rakhine State. Additionally, the OHCHR rapid response mission to Cox's Bazar in September 2017 gathered information that in the days leading up to 25 August 2017, security forces imposed further restrictions on Rohingya access to markets, medical facilities, schools and religious sites.⁸

42. In the early morning of 25 August 2017, just hours after the release of the Rakhine Commission Report, members of the Arakan Rohingya Salvation Army (ARSA) reportedly launched attacks on an army base and 30 Border Guard Police posts located across the three townships of Buthidaung, Maungdaw, and Rathedaung in the north of Rakhine State. According to the Government, at least 59 armed attackers were killed along with 10 police officers, one immigration officer and one soldier. As a response, the Myanmar military and security forces conducted "clearance operations" across the same three townships. On 26 August 2017, the Anti-Terrorism Central Committee declared that ARSA was a terrorist organization under the Counter-Terrorism Law 2013, and its supporters were responsible for acts of terrorism. The Government stated publicly that "clearance operations" had ceased in Rakhine by 5 September 2017. However, first-hand accounts from refugees in Cox's Bazar together with reports and satellite images from international non-government organizations, media, and sources within Myanmar established that heavy attacks and security operations continued at least until November 2017.⁹

2. Allegations of human rights violations

43. The Special Rapporteur is alarmed by the pattern of violence that was described to her by refugees who fled to Cox's Bazar since 25 August 2017. This is the same pattern of violence she outlined in her previous report¹⁰ following the 9 October 2016 attacks in Rakhine. During her mission to Bangladesh, she spoke with over 100 people who had fled Rakhine State as result of the post-25 August violence, and she has received reports of serious human rights violations and abuses against Rohingya. The High Commissioner for

⁸ OHCHR rapid response mission to Cox's Bazar, Bangladesh, 13-24 September 2017.

⁹ See for example HRW, Burma: 40 Rohingya Villages Burned Since October (December 2017).

¹⁰ A/HRC/34/67.

Human Rights has characterized the crimes committed in the post-25 August period as a “textbook case of ethnic cleansing” and has raised the question of whether genocide has been committed against the Rohingya.

(a) Large-scale forced displacement

44. The magnitude of the violence of the “clearance operations” is reflected in the fact that 270,000 refugees fled to Bangladesh in the first two weeks following the 25 August attacks.¹¹ This doubled within a month,¹² with the vast majority of refugees being Rohingya. In November, the Government reported that 26,700 Rakhine Buddhists and other ethnic groups such as Mro, Daingnet, and Hindu groups that lived near Rohingya communities were internally displaced during the violence. By February 2018, the total number of refugees that fled since August 2017 stood at 671,000¹³ and the exodus of Rohingya to Bangladesh continues. Furthermore, there are uncounted Rohingya staying in areas not accessible to humanitarian workers in Cox’s Bazar District, and an estimated 5,300 individuals in the “no-man’s land” between Myanmar and Bangladesh. By mid-February 2018, the United Nations reported that 2,166 Rohingya arrived in Bangladesh since the beginning of the month.¹⁴ The Special Rapporteur notes with alarm that the people continuing to flee from Rakhine are doing so because of fear, food insecurity and blocked access to services.

(b) Burning and torching of buildings to intentionally kill

45. The Special Rapporteur is troubled by the consistent accounts from refugees of entire villages deliberately torched, including the burning of homes, crops, businesses and religious sites, lit by large munitions fired on villages or by hand. Human rights organizations have published satellite images of thousands of homes burned in hundreds of Rohingya villages in all three townships. The images show that where there were neighbouring Rohingya and Rakhine communities in the same village, the Rohingya areas were burned, while the Rakhine areas remain intact. The accounts given to the Special Rapporteur by refugees in Cox’s Bazar establish a very clear pattern in the conduct of these attacks; homes were set ablaze by security forces, at times with people trapped inside, unable to escape. Some survivors recounted how they escaped because their attackers thought they were dead, and surviving parents recounted how they witnessed security forces throw their children into fires that were engulfing their homes.

(c) Extrajudicial killings, threats to physical integrity, torture and other cruel, inhuman and degrading treatment

46. The Special Rapporteur is distressed by credible reports of intentional and indiscriminate killings including by gunfire, artillery explosions, stabbings, throat slittings, beatings, and burning people alive. She is alarmed by the reported discovery of mass graves. It has been conservatively estimated that at least 6,700 Rohingya, including at least 730 children under the age of five were killed in the first month of violence.¹⁵ According to those that the Special Rapporteur spoke with from all three townships, there was a clear pattern of violence. Tatmadaw and other security forces came to their villages after 25 August 2017 and called out families from their homes, singling out men and boys who were subsequently taken away or executed in front of their families. Often women and girls were

¹¹ UNHCR, Bangladesh: Refugee camp capacity exhausted; thousands in makeshift shelters (September 2017).

¹² ISCG Situation Update, 10 October 2017.

¹³ ISCG Situation Report 25 February 2018.

¹⁴ Id.

¹⁵ MSF, Health Survey in Kutupalong and Balukhali Refugee Settlements, November 2017.

physically or sexually assaulted, or killed in front of family. Survivors described a litany of violations including severe beatings, stabbings, and sexual violence.

47. The Special Rapporteur is particularly saddened by accounts of the targeting and killing of Rohingya children during the attacks. She heard personal accounts from surviving parents and grandparents of the loss of their children at the hands of security forces. Recent United Nations figures estimate 185,000 Rohingya children remain in Rakhine State. She is alarmed by the challenges arising from the fact that nearly 60 per cent of the refugee population is children with an estimated total of 534,000 Rohingya refugee children from last year and previous exoduses from Rakhine – including a large number who have been orphaned.¹⁶ These children are in need of healthcare, including psychosocial services to help address their trauma.

(d) Sexual and gender-based violence

48. The Special Rapporteur notes credible allegations of widespread sexual violence committed by the Tatmadaw and other security forces against women and girls, including gang rape involving multiple perpetrators. The Special Rapporteur listened to personal accounts from survivors, and family witnesses describing women and girls killed after being raped, including burned alive in their homes, unable to escape while they were unconscious or bound. The accounts given by witnesses and survivors are supported by the reports from doctors in Cox's Bazar, who have described seeing evidence of sexual assaults among newly arriving refugees seeking medical treatment, including wounds from beatings, forced penetrations and vaginal lacerations.

(e) Enforced disappearance and incommunicado detention

49. The Special Rapporteur reminds the Government they have a duty to make available information about people who are in detention following both the 2016 and 2017 episodes of violence, and afford them the right to a fair trial. She met many refugees who said family members and relatives remain missing, having been taken when the Tatmadaw came to their villages. An unknown number of people are reported to have been arrested under the Counter-Terrorism Law 2013, and may be held in incommunicado detention with little or no information available as to their identity, whereabouts and charges against them. The Special Rapporteur is disturbed by reports of enforced disappearances; with people reported to have been taken away by security forces with no information as to their arrest, whereabouts or well-being given to their families.

3. Humanitarian Situation

50. The Special Rapporteur has repeatedly expressed concern for the vulnerable populations in Rakhine State that are hugely dependent on aid. Humanitarian access for most United Nations agencies and international organizations was severely restricted by the Government in the lead up to and the period following 25 August 2017; and most agencies and international organizations are still unable to enter northern parts of Rakhine to conduct a comprehensive needs assessment or to determine the extent of internal displacement.

51. The Special Rapporteur is extremely concerned by the lack of food security and further restrictions on Rohingya remaining in Rakhine. She continues to receive information of denial of access to food markets, crops, health services, humanitarian aid and confiscated livestock that has exacerbated their insufficient means for survival.¹⁷

¹⁶ UNICEF, *Lives in Limbo* (February 2018).

¹⁷ AI, *Myanmar: Fresh evidence of ongoing ethnic cleansing as military starves, abducts and robs Rohingya* (February 2018).

52. With 884,000 refugees sheltering in Bangladesh from Myanmar,¹⁸ including Rohingya who fled there in the 1990s, as well as those displaced by violence following 9 October 2016 and 25 August 2017, Bangladesh continues to face an enormous humanitarian emergency. The upcoming monsoon and cyclone season threatens to bring landslides, flooding and foreseeable casualties; the Special Rapporteur implores the international community to assist the Government of Bangladesh to undertake all necessary preparations, including by preparing emergency evacuation and relocation plans to protect the Rohingya from the coming disaster within a disaster.

4. Discrimination and citizenship

53. The Special Rapporteur has previously described how discrimination against the Rohingya is entrenched in a system of law, policy and practice. If Myanmar truly wants to break the cycle of violence in Rakhine, this can only be achieved by recognizing the Rohingyas' right to self-identify, restoring their citizenship and upholding their human rights. She emphasizes the importance of moving beyond talk to immediate concerted actions to implement the recommendations put forth in the Rakhine Commission Report on the issue of citizenship without further delay, including through legislative reform.

54. The Special Rapporteur expresses concern about the recently released Report to the People on the Progress of Implementation of the Recommendations on Rakhine State that states a road map has been developed for removing movement restrictions for people who have National Verification Cards (NVCs) or other form of identification. Disturbingly, this appears to indicate that freedom of movement is dependent on holding an NVC, which is contrary to the Rakhine Commission recommendation that freedom of movement be afforded to all irrespective of religion, ethnicity or citizenship status.

55. During her mission to Bangladesh, members of the Rohingya community expressed apprehension about the ongoing citizen verification exercise. The Committee for Implementation of Recommendations on Rakhine State reports that 5,162 people were issued NVCs in 2017, but that only 118 people have been verified as citizens, and 105 as naturalized citizens. The Special Rapporteur has received reports of people being coerced into receiving NVCs and notes Rohingya refugees who have recently fled to Bangladesh have pointed to efforts forcing them to accept NVCs as a motivating factor in their decision to leave.

5. Repatriation

56. The Special Rapporteur has previously raised concerns about the Bangladesh-Myanmar Arrangement on Return of Displaced Persons from Rakhine State (Repatriation Agreement), and notes the recent signing by the two countries of a Physical Arrangement on Repatriation of Displaced Myanmar Residents from Bangladesh. The Special Rapporteur observes that current conditions in Rakhine State appear worse now than they were before 25 August 2017. Access for international observers to monitor the situation in Rakhine State must be a pre-condition before returns can take place. Neither agreement provides for the refugees to return to their place of origin. The Special Rapporteur is concerned that despite Myanmar's assurances that Rohingya will not remain in temporary relocation centres for "a long period of time", any Rohingya who do return may remain in such facilities for years much like the experience of Rohingya who have lived in IDP camps in and around Sittwe for six years. The Special Rapporteur reiterates her previous statement that the citizenship verification process must be separate from the repatriation process, and that the provision of the Repatriation Agreement that compels returning Rohingya to undergo the NVC process undermines the voluntary nature of both repatriation and the NVC process.

¹⁸ ISCG Situation Report, 25 February 2018.

57. The Special Rapporteur refers with concern to the Government's announcement in September 2017 that it was taking control over management of burned land under the Natural Disaster Management Law 2013. She questions the Government building new villages for ethnic groups including Hindus and ethnic Mro, who lost homes during the violence last year, while excluding the Rohingya. The Special Rapporteur is troubled by information received from individuals who visited northern Rakhine recently, including some who were flown over the area and the recent satellite images of significant new construction in areas that were once home to Rohingya villagers.¹⁹ They show clear signs of extensive bulldozing of former Rohingya villages with huge redevelopment projects already underway in some areas. Development on this massive scale is clearly being undertaken with the full knowledge of the Government. The Special Rapporteur is further troubled by reports that Rakhine Buddhist families from other parts of the State are being paid to move to areas once home to Rohingya.

58. The Special Rapporteur was extremely concerned to see a list of 1,311 names together with photographs published under the heading "Members of ARSA Terrorist Group" in state media and on the Information Committee's Facebook page. This is a clear violation of the right of those named to a fair trial and casts further doubt on the sincerity of Myanmar regarding repatriating Rohingya from Bangladesh. Further, the list included at least 46 children which is extremely troubling. She reminds the Government that under the Child Law 1992 it is unlawful to publish information in newspapers revealing the identity of a child who is accused of committing an offence.

59. The Special Rapporteur is particularly concerned by recent reports that Bangladesh has sent a list of 8,032 refugee names to Myanmar to be processed for repatriation. No information has been made available as to the methodology underlying the list; whether the people named on it were consulted; and whether they do in fact wish to return. Repatriations should not take place until safeguards are in place to ensure that Rohingya can return voluntarily and in conditions that are safe, dignified, and sustainable.

6. Central Rakhine State

60. The Special Rapporteur is also troubled by the prevailing situation in central Rakhine where Muslims continue to be subjected to restrictions on their freedom of movement, and face continued threats and hostility from their Buddhist neighbours. The Government has announced a pilot project to begin closing IDPs camps that have housed approximately 120,000 people, mostly Rohingya, since 2012. Humanitarian access to those remaining in camps in central Rakhine has also been constricted since 25 August 2017. However, the authorities reportedly plan to build houses in current camp vicinities rather than allowing people to return to their places of origin. The Special Rapporteur is worried that this proposal will serve only to entrench community segregation and consign Rohingya to precarious conditions, as reportedly Muslim property burned is now under Government control. While the Special Rapporteur encourages the closure of the camps, measures must be undertaken in accordance with the Rakhine Commission Report recommendations and under conditions that ensure genuine consultation with affected communities and the possibility of voluntary returns to places of origin.

7. Accountability

61. The Special Rapporteur remains alarmed by the Government of Myanmar's insistence that no human rights violations and abuses were committed by the Tatmadaw and other security forces. This is demonstrated by the Tatmadaw's internal investigation report of November 2017 that concluded security forces had not committed any abuses in Rakhine State during "clearance operations" and there were no deaths of "innocent" people. The only exception to the Tatmadaw's otherwise full rejection of allegations of violations in the

¹⁹ HRW, Burma: Scores of Rohingya Villages Bulldozed (February 2018).

post-August 2017 violence is an admission its soldiers and some local Rakhine villagers killed 10 men claimed to be terrorists at Inn Din village, Maungdaw Township in September 2017 following a second internal investigation. The Special Rapporteur calls on Myanmar to undertake a genuine, impartial investigation into the post-25 August 2017 violence and to hold perpetrators accountable regardless of their rank or official position.

62. Measures towards accountability should not only focus on the Tatmadaw; the Special Rapporteur has received information that ARSA is alleged to have forcibly recruited young men, recruited and used children in its attacks, burned three villages in Maungdaw,²⁰ used explosive weapons including landmines and improvised explosive devices, and engaged in killings and abductions, including of Rohingya people. All those responsible must be held accountable. Additionally, Rakhine Buddhist villagers who are found to have been involved in attacks against Rohingya villagers should also be held accountable.

8. Reprisals

63. The Special Rapporteur is extremely concerned and horrified by reported violent reprisals by Tatmadaw against civilians she met with following her Government-cleared visit to Rakhine State in January 2017. She raises issue with two reported incidents of reprisals. A boy drew a picture of his uncle who had been shot and killed by Tatmadaw for having spoken to the Special Rapporteur during her visit. The boy had depicted what happened to his uncle immediately after the Special Rapporteur left their village. In another village that the Special Rapporteur visited, men were reportedly beaten and women raped by the Tatmadaw immediately following her visit. The Government must investigate these reprisals and hold the perpetrators accountable.

III. Conclusion

64. **Accountability must be the focus of the international community's efforts to bring long-lasting peace, stability and democratization to Myanmar. This must be aimed at the individuals who gave the orders and carried out violations against individuals and entire ethnic and religious groups. The government leadership who did nothing to intervene, stop, or condemn these acts must also be held accountable.**

65. **To date, accountability for the crimes committed following 25 August 2017, and 9 October 2016, is elusive. A repeat of violence in Rakhine State was foreseeable and, as such, possibly preventable. As more information about the post-25 August 2017 violence becomes available and following the Special Rapporteur's mission to Bangladesh, she is increasingly of the opinion that the events bear the hallmarks of genocide and therefore calls in the strongest terms for accountability.**

66. **The Special Rapporteur calls for a thorough, impartial and credible investigation to be conducted without delay and perpetrators to be held responsible for the alleged crimes that were committed in Rakhine State since 9 October 2016 and 25 August 2017, and the violations that continue today. To do so, it is imperative to establish a documentation structure to collect, map and preserve evidence of human rights violations and abuses, and testimony from refugees in Cox's Bazar.**

IV. Recommendations

²⁰ ICG, Myanmar's Rohingya Crisis Enters a Dangerous New Phase.

67. The Special Rapporteur reiterates all of her previous recommendations addressed to the Government of Myanmar that have not yet been implemented and recommends the following:

68. With regards to rule of law the Special Rapporteur recommends that the Government of Myanmar:

(a) Develop a comprehensive programme of legislative reform to bring Myanmar's domestic legal system into line with international human rights obligations and to protect the rights of the country's entire population;

(b) Revise the 1982 Citizenship law to bring it into line with international standards and best practices including through the abolition of distinctions between different types of citizens;

(c) Amend the four race and religion protection laws of 2015 including the removal of provisions undermining the rights of women, children and religious minorities;

(d) Revise the Bill for Protection Against Hate-Speech to ensure that it combats hate speech in a manner that does not undermine freedom of expression and other internationally protected human rights;

(e) Ensure that civil society and the entire public are consulted in the legislative process, including the process towards the Law on the Prevention of Violence Against Women, in compliance with Myanmar's obligations under CEDAW;

(f) Ensure that the draft Child Rights Law complies with the Convention on the Rights of the Child and ILO Conventions with provisions to end child recruitment into armed forces;

(g) Ensure that the draft Prisons Law is revised to uphold international standards on the treatment of prisons, including the UN Standard Minimum Rules for the Treatment of Prisoners;

(h) Amend or repeal all provisions which are used to unfairly target the people of Myanmar, including but not limited to: Section 66(d) of the 2013 Telecommunications Law, Section 17(1) of the 1908 Unlawful Associations Act, Section 19 of the 2011 Peaceful Assembly and Peaceful Procession Law, Sections 500, 505(b) and 505(c) of the Penal Code, Section 25 of the 2014 News Media Law, and Section 3 of the 1923 Official Secrets Act.

69. With regard to democratic space, the Special Rapporteur recommends that the Government of Myanmar:

(a) Immediately cease the arbitrary arrest and prosecution of those exercising their rights to freedom of expression, assembly and association, release all those detained for exercising their rights, and release all remaining political prisoners;

(b) Protect the fundamental rights to freedom of expression, assembly and association of all in Myanmar, including journalists, members of civil society and human rights defenders;

(c) Further amend the Telecommunications Law so that it complies with international standards, including by repealing Section 66(d);

(d) Condemn publicly all acts of incitement to discrimination, hostility and violence against minorities, including on social media, while upholding freedom of expression;

(e) Repeal Section 17(1) of the Unlawful Associations Act and Section 505 of the Penal Code, and withdraw all charges currently brought against individuals under these provisions;

(f) Release and drop charges against all children detained in relation to association with armed groups and treat all associations of children with armed groups as forced, not voluntary;

(h) Conduct prompt, thorough, independent and impartial investigations and systematically ensure redress for any violence, threats, acts of intimidation or harassment against members of the media, human rights defenders and civil society;

(i) Investigate and remedy all allegations of excessive use of force by police and other law enforcement officials and take the necessary steps to ensure that perpetrators are prosecuted and convicted, and ensure all police and other law enforcement officials receive training in accordance with international standards including the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;

(j) Reinstate all students who have been expelled from their universities for exercising their rights to freedom of expression and assembly;

(k) Amend the Peaceful Assembly and Peaceful Procession Act to bring it into line with international standards and withdraw any administrative directives that further infringe on the right to freedom of assembly and association;

(l) Immediately give access to all parts of Rakhine, Kachin and Shan States to journalists and human rights defenders;

70. With regards to economic, social and cultural rights, the Special Rapporteur recommends that the Government of Myanmar:

(a) Continue to seek international assistance and cooperation to progressively realize the rights recognized in the International Covenant on Economic, Social and Cultural Rights in an inclusive manner that upholds the obligation to guarantee rights without discrimination;

(b) Ensure full access to health, education and other basic services to all, particularly in Rakhine State, without discrimination, and work with ethnic health and education organizations to build inclusive health and education structures;

(c) Incrementally raise the age of compulsory education (currently age 10) to match the minimum employment age (age 14);

(d) Enact a law on the rights of children that are compliant with Myanmar's international obligations;

(e) Ensure universal birth registration by expanding registration efforts to all parts of Myanmar;

(f) Take a rights-based approach to implementing the Sustainable Development Goals, ensure all development projects are undertaken transparently in accordance with the law and international standards, and have environmental, social and human rights safeguards;

(g) Ensure all natural resources and land policy development and law reform occurs transparently and inclusive participation of all stakeholders in consultation and that discussions about resource sharing occurs in the peace process;

(h) In relation to all development projects, engage in genuine, transparent consultation with all members of affected communities, make relevant information freely and easily accessible to them, and establish accessible feedback and complaint mechanisms;

(i) Ensure that environmental impact assessment procedures are consistently implemented, and environmental safeguards are put in place;

(j) Enact, following an extensive and inclusive consultation process, a new land law in compliance with the National Land Use Policy and international standards that includes environmental, social and human rights protection;

(k) Enact, following an extensive and inclusive consultation process, comprehensive legislation and regulations to govern extractive industries and ensure they include transparency requirements and environmental, social and human rights protection;

(l) Ensure full implementation of the Guiding Principles on Business and Human Rights and protect against any human rights abuse within the territory of Myanmar by third parties, including local and international businesses through law and policy;

71. With regards to conflict-related rights violations and the peace process, the Special Rapporteur recommends that the Government of Myanmar and all parties to the conflict, respectively:

(a) Immediately cease all hostilities in conflict-affected areas, including Kachin and Shan States;

(b) Ensure humanitarian access to areas affected by conflict and to affected populations;

(c) Ensure that all violations committed in the context of conflict are investigated by an independent, impartial body, and those responsible for violations are held accountable regardless of rank or position;

(d) Cease the use of landmines by all parties and immediately implement measures to demine areas of the country that are affected by landmines and unexploded ordnance and remnants of war;

(e) End the recruitment of child soldiers by the Tatmadaw and other parties to the conflict;

(f) Investigate the killings of three KNPP soldiers and one civilian on 20 December 2017 and hold those responsible accountable, regardless of rank and position;

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

72. With regards to, Rakhine State, the Special Rapporteur recommends that the Government of Myanmar and local authorities:

(a) Cease all violent, hostile and discriminatory action against all communities in Rakhine State;

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

(c) Conduct prompt, thorough, independent and impartial investigations into all alleged violations of international human rights law, and hold perpetrators to account;

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

(e) Desist all dehumanizing narratives and descriptions of the Rohingya, and make genuine efforts to remove tensions and hostility between communities;

- (f) Immediately lift all restrictions on freedom of movement in Rakhine State;
- (g) Review and revise all laws, regulations, rules, local orders, instructions and other policies and practices that are discriminatory in law and in practice;
- (h) Seek durable solutions for the persons who have lived in displacement camps since 2012 that do not result in community segregation, ensuring that all solutions are identified in consultation with the affected communities and that any relocation is entirely voluntary;
- (i) Make publicly known the number of people who are currently detained in Rakhine and their whereabouts, uphold the rights of accused persons by ensuring that all due process guarantees are respected and fulfilled, and continually keeping their families informed;
- (j) Ensure that children are detained only as a measure of last resort and, ensure that legal proceedings are completed as quickly as possible and that detention is for the shortest possible duration;
- (k) Take concrete steps to address long-standing challenges to social and economic development through a human rights-based approach, while ensuring the participation of affected communities and fostering reconciliation and greater integration between communities;
- (l) Only continue the citizenship verification process after genuine consultation with all communities in Rakhine State and establishment of safeguards to ensure that it is voluntary;
- (m) Work with the United Nations High Commissioner for Refugees on repatriation of refugees from Bangladesh, establish conducive conditions in Rakhine State, and put safeguards in place to ensure that returns comply with international standards of voluntariness, sustainability, dignity and safety; also allow refugees to return to their place of origin, not to camps, restore citizenship and recognize full rights, freedom of movement; and provide compensation to refugees for burned, damaged or looted property and goods.

73. Cooperate fully with United Nations, its agencies and bodies, including by fulfilling its commitment to the opening of an Office of the High Commissioner for Human Rights country office with a full mandate; granting access to the Human Rights Council Independent International Fact Finding Mission on Myanmar and re-granting access to as well as resume full cooperation with the Special Rapporteur on the situation of human rights in Myanmar.

74. To the international community, Special Rapporteur recommends that Member States:

- (a) Act to ensure that the Government of Myanmar immediately starts taking concrete measures to carry out its commitments to implement the Rakhine Commission Report recommendations and towards a successful peace process, recognizing that impunity must be addressed and perpetrators of large scale human rights violations are brought to account;
- (b) Remain seized of the human rights situation in Myanmar in all relevant intergovernmental forums;
- (c) In relation to business enterprises operating in Rakhine, either directly or through business relationships, urges the undertaking of heightened human rights due diligence to ensure that they are not causing or contributing to human rights abuses, or directly linked to human rights abuses through their business relationships;

(d) Ensure that the home States of companies operating in Myanmar fulfil their duties to protect human rights as called for by the Human Rights Council in its resolution 31/24;

(e) Continue to engage with the Government of Myanmar in relation to its progressive realization of the rights recognized in the International Covenant on Economic, Social and Cultural Rights, to continue to monitor the situation, assess progress and hold Myanmar accountable to its international obligations;

(f) Engage and fund programmes on a principled basis, with perimeters and funding contingent on conscionable action and genuine efforts for reform and to find consensus on engagement strategy with the Government of Myanmar, placing human rights at the forefront;

(g) With regard to Rakhine State, establish under the auspices of the United Nations, a structure based in Cox's Bazar, Bangladesh supported by various necessary expertise for a duration of three years to investigate, document, collect, consolidate, map, and analyze evidence of human rights violations and abuses; and to maintain and prepare evidence in a master database to support and facilitate impartial, fair and independent international criminal proceedings in national or international courts or tribunals in accordance with international criminal law standards. The focus must include incidents of violence following the attacks on 9 October 2016 and 25 August 2017 in Rakhine State, including acts that ARSA and other individuals have been alleged to commit;

75. With regards to the refugee situation in Bangladesh, the Special Rapporteur recommends that the Government of Bangladesh:

(a) Continue with its principled approach to the situation of the refugees in Cox's Bazar ensuring returns are voluntary, determined in consultation with individuals, who are informed, and conditions are confirmed to be safe, dignified, and sustainable;

(b) Work with international humanitarian partners to devise a joint readiness response plan for the monsoon and cyclone season that includes calculations for the refugee population in Cox's Bazar with evacuation and relocation contingencies;

(c) Continue to speedily cooperate with international organizations and facilitate their access and activities in Cox's Bazar.

76. With regards to the Myanmar refugee situation in Thailand, the Special Rapporteur recommends that the Government of Thailand continues to provide assistance to the refugees at the Thailand-Myanmar border.

77. To the UN and its agencies, the Special Rapporteur recommends:

(a) Under the leadership of the Secretary-General, arrive at a consensus for a comprehensive and coordinated approach to UN action and engagement in Myanmar, including peacebuilding, development and humanitarian assistance, with human rights principles at the forefront.

(b) Conduct a comprehensive 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 regarding the implementation of its humanitarian and protection mandates and within the Human Rights Up Front framework. The external review should assess whether the UN and international community could have prevented or managed the situation differently that occurred regarding the Rohingya and in Rakhine State, and make recommendations for accountability if appropriate.

(c) **Recognize the right of all groups, including the Rohingya, to self-identify and use the name by which they identify in all public statements.**

Annex I



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Permanent Representative

No. 158 / 3- 27 / 91

7 June 2017

Dear Madam Special Rapporteur,

I have the honour to inform you that I have submitted your letter dated 29 May 2017 proposing a visit to Myanmar, ahead of the presentation of a report to the General Assembly in October 2017.

In response to my communication, my headquarters is requesting a written statement by you expressing that your proposed visit has nothing to do with the Fact-finding Mission to Myanmar.

Please accept, Madam Special Rapporteur, the assurances of my highest consideration.

Warm regards,

(Htin Lynn)

Ambassador and Permanent Representative

Ms. Yanghee Lee
United Nations Special Rapporteur
on the situation of human rights in Myanmar

Copy to:

- Ms. Raja Azwa Petra
Human Right Officer, Asia-Pacific Section
Field Operations and Technical Cooperation Division
Office of the United Nations High Commissioner for Human Rights

Annex II

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU CONSEIL DES
DROITS DE L'HOMME

**Mandate of the United Nations Special Rapporteur on the situation of human rights in
Myanmar
established by the Human Rights Council**

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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE HUMAN
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8 June 2017

Excellency,

In reference to your letter of 7 June 2017, I would like to confirm that my country visit will be undertaken strictly in the context of implementing the mandate entrusted to me by the Human Rights Council.

As you are aware, the mandate that I discharge as the Special Rapporteur on the situation of human rights in Myanmar was first established in 1992 under the Commission on Human Rights Resolution 58 and extended annually. Human Rights Resolution 25/26 adopted on 15 April 2014 broadened the mandate to report on the progress in the electoral process and reform in the run-up to the 2015 election and Human Rights Resolution 31/24 adopted on 24 March 2016 broadened the mandate further to include identifying benchmarks for progress and priority areas for technical assistance and capacity-building.

The latest resolution to extend my mandate, Human Rights Resolution 34/22 adopted on 24 March this year requests that I present an oral progress report to the Human Rights Council at its 35th session and to submit a report to the Third Committee at the 72nd session of the General Assembly and to the Council at its 37th session. I was also invited to continue to monitor the situation of human rights in Myanmar and to measure progress in the implementation of the recommendations made by the Special Rapporteur.

As such my request to conduct a country visit next month is in meeting the mandate entrusted to me by the Human Rights Council in preparation for the report to be submitted to the Third Committee at the 72nd session of the General Assembly.

I look forward to receiving confirmation of the dates for my next country visit as proposed. In the meantime, please accept, Excellency, the assurances of my highest consideration.

A handwritten signature in black ink that reads "Yanghee Lee". The signature is written in a cursive, flowing style.

Yanghee Lee
United Nations Special Rapporteur on the situation of human rights in Myanmar

Annex III

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE
L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE HUMAN
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Mandate of the United Nations Special Rapporteur on the situation of human rights in Myanmar established by the Human Rights Council

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12 February 2018

Excellency,

Thank you for your letter dated 31 January 2018. As I said in my end of mission statement last week, I remain ready to work with the government of Myanmar.

In the spirit of cooperation, transparency, and engagement, I have attached a list of questions to the Government of Myanmar. To continue to be fair and impartial, as I have always prioritized, I would appreciate your early response or no later than 23 February, as answers to these questions will contribute to my upcoming report to the Human Rights Council.

In the meantime, please accept, Excellency, the assurances of my highest consideration.

A handwritten signature in black ink, reading "Yanghee Lee".

Yanghee Lee

United Nations Special Rapporteur on the situation of human rights in Myanmar

QUESTIONS FOR GOVERNMENT OF MYANMAR FROM UN SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS IN MYANMAR

Recommendations and joint benchmarks

1. Please provide an update on your plans to implement the recommendations in my previous report.
2. Please provide an update on the implementation of the proposed joint benchmarks in my report to the Human Rights Council of March 2017.

Law and judicial reform

3. Please provide an update on plans for constitutional reform.
4. Please provide an update on any developments in judicial reform and capacity building.
5. Please provide an update on any reform to the process by which bills are drafted and tabled, including on procedures and activities for consultation with stakeholders, including civil society, in respect of draft laws.
6. I refer to the non-exhaustive list of legislation which are not compatible with human rights standards in my report to the Human Rights Council of March 2016. Have there been further progress or any proposals to amend this legislation?
7. What progress has been made to review Myanmar's laws from the colonial era, including the Unlawful Associations Act?
8. Are you considering any further amendments to the Telecommunications Law of 2013?
9. Are there plans to review the "protection of race and religion laws" enacted in 2015?
10. The Rakhine Advisory Commission recommended review of the 1982 Citizenship Law. Are you planning to do so?
11. Please provide an update on any developments regarding a "law on law-making", as I suggested in the past.
12. Please provide an update on developments regarding the following proposed laws:
 - a) National Child Rights Law
 - b) Anti-Hate Speech Law
 - c) Prison Law
 - d) Prevention and Protection of Violence against Women Law
 - e) Right to Information Law
 - f) INGO Law
 - g) Land Acquisition Law
13. Please provide an update on the proposed amendments to the Virgin, Vacant, Fallow Land Law.
14. Please provide an update on the activities and priorities of the Legal Affairs and Special Cases Assessment Commission.

Administration of justice

15. What are the barriers that prevent the release of 46 reported political prisoners? What steps are needed to address these barriers?

16. Please provide information, including the status of proceedings and whether the defendants have legal representation, about the following cases that are ongoing, including:
 - a) Mai Cho Min Htwe (14-year-old boy, reportedly appealing his conviction under section 17(1) of the Unlawful Associations Act for which he was sentenced to two years' imprisonment at Mandalay Children's Detention Centre);
 - b) Dumdaw Naung Latt and Gam Seng (reportedly appealing their convictions under sections 17(1) of the Unlawful Associations Act, the Penal Code and Export and Import Law);
 - c) Aung Ko Htwe (a former child soldier, reportedly charged with Penal Code section 505(b)); and
 - d) Wa Lone and Kyaw Soe Oo (reportedly charged under the Official Secrets Act); and
17. Please provide information about the list of 1,311 persons categorized as "Members of ARSA Terrorist Group" published in the Global New Light of Myanmar on 18, 19, 20 and 21 January 2018, including any charges against them, the outcomes of any investigations that were undertaken in relation to their activities, and compliance with the Child Law, Media Law and due process.
18. Please provide an update on developments in the case of the killing of U Ko Ni and U Nay Win.

Democratic space

19. There are continued reports of surveillance, intimidation, threats, and even attacks against human rights defenders, lawyers and journalists. What steps are you taking to address this?
20. What steps are being taken to ensure journalists are able to access and work freely in all parts of the country, including northern Rakhine State and conflict affected areas of Kachin and Shan?

Citizenship

21. I have received reports of Shan, Kachin and Karen people in rural areas without civil documentation. What is being done to address this?
22. Please provide an update on the National Verification Card (NVC) and citizenship verification processes, including where they are occurring and their timeframe.
23. Please provide the number of those who have applied and received NVCs to date, and the number of those who have successfully obtained citizenship.
24. What rights can be exercised by NVC holders such as freedom of movement, access to education, healthcare and livelihoods? Are these same rights applicable for NVC holders in all parts of Myanmar?
25. Is an NVC necessary to obtain humanitarian assistance, a fishing licence and to move between villages in Rakhine state?
26. Is it necessary for NVC applications to state their ethnicity on applications?
27. Is it correct that all refugees who are repatriated from Bangladesh are automatically given NVC?
28. Must Kaman Muslims in Rakhine State also go through the citizenship verification process?
29. Must refugees from the camps at the Thai-Myanmar border and return to Kayin State also go through the citizenship verification process and apply for the NVC?
30. The Rakhine Advisory Commission recommended various steps to accelerate the citizenship verification process, including establishing a clear strategy and timeline, and discussing it with

members of the Rakhine and Muslim communities. It also recommended ensuring that the process is voluntary. What progress has been made to implement these recommendations?

Birth registration

31. Please advise what steps you are taking towards achieving universal birth registration.
32. I have received reports that birth registration rates are very low in rural parts of Kachin, Shan and Kayin states. What are you doing to address this?

Labour

33. Please provide an update on your work with ILO to combat child labour.
34. Please provide an update on the preparation of the National Action Plan on Child Labour.
35. Please provide an update on any complaints received regarding forced labour.
36. I understand that you have recently renewed your agreements with ILO regarding forced labour. Please advise what the agreements entail.

Education

37. Please provide an update on the implementation of the National Education Strategic Plan 2016-2021 and the National Strategic Plan for Early Childhood Intervention.
38. What is the status of the Basic Education Law? What does it provide for? Have consultations been undertaken about it? Please describe the role and function of the Basic Education Council.
39. Please provide an update on the Ministry's activities in relation to accommodating students with disabilities.
40. Please provide an update on the steps being taken towards multilingual education for children from ethnic minority families?
41. What steps are being taken by the Ministry to combat child labour and encourage families to send children to school?
42. Please provide information about reports of students being dismissed from universities after participating in demonstrations calling for an increase in the education budget.
43. What steps are you taking to address difficulties for children to access schools in conflict areas?
44. Please provide an update on steps being taken to address the difficulties faced by children educated in schools run by ethnic organisations.
45. I understand that many schools in northern Rakhine State have not re-opened since they were closed during the August 2017 violence. What is being done to ensure schools reopen with full teaching capacity there?
46. Please provide an update on the education available to IDP camps in Rakhine State.
47. What progress is being made on implementing the recommendation made by the Rakhine State Advisory Commission that the Union Government and the Rakhine State Government should ensure – and publicly state – that all communities have equal access to education, irrespective of religion, ethnicity, race, gender, or citizenship status, and that as such, the government should also reverse discriminatory policies that bar Muslim students from higher education.

Business and human rights and natural resources

48. Please provide an update on Special Economic Zones at Thilawa, Dawei, and Kyauk Phyu. Are you planning to establish any additional Special Economic Zones?
49. Please provide an update on the development of Maungdaw Economic Zone.
50. What is the government doing to ensure businesses respect human rights?
51. I have been told that communities are being negatively affected by the development of the Asia Highway and quarry at Mount Lone Nya, including that they were not consulted and their concerns have been voiced but they are not being addressed. Please tell me what steps you are taking to address their concerns.
52. Please provide an update on the process for EITI report submission.
53. I understand that there are ongoing clashes between prospectors and security services in jade mines which have led to several deaths and injuries. What steps are being taken to investigate these cases? Are policies being put in place to prevent further incidents?
54. Please provide information about the strategy on mining that is being developed. Does it focus just on jade mining or also other mining? Is civil society involved? What is the timeframe?
55. Please provide an update on the process for Environmental Impact Assessments to be undertaken for large projects. Are communities being genuinely consulted? What is your current assessment scrutiny procedure?
56. What are your plans in relation to land governance? Will this involve an overarching land law in line with the National Land Use Policy? Will it be considered during the peace process?
57. Please provide an update on the case load and resolution of cases of the Central Review Committee on Confiscated Farmlands and Other Lands. What are the Committee's priorities for this year?

Health

58. Please provide an update on progress made in relation to implementing the National Health Plan.
59. Please provide an update on efforts to improve health care in prisons.
60. What is being done to provide healthcare services to people in conflict affected areas?
61. Please provide an update on the health situation, including mental health, in IDP camps.
62. I have received information that a hospital has been built inside a camp housing those who were displaced during the 2012 violence in Rakhine State. Please provide information as to the reason
63. it was built.

Sustainable Development Goals (SDGs)

64. Please provide information about Myanmar's plans for achieving the SDGs.
65. How are you intending to implement the commitment to leaving no one behind, particularly in relation to Rohingya people and people who live in non-government controlled areas.

Peace process and conflict

66. What is your assessment of the progress of the peace process? How is ongoing conflict and escalation of violence in Kachin and Shan States affecting the peace process? How do you propose to address the ongoing conflict?

67. How have recent reported clashes in Chin State affected the peace process? How are you proposing to address this? Are people still displaced as a result of these clashes?
68. Do you propose to take any further international assistance or increase international involvement in the peace process?
69. Please provide an update on progress to increase women's participation in the peace process.
70. Please comment on the reports that consultations in advance of national dialogues, as part of the peace process, were blocked by the Tatmadaw in Shan and Rakhine States in January. How has this affected the peace process?
71. What precautions are being taken to limit the impact of conflict on the civilian population?
72. What assistance is being provided to people displaced by conflict in Chin, Shan and Kachin States? Have you evacuated and rescued affected civilians?
73. Access for international humanitarian agencies is severely restricted in Rakhine, Shan and Kachin States. What are you doing to improve their access?
74. Could you provide an update on plans for the return and resettlement of IDPs and refugees?
75. Please comment on the Secretary General's report on children and armed conflict in Myanmar dated 22 December 2017, including that the country task force received 49 complaints regarding recruitment of children from January to June 2017, and that it verified seven incidents of formal recruitment involving 84 children. Please provide an update on the implementation of the Joint Action Plan to end and prevent the recruitment and use of children.
76. Does the Tatmadaw continue to lay landmines? Please provide an update on demining activities.
77. Are you proposing to investigate the killing of three Karenni National Progress Party soldiers and one civilian that occurred in December 2017?
78. Please provide information about nine farmers, including a 12-year-old boy, from Ho Pong, southern Shan State who are reportedly facing court proceedings, including the charges against them and whether they have legal representation.

Rakhine State

79. What precautions were taken to protect civilians during the security operations following 25 August 2017?
80. Do you propose to undertake further investigations into allegations of human rights violations in northern Rakhine following 25 August 2017?
81. I note the finding by the Tatmadaw that security forces were involved in killing villagers in Inn Din village in Rakhine State, and that action would be taken against those who broke the Rules of Engagement. Please provide information about the action being taken.
82. How many people are detained in prisons in Rakhine State? What charges have been laid against them? Are there court proceedings currently ongoing? Do detainees have access to lawyers?
83. How many people were displaced inside Rakhine State following the violence on 25 August 2017? Are they still displaced? What support is being provided to them?
84. Please provide an update on developments in areas of Maungdaw, Buthidaung and Rathidaung Townships that were affected by violence following 25 August 2017, including your activities to create a conducive environment for refugee returns.
85. What is the current population of Maungdaw, Buthidaung and Rathidaung Townships?
86. Please provide an update on the government's plans to manage land that was burned in northern Rakhine State under the Natural Disaster Management Law.

87. Please provide information about the activities and priorities of the Implementation Committee of the Recommendations of the Rakhine Advisory Commission.
 88. Please provide information about the activities and priorities of the Union Enterprise for Humanitarian Assistance, Resettlement and Development in Rakhine State.
 89. Please provide information about the reported plans to close the camps housing the people in Rakhine State displaced since the 2012 violence. Will the closure be carried out in line the with recommendations of the Rakhine Advisory Commission? Where will people be resettled to?
 90. Are you proposing to take any action in relation to the reported shooting of protestors by police in Mrauk-U in January 2018? If so, what are you proposing?
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