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Human rights situations that require the Council's attention

## Report of the Special Rapporteur on the situation of human rights in Myanmar<sup>\*</sup>, <sup>\*\*</sup>

### *Summary*

The present report of the Special Rapporteur on the situation of human rights in Myanmar is submitted pursuant to Human Rights Council resolution 37/32. In the report, the Special Rapporteur builds on her previous reports to identify progress and challenges in human rights issues, and makes recommendations for the furtherance of the human rights of all people in Myanmar.

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\* The annexes to the present report are being circulated as received and in the language of submission only.

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



## **I. Introduction**

1. The present report, submitted pursuant to Human Rights Council resolution 37/32, covers developments in Myanmar since the previous report of the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, to the Human Rights Council in March 2018 (A/HRC/37/70), an oral update to the Council in June 2018 and a report to the General Assembly in August 2018 (A/73/332).

2. Despite the Government of Myanmar having withdrawn cooperation with the Special Rapporteur, she continues to seek to engage with and assist it with addressing human rights issues. In that spirit, she requested a visit to the country in January 2019. However, her request was refused, the Government saying that her visits were counterproductive for the people of Myanmar.<sup>1</sup> Continuing, nevertheless, to seek opportunities for dialogue with the Government, she sent a list of questions, to which she has not received a response.<sup>2</sup>

3. By reason of being refused entry into Myanmar, the Special Rapporteur conducted visits to Thailand from 14 to 19 January and Bangladesh from 19 to 25 January 2019. She thanks the Governments of both countries for facilitating the visits. In Thailand, she met with representatives of the Government, the United Nations and civil society organizations working on human rights issues in Myanmar. In Bangladesh, she met with government officials in Dhaka and Cox's Bazar. She visited the refugee camps in Cox's Bazar, where she met refugees and representatives of civil society organizations and United Nations agencies and organizations, which are part of the Inter-Sector Coordination Group. She visited the island of Bhashan Char where the Government plans to relocate refugees from Cox's Bazar. She also met with the United Nations Resident Coordinators for Myanmar and Bangladesh and held a teleconference with the United Nations country team for Myanmar and a briefing with the United Nations country team for Bangladesh.

## **II. Situation of human rights**

### **A. Resource extraction and infrastructure development**

#### **1. Logging and mining**

4. The Special Rapporteur continues to receive reports of human rights abuses taking place in the vicinity of gold, amber and jade mines in Kachin State; gold, ruby and coal mines in Shan State; and tin and coal mines in Tanintharyi Region and Kayah State. The reports highlight the extent to which the unchecked extraction of those natural resources has a grave impact on the rights of nearby communities, persistently causing forced displacement, environmental destruction leading to loss of livelihood and health concerns. Abuses associated with militarization, such as rape and forced labour, increase around mine sites and the resultant instability and loss of land prevent internally displaced persons and refugees from returning home. New machinery at the Letpadaung copper mine in Sagaing Region has been reported, suggesting that plans for the expansion of the mine are moving forward and causing widespread fears of further environmental devastation and forced relocation.

5. Recent abuse in relation to increased logging activity in Kayah State has been reported. Logging operations around the country have been linked to the destruction of livelihoods, owing to severe forest degradation and increased militarization to secure logging sites. The Special Rapporteur is troubled by the reported decision in September 2018 of the National Reconciliation and Peace Centre to endorse a trade agreement relating to 5,000 tons of hardwood from areas under the control of the border guard force, the

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<sup>1</sup> See annex I below.

<sup>2</sup> See annex II below.

Karenni National People's Liberation Front, which is aligned to the Tatmadaw (the armed forces of Myanmar).<sup>3</sup> The Special Rapporteur questions whether the National Reconciliation and Peace Centre has the mandate to endorse such decisions. The extraction and trade of natural resources from militarized areas, whether under ceasefire or actively contested, is extremely challenging to regulate and is often a source of further conflict, which in turn exacerbates the impact on human rights. The Government should continue to enforce restrictions in the timber, jade and gemstone sectors, and natural resource management and benefit-sharing must be meaningfully addressed in the peace process.

6. There are an estimated 400,000 informal gemstone “pickers” in northern Myanmar alone, predominantly working in the jade mines where child labour, sex work, drug trafficking and addiction, HIV/AIDS and crime are widespread. Jade mines are secured by armed actors, including the Tatmadaw, militias aligned to the Tatmadaw and the Kachin Independence Army. In November 2018, three jade pickers were reportedly killed by Tatmadaw soldiers. In addition, dangerous practices employed by mining companies create hazardous conditions resulting in deadly landslides. The Special Rapporteur calls for stronger regulation of responsible and sustainable mining. Enforcement requires the demilitarization of mining regions. Furthermore, the Government must take all appropriate measures to progressively realize the right to just and favourable conditions of work for all, in accordance with its obligations under the International Covenant on Economic, Social and Cultural Rights.

## **2. Transparency, accountability and military commercial interests**

7. While large profits are undoubtedly being made from resource extraction, significant amounts of that revenue do not reach the people of Myanmar and the Government. Rather than supporting sustainable development and the realization of economic and social rights, the majority of profits flow to the Tatmadaw, ethnic armed organizations, militias, political elites and national and international private interests. The military-run conglomerates Union of Myanmar Economic Holdings Limited and Myanmar Economic Corporation provide off-budget financing to the Tatmadaw and are involved in natural resource extraction. Since 2011, both companies have received significant international investment through joint ventures. The State revenue captured from the two companies is low in comparison to their estimated profits, which are not accounted for. Shares in Union of Myanmar Economic Holdings cannot be sold to civilians and the main beneficiaries are likely to be high-ranking military officials.

8. The role of natural resource extraction State-owned economic enterprises is also problematic and much of their leadership is comprised of military and ex-military officials.<sup>4</sup> Creating a substantial conflict of interest, they oversee regulation of their respective sectors, collect and allocate revenues, award licences to private companies and operate commercial joint ventures. Between them, they either contribute to or regulate two thirds of the entire State revenue but are not subject to appropriate checks and balances. The monopoly of Myanmar Timber Enterprise has allegedly seen it assume a central role in enabling large profits to be syphoned from systematically undergraded teak sold illegally into international markets, leaving the country's forests decimated.<sup>5</sup> The State-owned economic enterprises are authorized to retain vast profits in “other accounts”, which are outside the State budget and spent in an undisclosed manner. Those accounts are a vacuum of transparency and accountability, and the Special Rapporteur urges the Government to rectify this.

9. The unaccounted profits and loss of revenues from resource extraction and the commercial interests of military-owned and military-affiliated entities is a concern for human rights in Myanmar. Such economic structures sustain the power and influence of an institution that obstructs democracy and commits egregious crimes with impunity. Policies

<sup>3</sup> See annex III, map showing militarization and resource extraction in Kayah State.

<sup>4</sup> They are: Myanmar Oil and Gas Enterprise, Myanmar Pearl Enterprise, Myanmar Gems Enterprise, No. 1 Mining Enterprise, No. 2 Mining Enterprise and Myanmar Timber Enterprise.

<sup>5</sup> See Environmental Investigation Agency “State of corruption: the top-level conspiracy behind the global trade in Myanmar's stolen teak” (February 2019).

intended to advance democracy and accountability in Myanmar must address the serious governance challenges in the sector. Furthermore, under the International Covenant on Economic, Social and Cultural Rights, the Government has agreed to take steps to progressively realize the rights contained within the Covenant to the maximum of its available resources. Effective financial management ensuring that revenues generated by resource extraction are accessible to Union, regional and state Governments would significantly increase the capacity to progressively realize those rights. Guaranteeing transparency in how revenues are used would greatly assist the Government in meeting its international obligations under the Covenant and responding effectively to the needs of the people of Myanmar.

10. The Special Rapporteur commends the continued engagement of the Government with the Extractive Industries Transparency Initiative. As she has previously stated, that is a valuable tool, which can support the efforts of the Government to achieve greater transparency and accountability, if engaged with meaningfully. That will require a robust legislative and policy framework at the domestic level to ensure reporting compliance, which should include requirements for disclosure of the beneficial ownership of extraction companies, to meet the 2020 requirements of the Transparency Initiative.

11. The Special Rapporteur acknowledges the attempts to tackle the severe social and environmental impacts of jade and gemstone mining under the 2019 Myanmar Gemstone Law. However, the law does not do enough to improve the governance framework or prevent companies with a record of human rights and environmental abuse from obtaining new licences and fails to address adequately the fundamental issues described above. She once again strongly recommends that the Government adopt the comprehensive Gemstone Policy as the basis for further legislative reform.

### **3. Infrastructure development**

12. The Special Rapporteur recognizes the government need to pursue the development of power generation capabilities and transport, communication and industrial infrastructure to improve livelihoods and achieve broad economic development. Foreign investment will play a role in that process. However, she remains concerned at the impact of several large-scale hydropower projects on the rights of people and communities, and the implications for conflict and the peace process.

13. Villagers in Shan State continue to object to the construction of hydropower dams such as the Upper Yeywa on the Namtu River and the Upper Keng Tawng on the Nam Teng River, as the dams will submerge their villages and farms. Frequent clashes between the Restoration Council of Shan State, the Shan State Progressive Party and Tatmadaw troops occurred around the Namtu River dam sites in late 2018, displacing villagers. The Upper Keng Tawng dam site is in the location of a brutal Tatmadaw campaign that displaced thousands of people in the 1990s and where there is still a military presence. Should the project proceed, thousands of people will be unable to return. The development of the Hatgyi dam on the Salween River in Kayin State, currently in its exploration phase, has repeatedly been linked to clashes between the Tatmadaw, border guard forces aligned to the Tatmadaw, the Democratic Karen Benevolent Army and the Karen National Liberation Army, most recently between the Tatmadaw and the Karen National Liberation Army in August 2018. In March 2018, border guard force troops reportedly opened fire near 2,000 villagers who had gathered at the dam site in protest.

14. On 7 February, thousands of people in Kachin State marched in protest at the proposed Myitsone hydropower project, which will cause large-scale displacement, loss of livelihoods, the destruction of cultural heritage and environmental degradation should it proceed. Kachin community leaders oppose the plans for the project, which were agreed without the participation of stakeholders in Kachin State.<sup>6</sup> The Government must comply with its duty to be transparent and to engage in legitimate assessments and meaningful consultations with all stakeholders before reaching any decisions on whether and how to proceed with such projects.

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<sup>6</sup> See annex IV, map of hydropower projects in Myanmar and evaluation of conflict risk.

#### 4. Responsible investment and business and human rights

15. For major projects in Myanmar to benefit the public and avoid serious human rights harm and exacerbating conflict, agreement on tangible, comprehensive and inclusive policy and legislative frameworks that address core questions must be achieved. Having ratified the International Covenant on Economic, Social and Cultural Rights, the Government should refrain from entering into trade and investment treaties where there is a conflict between its obligations under the Covenant: for example, where government actions in relation to implementing an investment agreement would lead to forced relocation and inadequate resettlement.

16. The Special Rapporteur encourages the Government to refer explicitly to its human rights obligations and its expectations of the human rights-related conduct of companies in future investment treaty provisions. It should ensure that mechanisms for the settlement of investor-State disputes take human rights into account. The Special Rapporteur repeats her previous call for the Government and private companies to follow the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework. Home countries of multinational companies investing and operating in Myanmar should work to ensure that they act in line with the Guiding Principles. It is paramount that international financial institutions, development agencies, States and private investors consider conformity with these standards at all levels prior to implementing projects.

#### B. Land rights

17. The Special Rapporteur has repeatedly expressed concerns over amendments that were made to the 2012 Vacant, Fallow and Virgin Lands Management Law in September 2018. She remains further concerned over amendments being made to the 2012 Farmland Law and the proposed land acquisition law.

18. The Vacant, Fallow and Virgin Lands Management Law requires millions of farmers and members of rural communities to give up their existing claims to their land and apply for 30-year use permits by 11 March. If they are not granted a permit, choose not to apply or do not know how to apply but continue to use the land, they risk being charged with trespassing and could face two years’ imprisonment, a 500,000 kyat fine or both. While the law attempts to recognize customary land tenure, such status will be adjudicated on by the Central Committee without any legislative framework to identify customary land. There is a significant risk that permits to use vast areas of land designated as vacant, fallow or virgin but belonging to people who have been internally displaced or are refugees will be granted to investors.

19. The majority of land designated as vacant, fallow or virgin is located in ethnic States.<sup>7</sup> By reinforcing government control over land in those States, the law contradicts the Nationwide Ceasefire Agreement, which requires the Government to coordinate with signatory armed groups on land management. Additionally, it contradicts the national land use policy, which aims to recognize and protect legitimate land tenure rights.

20. By denying people access to lands essential for their livelihood and culture and potentially making them landless, the law is likely to contravene the country’s obligations under the International Covenant on Economic, Social and Cultural Rights. That includes the duties to respect and protect the rights to an adequate standard of living; to work; to take part in cultural life and freely pursue economic, social and cultural development; to adequate housing; and the prohibition on forced evictions. The Special Rapporteur urges the Government to halt immediately implementation of the amended law and restates her support for the establishment of an overarching national land law drafted in line with the national land use policy and international obligations of Myanmar. She notes the National Land Use Forum, held in October 2018, in relation to preparing such a law and urges the

<sup>7</sup> See annex V, map showing vacant, fallow and virgin land distribution.

National Land Use Council to be transparent about the drafting process, hold more inclusive dialogues, and move forward on the basis of those consultations.

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

21. The Special Rapporteur once again welcomes the steps being taken by the Government to realize the 2030 Agenda for Sustainable Development and acknowledges the Myanmar Sustainable Development Plan for the period 2018–2030. Under the International Covenant on Economic, Social and Cultural Rights, the Government has committed to taking immediate steps towards the progressive realization of rights to adequate housing, livelihood, food, health and education, without discrimination, and to the maximum of its available resources. With the Government estimating that around 23 per cent of people in rural Myanmar live in poverty, it is vitally important to bring the revenues from resource extraction within government regulation so that it can be used with parliamentary oversight to improve the situation.

22. While the rights contained within the Covenant are subject to progressive realization, there are obligations for the Government that apply with immediate effect. Under minimum core obligations, significant numbers of people must not be deprived of essential food, health care or shelter, which is undermined by blocking humanitarian assistance. The Government is obliged not to deliberately enact any retrogressive measures; laws such as the Vacant, Fallow and Virgin Lands Management Law undermine existing access to livelihoods, housing and culture, breaching that obligation. Finally, the obligation of non-discrimination is effective upon ratification. However, ethnic minorities disproportionately suffer displacement, loss of livelihood and lack of access to health care and education as a result of conflicts, while the Government denies recognition of services administered by ethnic armed organizations, such as the land-use permits administered by the Karen National Union and the schools supported by the New Mon State Party. The Government must do more to fulfil that obligation.

23. Returnees are reportedly unable to receive accreditation for education received in refugee camps along the Thai-Myanmar border. That has implications for their ability to continue education and seek employment. In many areas affected by conflicts, ethnic armed organizations and others are providing education with community support. In order to receive government funding and teachers, schools are required to accept the national curriculum, which the Special Rapporteur is concerned excludes ethnic minority languages.

24. The Special Rapporteur welcomes the plan that the Ministry of Health and Sports has begun to implement to address all World Health Organization recommendations, and that Myanmar has reduced malaria cases around the country. However, she continues to be troubled by the lack of access to adequate health care in prisons and has received reports of a prisoner losing a leg after being refused hospitalization following an accident. The Special Rapporteur is gravely concerned about the health of the jailed Kachin peace activist, Nang Pu, who is reportedly being held with around 500 others in a cell built for half that number and is in very poor health. The Special Rapporteur calls for her immediate release, or that she be granted immediate access to emergency health care, and for the improvement of access to health care and conditions in all prisons.

### **D. Armed conflict and violence, and the peace process**

25. Myanmar continues to face armed conflicts and violence, which affect adults and children alike. The United Nations has documented 1,166 grave violations against children, including killing and maiming, rape and sexual violence, and recruitment and use, in northern Rakhine, mostly after 25 August 2017 (see S/2018/956). The Tatmadaw and the integrated border guard forces were listed by the Secretary-General in his 2018 annual report to the Security Council for the grave violations of killing and maiming of children and grave sexual violence against children. The Special Rapporteur notes that progress has been made on plans to address and prevent such violations. However, the Tatmadaw and seven ethnic armed organizations remain listed as groups which recruit and use children,

although the Tatmadaw released 75 children in June 2018. The Special Rapporteur has been informed that several listed ethnic armed organizations wish to delist themselves and she calls on relevant United Nations entities to assist them, whether or not they have signed the Nationwide Ceasefire Agreement.

26. The Special Rapporteur remains concerned about the progress of the peace process. She notes that in late 2018, the Karen National Union and the Restoration Council of Shan State, both signatories to the Nationwide Ceasefire Agreement, announced separately that they would suspend their participation in formal peace negotiations. On 13 December 2018, the Arakan Army, the Myanmar National Democratic Alliance Army and the Ta'ang National Liberation Army issued a welcome statement to the effect that they were willing to stop military action in order to achieve peace by political means. On 21 December, the Commander-in-Chief of the Tatmadaw declared a unilateral ceasefire for four months in five regional commands in the north and east, in order to engage in peace negotiations. While that is also welcome, it is of concern that it is geographically and temporally limited. The Special Rapporteur again urges meaningful, open and inclusive dialogue between all stakeholders to move the country towards a genuine and lasting peace.

### **1. Situation in northern Myanmar**

27. In late 2018, there were reports of clashes between the Tatmadaw and the Kachin Independence Army, with the Tatmadaw looting a village and shells landing in Chipwe camp for internally displaced persons in Kachin. In December and January, three people were reportedly killed and three people injured by landmines in Kachin.

28. From October 2018 in Shan State, there were armed conflicts between ethnic armed organizations and the Tatmadaw that led to nearly 6,000 people fleeing their homes until the end of December. In January, approximately 3,700 people were temporarily displaced and clashes between the Restoration Council of Shan State and the Shan State Progressive Party in Kyaukme Township displaced a further 1,100 people in February. Most people have returned home but approximately 1,900 remained displaced in late February. The Special Rapporteur is concerned that as many of them have been displaced multiple times, they have suffered repeated psychological trauma, face severe difficulties if they are elderly or disabled and their education and livelihoods have been disrupted.

### **2. Situation in south-eastern Myanmar**

29. The Special Rapporteur is deeply concerned that clashes between the Tatmadaw and the Karen National Liberation Army have continued, since resuming in March 2018. In January 2019, several clashes took place in Hpapun District, Kayin State, and a Tatmadaw soldier was allegedly killed. The fighting in Hpapun is said to be linked to the Tatmadaw constructing a road between two of its military camps.

30. Since the end of December 2018, the Tatmadaw has reportedly constructed three new bases in Kayah State, despite the area falling within the announced unilateral ceasefire agreement and the Karenni National Progressive Party having signed a ceasefire agreement with the Tatmadaw in 2012. The Special Rapporteur is worried about the implications of the new construction sites and calls on all parties to maintain the ceasefire.

### **3. Situation in western Myanmar**

31. In late November and December 2018, the Arakan Army staged a number of attacks on the security forces in central and northern Rakhine State and Paletwa in Chin State. After an attack on four police outposts in Buthidaung Township, Rakhine State, on 4 January, in which 13 policemen were reportedly killed and 9 injured, the Office of the President reportedly instructed the military to launch operations against the Arakan Army.

32. As a result of those hostilities, several civilian deaths, including those of children, and deaths caused by landmines were reported. Clashes have been taking place near villages and the shelling of villages has been reported. The conflict has led to over 5,500 people being displaced in Rakhine and Chin States. On 10 January, the Rakhine State Government instructed the United Nations and international humanitarian organizations, except for the World Food Programme and the International Committee of the Red Cross,

to suspend all activities in the five townships in Rakhine affected by conflict (Ponnagyun, Kyauktaw, Rathedaung, Buthidaung and Maungdaw). The Special Rapporteur is seriously concerned by this violation of the country's international humanitarian obligation to ensure humanitarian access; people will be deprived of life-saving assistance and the limited access for independent observers to assess the situation has been further diminished. In early February, there were reports of 160 people fleeing Paletwa for Bangladesh.

33. The Special Rapporteur is disturbed by the deteriorating situation in Rakhine and Chin States, in particular by reports that the Government and the Tatmadaw are targeting people who are suspected of supporting the Arakan Army, which a government spokesperson labelled a terrorist organization. Thirty village administrators resigned for fear of being prosecuted on false allegations of associating with the Arakan Army after 2 were arrested in January, and 89 resigned in late February in Mrauk-U when 4 more were arrested. The state government reportedly ordered the military to search houses for Arakan Army associates and 26 people were arrested overnight in early February. Thirteen of them have been charged by the military under the Unlawful Associations Act, a problematic law that the Special Rapporteur has repeatedly called to be reviewed, and 13 have been released.

34. Despite the Government having accepted the recommendations of the Advisory Commission on Rakhine State and claiming to have implemented the vast majority of them, the extent of implementation remains unclear. The Special Rapporteur is concerned that there is a lack of political will to implement most of the recommendations in a genuine, meaningful way. That is particularly evident regarding the citizenship regime. The campaign to impose national verification cards on Rohingya is reportedly continuing unabated. The Government has reportedly removed religion and ethnicity from the cards and said that holders have freedom of movement, however the Special Rapporteur understands that they are still required to apply for permission to leave their villages, in accordance with the existing rules and regulations that restrict their movements.

35. The Special Rapporteur is disturbed by details still emerging of the horrific violence that took place in northern Rakhine after 25 August 2017. According to information received, troops from Light Infantry Division 99 were deployed to the village of Alethankyaw in Maungdaw in the days prior to 25 August. On 25 August, those troops killed at least 50 men, women and children.<sup>8</sup> The following day, snipers were positioned on rooftops, a Myanmar Post and Telecommunications tower and a Telenor tower, and shot villagers as they fled. Bodies were reportedly disposed of by troops in wells and under the Telenor tower. The village was then burned on 29 August, with only the Rakhine parts of the village left untouched. The alleged use of the towers by snipers highlights the paramount importance of thorough and ongoing human rights due diligence being undertaken by companies and investors. The Special Rapporteur notes the Rakhine investment fair held in February 2019. She cautions investors about the many risks to human rights presented by the conflict, displacement and alleged commission of international crimes in Rakhine State, and calls for rigorous human rights impact assessments and adherence to the Guiding Principles on Business and Human Rights.

## **E. Refugees and internally displaced persons**

36. The ongoing presence of troops, landmines, instability and land insecurity in south-eastern Myanmar are preventing the return of internally displaced persons and refugees living in border camps. In Thailand, the Special Rapporteur met with organizations working with approximately 121,000 refugees who have been there for decades. Around 600 people returned to Myanmar in February 2019, the second group since 2016, however the United Nations High Commissioner for Refugees has said that the conditions do not exist in Myanmar for the promotion of voluntary repatriation. The Special Rapporteur repeats her call for international assistance to continue for the refugees as long as required. She also met with a group of Muslim migrants in Thailand, most of whom have never had Myanmar citizenship documentation. They explained that a certificate of Myanmar nationality is

<sup>8</sup> See Kaladan Press Network, 'The killing fields of Alethankyaw' (November 2018).



required to apply for a certificate of identification from the Government of Thailand to get a work permit. They told her that when they attempted to obtain certification, they were required to fulfil overly burdensome documentation requirements, including providing their grandparents' documents. As a result of their inability to fulfil those requirements, they were unable to obtain Thai documentation and continued to face difficulties, including security risks and instability.

37. The Special Rapporteur underlines the need for funding and assistance for 162,000 internally displaced persons in south-eastern Myanmar. Following the signing of the Nationwide Ceasefire Agreement, international funding for camps for internally displaced persons in territory administered by ethnic armed organizations was withdrawn. There are few alternative sources of income for those in the camps and rates of malnutrition have increased in recent years. Furthermore, the majority of internally displaced persons are not living in camps, but throughout rural communities and therefore fall outside the humanitarian funding framework.<sup>9</sup> International donors should rethink their policies of providing funding solely through government agencies and support local organizations delivering crucial assistance.

38. There are over 106,000 internally displaced persons in Kachin and Shan States, 46 per cent of whom are children and over 55,000 of whom are women. The United Nations has not been able to deliver humanitarian aid to people who live in areas not controlled by the Government since 2016 and although national partners continue to have access to most areas, it is unpredictable and complicated by delays and bureaucratic procedures. Nearly 20,000 internally displaced persons live in remote areas and are in need of food, shelter, water and education.

39. In central Rakhine State, there are over 128,000 internally displaced persons, of whom 53 per cent are children and over 65,000 are women. The conditions in the camps where they have lived since 2012 are reportedly dire; they are overcrowded, privacy is inadequate and environmental health conditions are poor. The Special Rapporteur was very concerned to receive reports of people from the camps attempting to leave Rakhine by boat in late 2018, highlighting the desperate situation in which they remain after almost seven years.

40. The Government has said that it wishes to close the camps for internally displaced persons around the country and has consulted with the United Nations; however, it has not adequately consulted with internally displaced persons or civil society. On 8 February, with little notice, government officers visited camp committees in Myitkyina and Moegaung Townships, Kachin State, to collect information about whether people wanted to return to their original villages or remain in the camps. Internally displaced persons in Maw Hpawng Hkanan camp in Myitkyina were told that they had to return home by April 2019 and that they would not be allowed to stay where they were after that time. That has created significant fear and anxiety among them and it does not appear that the plans will lead to durable solutions. So far, the Government has only demonstrated that its camp closure strategy is to upgrade housing infrastructure in the camps or nearby. That is not in accordance with the right of the internally displaced to return to their places of origin or choice. Additionally, the strategy fails to address the root causes of displacement and does not seek to end existing restrictions, such as on freedom of movement for internally displaced persons in Rakhine. In Rakhine, there are serious risks that implementation of the plans could lead to permanent segregation or apartheid conditions, as different religious and ethnic communities would be forced to live separately from each other, and without freedom of movement Rohingya would be confined to their allocated villages.

41. Rohingya continue to leave northern Rakhine for Bangladesh, despite widespread movement restrictions. In the refugee camps in Cox's Bazar, the Special Rapporteur met with newly arrived refugees, who reported recent acts of violence against them and their family members that had forced them to flee to Bangladesh. The refugees in Cox's Bazar continue to live in overcrowded and unhealthy conditions, without access to formal education and livelihoods or freedom of movement beyond the camp vicinity. The refugees

<sup>9</sup> The Border Consortium "Human Security in Southeastern Myanmar" (November 2018).

that the Special Rapporteur has met on all of her visits to the camps have expressed their desire for formal education and access to meaningful livelihood opportunities. With no indications that the refugees will be returning to Myanmar in the immediate future, she urges the Government of Bangladesh to start longer-term planning and ensure they have access to formal education and livelihoods. Failure to do so further increases their vulnerability to human trafficking and the drug trade. It is imperative that the international community continue to support the humanitarian response through contributions to the recently launched joint response plan for the Rohingya humanitarian crisis, which seeks to ensure that refugees and host communities receive assistance.<sup>10</sup> The Special Rapporteur calls especially for support for elderly and disabled refugees and refugees with particular vulnerabilities.

42. While in Bangladesh, the Special Rapporteur visited Bhashan Char, a newly formed island in the Bay of Bengal, which the Government of Bangladesh has developed to accommodate Rohingya refugees. She has previously raised concerns about whether it is a sustainable solution to the situation of Rohingya refugees in Bangladesh. Following her visit, her concerns remain and she cautions the Government against taking any measures that could create a new crisis. The Government informed her that any refugees who are relocated will have freedom of movement on the island, access to health services, livelihoods and primary education. The Special Rapporteur calls on the Government to be transparent about its plans for Bhashan Char and all assessments of the island that have been carried out. The United Nations must be allowed to conduct a full technical and humanitarian assessment, including a security assessment. No relocations should take place before a protection framework is developed by the Government and the United Nations. Refugees must be fully engaged and participate in any relocation process, including through meaningful consultation involving visits to the island, so that they can determine for themselves whether they wish to move, based on their individual, fully informed consent.

43. While the Governments of Bangladesh and Myanmar signed an agreement on repatriation in November 2017, the conditions for voluntary, safe, dignified and sustainable returns do not exist. When the two Governments agreed to begin repatriation in mid-November 2018, the Special Rapporteur urged them to halt the plan, which had caused high levels of fear and anxiety among the already traumatized refugee population in Cox's Bazar and led to refugees going into hiding or even attempting to take their own lives to avoid being forced to return to Myanmar. There was an absence of clear messaging and information about the repatriation, which caused confusion and misinformation. The Special Rapporteur has repeatedly called for the refugees to be afforded the opportunity to participate meaningfully in any repatriation plans so that any return is truly voluntary, dignified, safe and sustainable. She is concerned about the suggestion of establishing "safe zones" in northern Rakhine for returnees. She believes that returnee safety must be guaranteed and that it would be appropriate for this to be done independently of the Government, possibly by an international security or protection presence. However, the need for "safe zones" undermines the safe, voluntary, dignified and sustainable nature of repatriation, and she fears that confining returnees to "safe zones" could result in their being more vulnerable, would further constrain their freedom of movement and would segregate them from other communities.

44. The situation of Rohingya refugees is increasingly internationalized, with regional and global implications that require an international response. Over 1,300 Rohingya have arrived in Bangladesh from India since the beginning of the year and 31 people, including 16 children, were stopped at the border and arrested by the Indian authorities in late January. That came after the Government of India had deported seven Rohingya men to Myanmar in October 2018 and another five Rohingya in January 2019. Additionally, 13 Rohingya men were deported from Saudi Arabia to Bangladesh because they had travelled there with Bangladeshi passports. India and Saudi Arabia must ensure that Rohingya within their borders are protected as refugees and not refouled or deported to Myanmar or Bangladesh.

<sup>10</sup> See Strategic Executive Group, "2019 Joint response plan for Rohingya humanitarian crisis", available from <https://reliefweb.int/report/bangladesh/2019-joint-response-plan-rohingya-humanitarian-crisis-january-december-0>.

## F. Shrinking democratic space

45. The Special Rapporteur is further concerned at the decreasing space for the expression of views that are critical of or discordant with government narratives. That is illustrated by increasing self-censorship by journalists and the continued wielding of problematic laws by the Government against those who speak out. The Special Rapporteur fears that important checks on abuses of power may diminish and the transition to democracy be stymied. In late February, the parliament decided to discuss a motion urging the Government to respond to the actions of the Human Rights Council on Myanmar. The Special Rapporteur is extremely concerned by reports in this context that a member of parliament threatened to take legal action against people and organizations who “damage the dignity” of Myanmar by cooperating with the United Nations, and that this could further muzzle human rights defenders.

46. There continue to be a large number of people imprisoned or detained for political activities, which is totally unacceptable in a democratic society. As of 28 February, they included 33 people serving sentences and 311 people awaiting trial in relation to exercising their rights, of whom 86 people were detained while awaiting trial. That is worrying, as it represents a significant increase from the same time last year, when 184 people were on trial. The Special Rapporteur again calls on the Government to cease politically motivated charges, reform the problematic laws that she has previously identified, including replacing the six provisions for criminal defamation with a single civil defamation provision, and release all those who are imprisoned on such charges. She also recommends that the Government redress the harm that has been caused to political prisoners as victims of human rights violations, many of whom have ongoing mental and physical health needs, to aid the country’s transition and efforts at reconciliation.

47. The trial against Swe Win under section 66 (d) of the 2013 Telecommunications Law has gone on for two years. He is forced to travel from Yangon to Mandalay for hearings, which sometimes do not go ahead owing to the absence of the complainant or of witnesses. The charge against him should be withdrawn, and the telecommunications law revised in accordance with international standards. Wa Lone and Kyaw Soe Oo, the two Reuters journalists who uncovered the Inn Din massacre, were convicted of their charges under section 3 (1) of the 1923 official secrets act in September 2018. The district court delivered incongruous findings, including that the elements of the crime had been proved, despite the prosecution reportedly not presenting convincing evidence. They were sentenced to seven years’ imprisonment for conducting their duties as investigative journalists. The journalists appealed their conviction, but in January 2019 the appeal was dismissed by the High Court. They have since appealed to the Union Supreme Court. The Special Rapporteur calls for their immediate release and for the charges against them to be withdrawn.

48. The four men who were accused of killing or conspiring to kill Ko Ni and Nay Win have been convicted and, worryingly, two of them have been sentenced to death, while the alleged mastermind remains at large. Myanmar should continue its de facto moratorium on the death penalty and not carry out the sentences.

49. Peace activists in Kachin, Zau Jat, Nang Pu and Lum Zawng, were convicted of defamation of the military under section 500 of the Penal Code in December 2018. That led to a demonstration in which 5,000 people participated. As a result, three activists were arrested and charged under section 19 of the 2011 Law on the Right to Peaceful Assembly and Peaceful Procession. The Special Rapporteur is also troubled by the conviction on 13 February 2019 of seven students from Yadanapon Student Union of several offences under the Penal Code, including offending public tranquillity, and their sentence of three months’ imprisonment with hard labour. After a student was killed on campus, the students had conducted a demonstration calling for security in universities, during which they burned paper coffins and portraits of officials and the head of the university.

50. In Kayah State, 55 activists were reportedly arrested in February for protesting against the erection of a statue of General Aung San in the state capital. Those charges were dropped after negotiations between the activists and the state government, which is a

welcome outcome and should continue to be the case for protests over the statue. There were also demonstrations in July 2018, when the statue was first proposed, during which 16 activists were arrested. The activists had reportedly applied to the township authorities for permission to carry out the protest under the Law on the Right to Peaceful Assembly and Peaceful Procession, but this was twice refused. There was a further protest on 12 February, at which police used disproportionate force against protesters. Parliament is still considering a problematic amendment to the law, which could result in further rights violations; the Special Rapporteur urges that this be reconsidered and the law instead reformed in accordance with international standards.

## **G. Institutionalized hate speech**

51. The pervasive nature of hate speech is alarming, particularly because senior government officials use it. In November, the Minister for Religious and Cultural Affairs is reported to have said “the followers of an extreme religion take three or four wives and have families with 15 or 20 children”. In December, he reportedly said that these comments were not addressed to all Muslims but to “Bengalis”, apparently referring to the Rohingya, saying that their population was exploding and they were aiming to march to Rakhine State from Bangladesh. Such incendiary comments by a senior official are entirely antithetical to the Government’s stated aim of reconciliation and the desire to address hate speech and incitement to violence. The Special Rapporteur has repeatedly called for the Government to take action 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, and is aware that a draft hate speech law is still being considered. The Special Rapporteur has also been informed that the Government is developing a cybercrime law, which may include hate speech provisions; however she firmly believes that it should not include content restrictions.

52. The Special Rapporteur is particularly alarmed by reports that the national elementary school curriculum includes lessons and textbooks that contain discriminatory and incendiary material. For example, there is a fourth grade lesson on *wunthanu* spirit, meaning nationalistic and patriotic spirit, which includes the following: “we loathe those of mixed blood, for they prohibit the progression of a race”. Teaching children such ideas promotes racial superiority and communal disharmony. The Special Rapporteur urges their immediate removal from the curriculum and the removal of all incendiary passages from all textbooks.

53. The Special Rapporteur notes that Facebook has taken steps to address its impact in Myanmar and that it commissioned a human rights impact assessment, which found ongoing risks. It has removed several accounts and pages associated with the military involved in spreading misinformation and hate speech. However, hate speech and misinformation coming from public institutions linked to the military, its supporters, extremist religious groups and members of the Government continue to proliferate on Facebook. Civil society is concerned that Facebook does little to explain why it removes certain content and that this approach is unlikely to solve the problem in the long term.

54. On 5 February 2019, Facebook designated the Arakan Army, the Myanmar National Democratic Alliance Army, the Kachin Independence Army and the Ta’ang National Liberation Army as “dangerous groups”, meaning they are banned from Facebook and all related praise, support and representation has been removed. The Special Rapporteur notes that these groups are members of the Northern Alliance and have not entered into ceasefires with the Tatmadaw. No other ethnic armed organization or the Tatmadaw has been designated a “dangerous group”, despite the most serious allegations against the Tatmadaw. She is concerned that contrary to achieving the stated aim of decreasing tensions, the selective banning may contribute to feelings of inequality among ethnic minorities.

## H. Institution and law reform

55. It is not possible for Myanmar to transition to democracy with the Constitution in its current form. In February, a parliamentary committee was formed to begin the process of amending the 2008 Constitution. That is a welcome development and the Special Rapporteur urges the committee to carry out the will of the people in bringing about a truly democratic constitution. That would necessitate widespread amendments to many provisions, including those that relate to the role of the military in parliament and its control of ministries, and removing structural impunity.

56. The transfer of the General Administration Department from the Ministry of Home Affairs to the Ministry of the Office of the Union Government marks a positive shift in demilitarizing the public administration and empowering the civilian Government. Given the enormous role played by the Department in the administration of the entire country, from Nay Pyi Taw down to individual village tracts, the Special Rapporteur urges the Government to seize this opportunity for reform, including decentralizing those systems. That will comprise promoting local democracy by further amending the 2012 Ward or Village Tract Administration Law, removing the provisions for elected officials to be dismissed by appointed administrators and that restrict voting to one person per household. All people over the age of 18 should have the opportunity to vote. The proposed township administration law, currently in draft form, should uphold these provisions.

57. Reform of the citizenship legal regime is key to the country's future reconciliation. However, the Government has said it will not amend or replace the 1982 Citizenship Law. As its provisions discriminate against people based on ethnicity and create a hierarchy of citizenship classes, it will continue to entrench divides between ethnic and religious communities. The Special Rapporteur has received information that it is extremely difficult for people who are not Bamar Buddhists to obtain identification documents. People who are considered of "mixed blood", which includes those who identify as Muslim, regardless of whether they are members of the Kaman ethnic group recognized by the Government, are reportedly required to stand in a separate line at Department of Immigration and Population offices when they wish to obtain or renew documents.

58. The Special Rapporteur continues to follow the progress of the proposed child law. She is concerned that during the parliamentary review process, some areas have been amended that diminish the protection of children. There must be provision for the protection of children in armed conflict, including in relation to recruitment and use and the six grave violations. She urges parliamentarians to reconsider the penalties imposed in the juvenile justice chapter, which permits imprisonment for up to 10 years. The law must include a right to education for all children and the right to work between the ages of 12 and 14 should specify light work that would not jeopardize physical and psychological development.

59. The proposed law on the protection and prevention of violence against women has still not been passed and the Special Rapporteur again urges its immediate adoption in accordance with international standards. She notes that Myanmar has signed a communiqué with the Special Representative of the Secretary-General on Sexual Violence in Conflict that sets out cooperation between the Government and the United Nations in several areas to prevent sexual violence. That includes supporting legal reforms to strengthen the overall rule of law response to sexual violence and ensuring effective access to services for survivors. The Special Rapporteur calls on the Government to cooperate on all areas in the communiqué.

## I. Accountability

60. The Special Rapporteur is extremely concerned that the Myanmar security forces contribute three personnel to United Nations Peacekeeping. She notes that in February, peacekeeping training by India took place in Myanmar. Given the most serious allegations of commission of international crimes made against the Tatmadaw, she believes that in

principle, the contribution to peacekeeping is highly inappropriate and must end immediately.

61. The Independent Commission of Enquiry has said that it will submit an interim report to the Office of the President in mid-March and in December 2018, issued a call for the submission of complaints or accounts supported by data or evidence. After its meeting in late January 2019, the Commission stated that it had received 43 submissions and its evidence collection and verification team had collected 36 depositions in Rakhine State. The Special Rapporteur has previously expressed serious concerns about whether the Commission fulfils international standards for the investigation of human rights violations, in particular whether it is capable of achieving accountability. She is especially concerned that it has given an assurance that no one will suffer harassment, threats, acts of intimidation, ill-treatment, reprisals or any other prejudicial treatment, as the Commission does not have the power to protect witnesses and victims. She is also concerned about the independence of the Commission, given that its terms of reference state that it receives secretariat support from the Office of the President and such support could include legal counsel, research staff and specialist advisers.

62. It is imperative that the focus of the international community remain on justice and accountability for victims in Myanmar. Now that the Independent Investigative Mechanism has been established, the Special Rapporteur urges the United Nations to do what is necessary to make it operational as soon as possible. She reminds the international community that the Mechanism is an interim measure in the pursuit of justice for the people of Myanmar. The situation must be referred forthwith to the International Criminal Court for full investigation and the prosecution of those responsible. Should the situation fail to be referred, the Special Rapporteur recommends that the establishment of an international tribunal be considered, to adjudicate independently and impartially, in accordance with international standards, on the international crimes perpetrated in Myanmar since 2011. The people of Myanmar must not be forced to wait decades for justice as a result of the combined inability and unwillingness of their Government and the inaction of the international community to bring it about.

63. The Special Rapporteur recommends that the international community keep victims at the centre of all approaches to justice and accountability and take gender into account. In addition to reparations, urgent interim relief should be provided to victims who interact with the Independent Investigative Mechanism and other accountability processes in the future, such that they are ensured protection and access to livelihoods, education, health, psychosocial and trauma care, and legal assistance. Victims should also be provided with assistance and support in accessing accountability mechanisms and their right to remedy must be upheld, including through reparations, compensation, restitution of property and guarantees of non-repetition.

64. Throughout her mandate, the Special Rapporteur has been advocating for an end to impunity, redress for past abuses, establishment of the rule of law and democratic reforms. In line with this, she urges that, together with civil society, the international community consider justice in a broad sense to deal with the country's past in accordance with the pillars of justice, truth, reparations and guarantees of non-recurrence. She is aware of the efforts of Myanmar civil society in this area and that there are organizations advocating for reparations to rehabilitate victims of human rights violations and for reforms to ensure that violations are not repeated in the future. Accountability necessarily involves criminal justice, however non-punitive measures are also important. They include the Government recognizing and taking responsibility for what has happened in the past. Without taking those steps, denial and avoidance will only continue and serve to encourage ongoing systematic violations.

### III. Conclusions and recommendations

#### A. Conclusions

65. The international community must stay apprised of the situation in Myanmar, keeping it at the top of its agenda. It is only through the actions of the international community that justice can be brought about. The people of Myanmar have endured decades of abuse; international inaction, or delayed action, is a further injustice. Concrete action to advance human rights, accountability and the democratic transition in Myanmar must be taken by the international community immediately.

66. The Member States of the United Nations and its agencies must stand together with one united approach to Myanmar. That applies to the situation of the Rohingya, including their repatriation to Myanmar and their overall circumstances in Rakhine, as well as the situation of people in conflict-affected areas throughout Myanmar, who must be involved in decisions about their future.

#### B. Recommendations

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

68. In relation to resource extraction and infrastructure development, the Special Rapporteur recommends that the Government of Myanmar:

(a) Develop legislation to ensure that comprehensive and inclusive environmental and social impact assessments are conducted and complied with before granting natural resource extraction concessions;

(b) Consider amending the 2019 Gemstone Law to prevent companies with a track record of human rights and environmental abuse from obtaining new licences, adopt the Gemstone Policy and use that as the basis for further legislative reform;

(c) Seek to incorporate protection for informal mine workers into the licensing criteria for extraction companies, in line with the Guiding Principles on Business and Human Rights and International Labour Organization Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), ensure that community services providing drug rehabilitation services to informal mine workers are provided with funding and the necessary support, and ensure environmental safety standards at mine sites are enforced;

(d) Cease granting concessions for natural resource extraction in conflict-affected areas and work with stakeholders, including companies, ethnic administrations and local community leaders, to develop comprehensive policies to curb corruption, extortion, conflict and criminality at logging and mine sites;

(e) Develop a robust policy and legislative framework that requires companies involved in natural resource extraction, including Myanmar Economic Corporation and Union of Myanmar Economic Holdings Limited, to comply with financial reporting requirements and disclose details of beneficial ownership;

(f) Reconsider the 1989 State-owned Economic Enterprise Law and specifically the function of “other accounts”. Ensure that the revenues collected from natural resource extraction are transparent and included within Union, regional and state budgets, and require the Ministry of Resources and Environmental Conservation to disclose details of any expenditures made using funds from “other accounts”;

(g) Ensure that meaningful discussion on natural resource management and benefit-sharing is incorporated into the peace process and work with stakeholders to develop inclusive policies;

(h) **Continue to engage with the Extractive Industries Transparency Initiative;**

(i) **Be transparent about the status of proposed hydropower projects and those currently under construction, engage in meaningful and legitimate assessments, comply with those assessments and hold inclusive consultations with all stakeholders to reach agreements on whether and how to proceed with projects;**

(j) **Ensure the full implementation, through policies and laws, of the Guiding Principles on Business and Human Rights;**

(k) **Take a rights-based approach to implementing the Sustainable Development Goals, ensure that all development projects are undertaken transparently in accordance with the law and international standards, including environmental, social and human rights safeguards, and work with ethnic administrations and local communities on implementing development projects.**

69. **In relation to land rights, the Special Rapporteur recommends that the Government of Myanmar:**

(a) **Halt the rapid implementation of the Vacant, Fallow and Virgin Lands Management Law and harmonize it with the national land use policy;**

(b) **Adopt a national land law that is aligned with the national land use policy and relevant provisions of the Nationwide Ceasefire Agreement through a transparent and inclusive process;**

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

70. **In relation 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 enshrined in the International Covenant on Economic, Social and Cultural Rights in an inclusive, non-discriminatory manner;**

(b) **Ensure that the minimum core obligations under the Covenant are met, avoid enacting retrogressive measures and consider implementing policies that help ethnic administrations to overcome discrimination in national health and education services;**

(c) **Immediately remove all discriminatory material from the national elementary school curriculum and all textbooks.**

71. **Together with ethnic armed organizations, in relation to armed conflict and violence and the peace process, the Special Rapporteur recommends that the Government of Myanmar:**

(a) **Immediately cease hostilities;**

(b) **Comply with international humanitarian law and human rights law in the conduct of hostilities, including protecting all civilians affected by armed conflict, including children, and cease conduct that amounts to grave violations against children;**

(c) **End the forcible displacement of civilians from areas affected by conflict and violence;**

(d) **Immediately release all children under the age of 18 who have been recruited as combatants, refrain from recruiting children and take measures to prevent underage recruitment, Treat any association of children with armed groups as forced, release all children detained on spying or similar charges, ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and complete and adhere to all elements of the joint action**



plan between the United Nations country task force on monitoring and reporting on grave violations against children and the Tatmadaw;

(e) 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, clear mines and unexploded ordnance, mark and fence mine areas and carry out systematic mine-risk and education activities;

(f) 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;

(g) Immediately allow full and unfettered humanitarian access to people in need in areas affected by conflict and violence, and access to the media and human rights monitors;

(h) Stop arbitrary arrests of people on suspicion of association with armed groups;

(i) Fully implement the recommendations of the Advisory Commission on Rakhine State and engage with communities in doing so in accordance with a rights-based approach;

(j) Immediately stop conflict-related violations against civilians, including members of ethnic minorities;

(k) Immediately end the intimidation and harassment of and violence and discrimination against the Rohingya and end curfews and restrictions on freedom of movement;

(l) Hold an inclusive, participatory dialogue on all relevant issues in the peace process, including human rights issues, with all stakeholders, including women, youth and civil society, and ensure the integration of gender and ethnic perspectives in policy discussions.

72. In relation to refugees and internally displaced persons, the Special Rapporteur recommends that the Government of Myanmar:

(a) Take measures to bring about conditions for the voluntary, safe, dignified and sustainable return to the country of all refugees, including the Rohingya in Bangladesh;

(b) Create an environment conducive to returning refugees enjoying their fundamental rights, including their right to return to their places of origin and to compensation for burned, damaged or looted property, such that repatriation in accordance with international standards can be carried out;

(c) Ensure transparency in infrastructure development in areas affected by conflict throughout the country, including in northern Rakhine, and cease any infrastructure, mining or military construction on land that was owned or occupied by refugees;

(d) Provide internally displaced persons with psychological assistance and ensure they have access to essentials including health services, education and livelihoods, ensure that they are protected from gender-based violence, human trafficking and forced recruitment, and that their land is not appropriated, address the fundamental causes of their displacement in consultation with them, civil society and the United Nations, and ensure that any measures to close the camps are in accordance with international standards;

(e) End overly burdensome documentation requirements for Muslims living in Thailand who are seeking certification of their Myanmar nationality;

(f) Ensure access for humanitarian assistance to internally displaced persons living in camps and throughout rural areas in south-eastern Myanmar.

73. In relation to the democratic space and rule of law, the Special Rapporteur recommends that the Government of Myanmar:

- (a) Ratify all core international human rights instruments;
- (b) Amend the 2008 Constitution such that it accords with truly democratic norms and human rights standards;
- (c) Revise or repeal all arbitrary and discriminatory legislation, orders and policies that have been previously identified by the Special Rapporteur, 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 Law on the Right to Peaceful Assembly and Peaceful Procession, 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: any amendments must be in accordance with human rights norms and standards;
- (d) Immediately release all political prisoners and withdraw all politically motivated charges, and redress the harm caused to political prisoners, including their ongoing mental and physical health needs;
- (e) Stop arresting and charging people for exercising their legitimate rights;
- (f) Guarantee the rights to freedom of expression and freedom of peaceful assembly, including by amending laws that contravene those rights and ceasing to arrest people who are legitimately exercising those rights;
- (g) Restore citizenship to members of the Rohingya community and ensure they enjoy the same rights as other Myanmar citizens, cease arbitrary and discriminatory denial or restriction of citizenship rights and documentation to members of minority religions or ethnicities, and amend or replace the 1982 Citizenship Law;
- (h) Cease all acts and publication of advocacy of national, racial or religious hatred that constitute incitement to discrimination, hostility or violence, including on social media, enact a law to prohibit such acts in accordance with the Rabat Plan of Action and draft a comprehensive anti-discrimination law or policy;
- (i) Enact the proposed laws on child rights and the protection and prevention of violence against women, ensuring that they meet international standards, without delay;
- (j) Enact the township administration law and amend the Ward and Village Tract Administration Law to allow all those over the age of 18 to vote and remove the provisions for elected officials to be dismissed by appointed administrators and that restrict voting to one person per household;
- (k) Open a country office of the United Nations High Commissioner for Human Rights with a fully-fledged mandate.

74. 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;
- (b) Operationalize the Independent Investigative Mechanism as soon as possible;
- (c) 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, as outlined in the concept note indicated in the recent report of the Special Rapporteur (A/73/332);<sup>11</sup>

<sup>11</sup> Available from [www.ohchr.org/Documents/Countries/MM/AnnexesA7345400.pdf](http://www.ohchr.org/Documents/Countries/MM/AnnexesA7345400.pdf).

(d) In addition to criminal accountability measures, work with civil society to consider justice broadly in accordance with the other pillars of truth, reparations and guarantees of non-recurrence that would assist Myanmar to redress past abuse and bring about democratic reforms and the rule of law;

(e) End contributions to United Nations Peacekeeping by Myanmar;

(f) Work with ethnic armed groups to remove them from the list of groups who recruit and use children annexed to the reports of the Secretary-General;

(g) Ensure the full funding of humanitarian assistance programmes that assist people from Myanmar in need inside and outside the country, including the joint response plan for the Rohingya humanitarian crisis, and provide assistance to internally displaced persons in the south-east of Myanmar in those programmes;

(h) Be united in supporting the Government of Myanmar in complying with its human rights obligations, and engage with and fund programmes in Myanmar on a principled basis, making both parameters and funding contingent on genuine reform efforts;

(i) Conduct a comprehensive, independent and transparent review of actions by the United Nations system and ensure that any final report and recommendations are made public. Ensure that the review includes actions 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 the international community could have prevented or managed the situation differently, and make recommendations for accountability, if appropriate;

(j) Ensure that social media platforms, including Facebook and Twitter, respect human rights and conduct due diligence such that they fully understand the Myanmar context and act responsibly;

(k) Ensure that international financial institutions, development agencies and States do not implement projects without thorough and ongoing assessments of the actual human rights situation and the impact and existence of domestic policy and legislative frameworks to protect human rights in the context of development;

(l) Ensure that the home countries of multinational companies have sufficient oversight of investing and operating in Myanmar to be able to assess the actual human rights situation and impact, and sufficient influence to ensure compliance with international standards;

(m) Ensure that investments and private ventures do not support military commercial interests and consider reinstating sanctions against Myanmar Economic Corporation and Union of Myanmar Economic Holdings Limited.

75. The Special Rapporteur recommends that the Government of Bangladesh:

(a) Recognize the Rohingya as refugees, provide education for all refugee children and access to meaningful livelihood opportunities for women and men, and allow freedom of movement;

(b) Be transparent about plans for refugee relocation to Bhashan Char and if plans proceed, ensure that any relocations to Bhashan Char occur only after the development of a protection framework together with United Nations agencies and in accordance with the fully informed consent of the refugees;

(c) Ensure that the refugees are engaged in the dialogue about repatriation plans and that information on any plans for repatriation is shared with them to avoid the spread of fear and anxiety within the camps, and ensure that any decision to repatriate refugees to Myanmar complies with international refugee and human rights laws and standards and is only implemented after an environment is in place that is conducive to voluntary, safe, dignified and sustainable returns.

## Annex I



*Permanent Representative*

*Permanent Mission of the Republic of the Union of Myanmar to  
the United Nations Office and other International Organizations  
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Tel. (+41-22) 906 9870, 906 9871 / Fax (+41-22) 732 8919  
E-mail: mission@myanmargeneva.org*

No. 599 / 1 – 27 / 91

26 December 2018

Madame Special Rapporteur,

I am writing this letter to you to acknowledge the receipt of your letter dated 21 November 2018 proposing to visit Myanmar once again in connection with your mandate.

Myanmar, as a responsible member of the United Nations, subscribes to the aims and purposes of the organization and has been consistently cooperating with the organization. Accordingly, Myanmar has been extending its cooperation to the United Nations in all fields, including in its work to protect and promote human rights everywhere.

It is in this spirit of cooperation that Myanmar authorities granted you visit the country to carry out your mandate as United Nations Special Rapporteur on Human Rights in Myanmar. However, as your reports have been invariably lack of objectivity and impartiality, your visits are deemed to be counter-productive by the people of Myanmar. A motion to deny you access to the country has been adopted by a unanimous decision in the Hluttaw in July 2017.

Under this circumstance, I regret to inform you that we will not be able to facilitate your proposal to visit Myanmar at this time.

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

*Wishing you a Happy new Year.  
Warmest regards.*

(Kyaw Moe Tun)

Ambassador and Permanent Representative

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

## Annex II



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### Mandate of the Special Rapporteur on the situation of human rights in Myanmar

REFERENCE:

5 February 2019

Excellency,

Thank you for your letter of 26 December 2018. As you know from my recent statements, constructive engagement with the government of Myanmar is my utmost priority, and I continue to avail my assistance and advice.

In the spirit of cooperation, transparency, and engagement, I reiterate my questions sent on 12 February 2018 and 18 July 2018, and attach a list of further questions to the Government of Myanmar. I would appreciate your early response by 18 February 2019, as answers to these questions will contribute to my upcoming report to the Human Rights Council.

Should you have any questions, please do not hesitate to contact Ms Georgia Drake, Human Rights Officer, through email to [gdrake@ohchr.org](mailto:gdrake@ohchr.org) or by telephone +41 22 928 9780.

Please accept, Excellency, the assurances of my highest consideration.

A handwritten signature in black ink that reads "Yanghee Lee".

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

His Excellency Kyaw Moe Tun  
Ambassador Extraordinary and Plenipotentiary  
Permanent Representative  
Avenue Blanc 47  
1202 Geneva

**Questions for Government of Myanmar from UN Special Rapporteur on the Situation of  
Human Rights in Myanmar**

**Previous recommendations**

1. Please provide information on your plans to implement the recommendations in my report to the General Assembly of October 2018.

**Law and judicial reform**

2. I understand that a proposal has been submitted to establish a joint parliamentary committee tasked with amending the 2008 Constitution. Please provide details on the committee's planned work, and any information on which parts of the Constitution will be prioritized for amendment.
3. I refer to the non-exhaustive list of laws, which are not compatible with human rights standards and are in need of reform, provided in my report to the Human Rights Council of March 2016. This includes the colonial era Unlawful Associations Act and Official Secrets Act. What progress has been made to amend this legislation? Please give a detailed list of laws from that list that have been amended or reformed.
4. I understand that the National Child Rights Law is still under parliamentary review. Please provide details on how the law will adequately protect children and meet international standards on the right to education; criminalization of grave violations against children during armed conflict; and penalties for children under juvenile justice.
5. Please provide an update on the progress of the Prevention and Protection of Violence against Women Law, and in particular how the law will define sexual violence so as to properly protect women and meet international standards.
6. Please provide details on the progress being made in drafting the National Land Law, and on how the Law will be aligned with the National Land Use Policy.

**Administration of justice**

7. It is reported that there are 35 political prisoners currently serving sentences. What is obstructing their release? Please provide information on the steps being taken to bring about the release of all political prisoners.
8. Please provide information on the reported conviction of the following people, including the proceedings that were commenced against them, any trial that took place and whether they had legal representation:
  - a) Zau Jat, Nang Pu and Lum Zawng (reportedly convicted for defamation under section 500 of the Penal Code). Please also provide information on Nang Pu's state of health and what assistance she is receiving;
  - b) Wa Lone and Kyaw Soe Oo (reportedly convicted under the Official Secrets Act and appealing their convictions at the Supreme Court); and
  - c) Aung Ko Htwe (a former child soldier, reportedly convicted under sections 505(b) and 228 of the Penal Code).
9. Please provide information, including the status of proceedings and whether the defendants have legal representation, about the following cases that are ongoing:
  - a) Ko Ye Lin Aung, Ko Phone Myint Kyaw, Ko Myo Chit Aung and Ko Nay Win Kyaw (students reportedly charged under section 505(b) of the Penal Code); and
  - b) Swe Win (reportedly charged under section 66(d) of the Telecommunications Act).



10. Please provide information on the status of the U Ko Ni case. I have received information that the lawyer defending the case of the driver has received death threats. What procedures are in place to protect defense lawyers?

#### **Democratic space**

10. I have received several reports of peaceful protest applications being denied and peaceful protestors themselves being intimidated, dispersed, beaten and arrested. How do you plan to address this?
11. What steps are being taken to address the spread of hate speech on social media?
12. I understand that the General Administration Department (GAD) has been transferred to the Ministry of the Office of the Union Government from the Ministry of Home Affairs. Are there any plans to strengthen local democracy at the township, ward or village tract level by transferring local election responsibilities from the GAD to an independent body?

#### **Education**

13. Please provide information on whether there are plans to formally recognize education received by returnees from refugee camps outside of Myanmar.
14. I have received reports that Muslim students are required to sit exams in a separate room in Rakhine State. Can you please provide details on this?
15. I have received reports that the national elementary school curriculum includes lessons and text books that contain discriminatory and incendiary material. For example, I refer to a poem for 3<sup>rd</sup> grade students entitled 'Becoming Happier and Cheerful' and a 4<sup>th</sup> grade lesson on 'Wunthamu Spirit.' Please provide details on this.

#### **Citizenship**

16. I have received reports that returnees from the Thai-Myanmar border have difficulties in applying for and obtaining citizenship documents. What steps are being taken to facilitate this process for returnees?
17. Please provide information on whether newly issued NVC cards will no longer show details of religion and ethnicity.
18. In Rakhine State, are those who currently hold NVC cards able to travel freely, or are they required to apply for travel authorization form 4?
19. Outside of Rakhine State, who will be issued with NVC cards?

#### **Business and human rights and natural resources**

20. Please provide information about the recent decision by the National Reconciliation and Peace Centre (NRPC) to endorse an agreement that allows the trade of timber from Kayah State.
21. Please provide information about the status of the proposed dams on the Salween River.
22. Please provide information about the status of the proposed Myitsone hydropower project.
23. Please provide information on the measures being taken to safeguard the environment and human rights in relation to construction of the Upper Yeywa and Upper Kengtwan dams.
24. What is the government doing to ensure local and international businesses respect human rights, in particular with respect to infrastructure development?

25. What are the plans to ensure that beneficial ownership of extractive companies is reported on and fully disclosed by 2020 under the EITI?
26. I have received reports of ongoing displacement, sale and use of drugs, child labour, sexual exploitation of women, deaths caused by landslides, environmental destruction, intimidation, violence and corruption related to jade mining activity in Kachin State. What measures are being taken to address this?
27. Please provide details of the safeguards in place to prevent homelessness, landlessness and to protect the livelihoods of people following the amendments made to the 2012 Vacant, Fallow and Virgin Lands Management Law and announcement of the March 2019 land registration deadline made by the Vacant, Fallow and Virgin Lands Management Central Committee. Furthermore, please provide details on how land belonging to internally displaced people or refugees will be protected.

#### **Peace process and conflict**

28. Do you propose to take any further international assistance or increase international involvement in the peace process?
29. What steps will be taken in response to the suspended participation in formal peace negotiations of the Karen National Union and Restoration Council of Shan State?
30. How will the unilateral ceasefire in Shan and Kachin States further the peace process? What plans are in place for the end of the announced ceasefire period?
31. Please provide information on the progress of the “National Strategy for the closure of the IDP camps in Myanmar.”
32. Do you plan to consult internally displaced persons (IDPs) and Ethnic Armed Organisations (EAOs) on IDP camp closure?
33. Will IDPs be able to return to their place of origin or choosing in line with international standards? How will IDP land be safeguarded from encroachment by infrastructure and other development projects?
34. What steps are being taken to improve conditions in the IDP camps alongside implementing the camp closure strategy?
35. Is the Tatmadaw planting landmines? Please provide details on demining strategies.
36. How will the conflict between the Tatmadaw and Arakan Army and escalating violence in Rakhine State affect the peace process? How do you propose to address this conflict?
37. I have received reports that recent clashes have taken place in Mutraw District, Kayin State between the Tatmadaw and the Karen National Liberation Army. How is this affecting the peace process and how do you plan to address this?
38. I have received reports that military bases are being constructed in Kayah State. How will this affect the peace process?
39. I understand that there is ongoing conflict between EAOs in Shan State. How will this affect the peace process and how will the protection of civilians be ensured?
40. What are the plans for delisting all children from the ranks from the Tatmadaw?

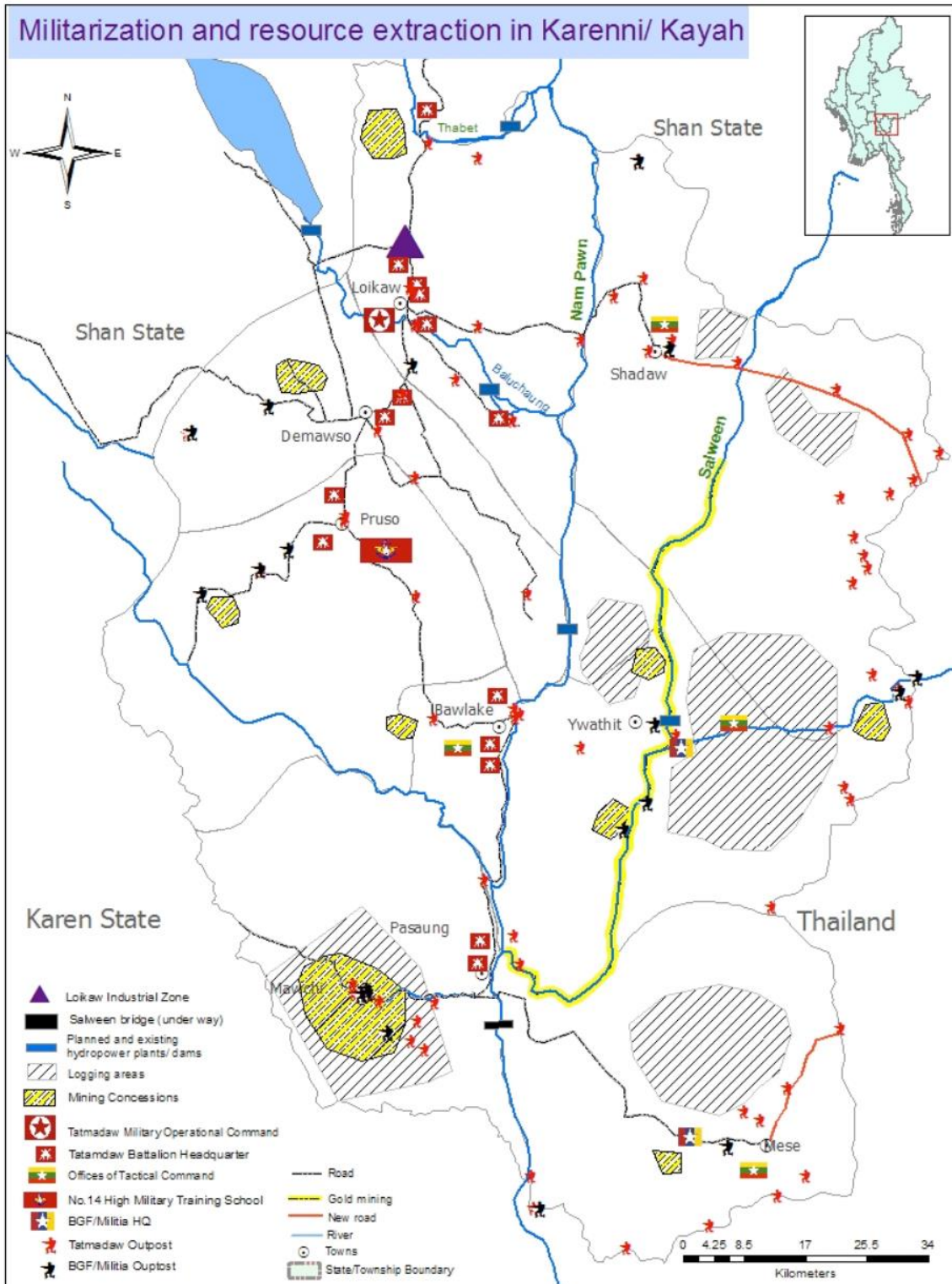
#### **Rakhine State**

41. Please provide information on reports that civilians have been used as human shields in Rakhine state during the conflict between the Tatmadaw and the Arakan Army.
42. Please provide information on the number of people who have been displaced by the conflict in Rakhine state. What assistance is being provided to these people?



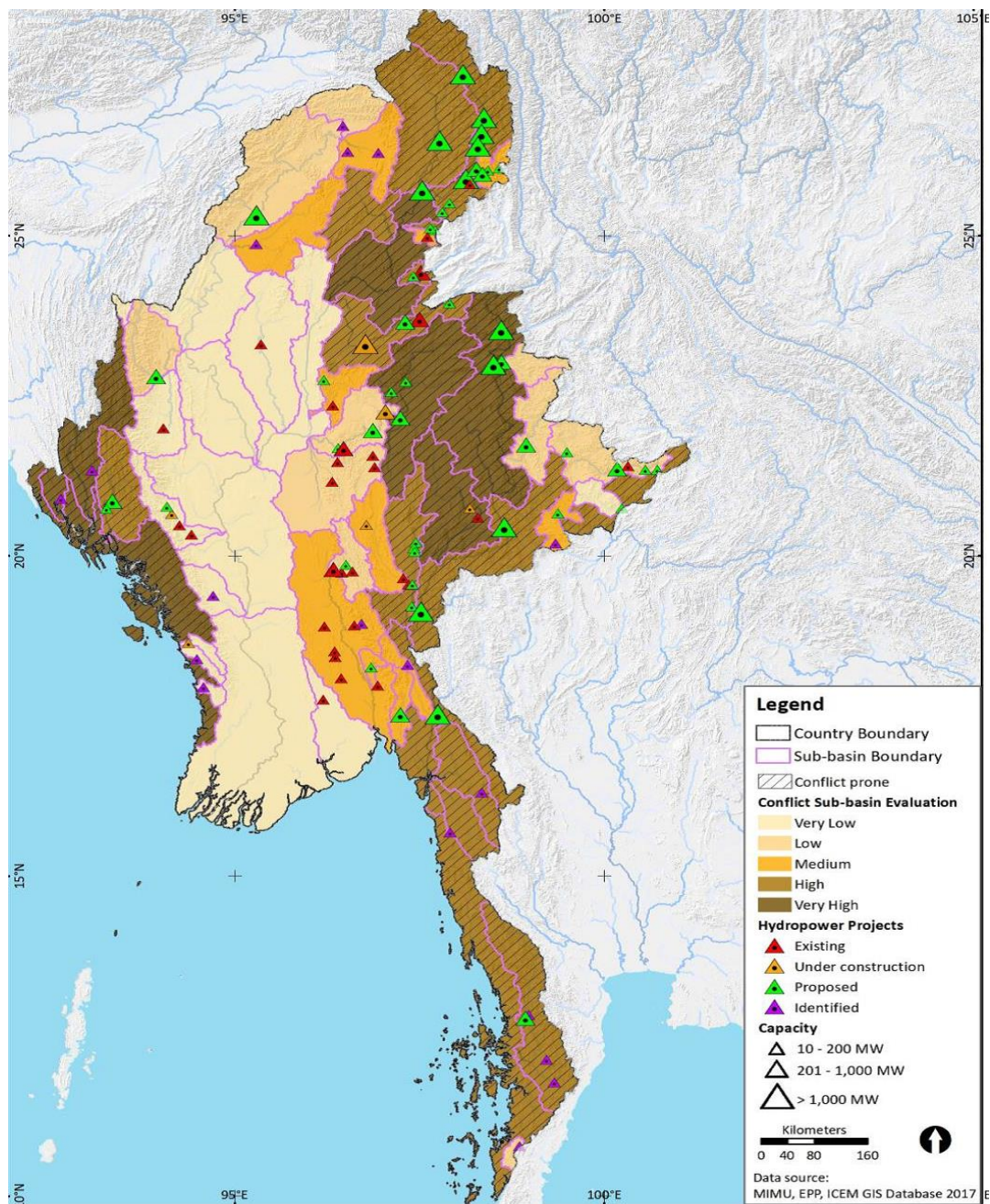
43. Access for humanitarian assistance agencies is severely restricted in Rakhine State. Furthermore, I refer to the Rakhine State government directive instructing UN and international agencies, with the exception of the World Food Program and the International Committee of the Red Cross, to suspend their activities in Ponnagyun, Kyauktaw, Rathedaung, Buthidaung and Maungdaw townships. Please provide information on what is being done to ensure critical access of these agencies to civilians affected by the conflict.
44. I have received reports that Rohingya in Rakhine State continue to face violence, intimidation and harassment. What is being done to address this?
45. Please provide information about any people who have been returned to Myanmar from India. Please provide details on where they are now located and what assistance they are being provided with.
46. Please provide information about the methodology of the Independent Commission of Enquiry, including on the safeguards in place to ensure the protection of victims who submit evidence to it. Please describe how the Commission meets international standards of impartiality and independence, and whether any prosecutions will take place if wrongdoing is found to have occurred.
47. There is construction taking place at the Zero Line between Myanmar and Bangladesh. Please provide information on the purpose of the construction, and details of the measures being taken to ensure that the structure does not pose a risk to the thousands of displaced people sheltering nearby.

### Annex III



Credit: Karenni Civil Society Network 2018.

## Annex IV

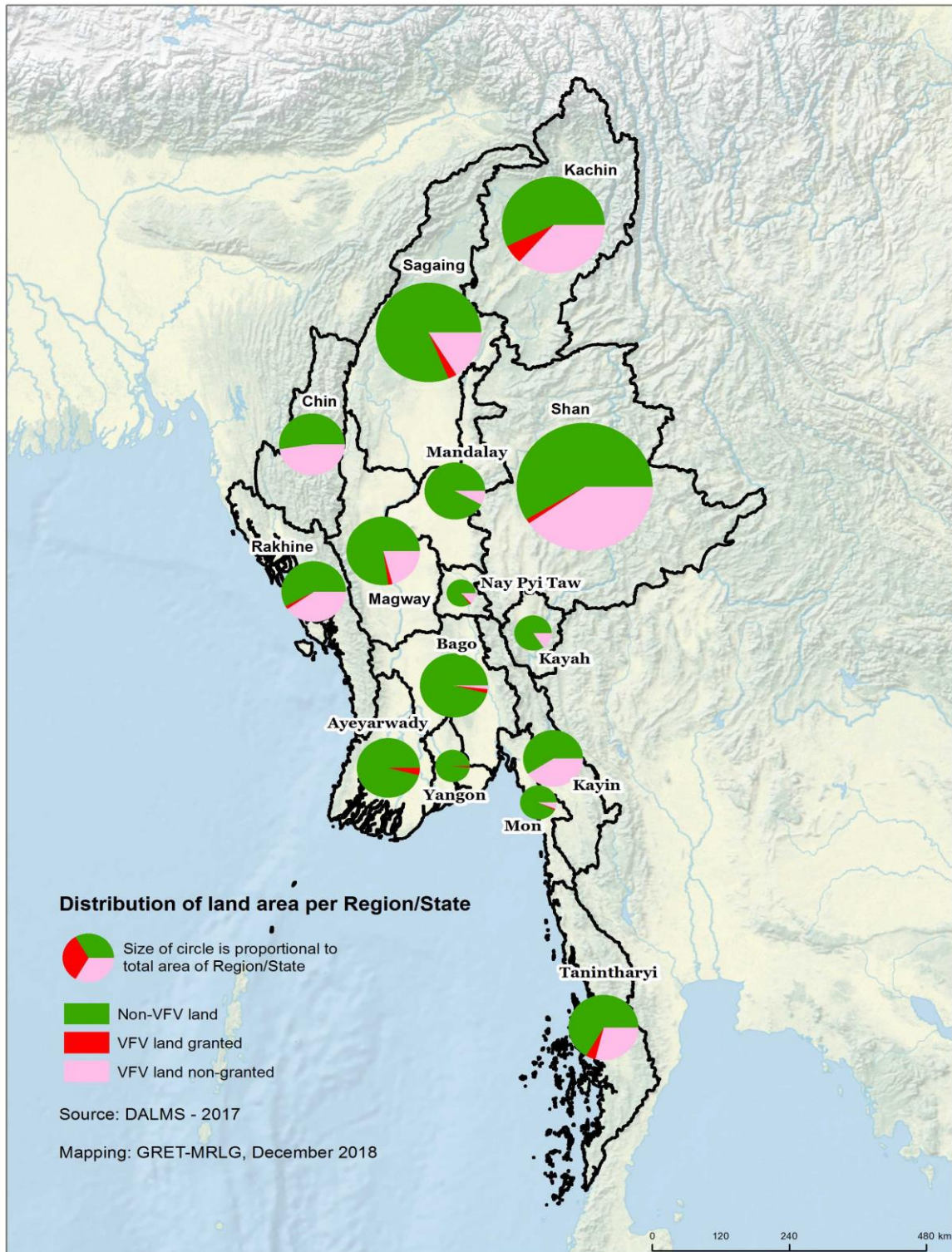


According to this map, Upper Kengtawng and Mytisone are located in areas at very high risk of conflict and Hatgyi in a high risk area. Upper Yeywa appears to be on the border of two sub-basins identified as low and very high risk, respectively. The Special Rapporteur notes that the area surrounding the Upper Yeywa dam construction site has been subject to heavy fighting in recent years, and that it could be at very high risk of conflict.

Credit: International Finance Corporation 2018.



Annex V



Credit: Groupe de Recherches et d'Echanges Technologiques (GRET) / Mekong Region Land Governance (MRLG) 2018.