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Agenda item 4

**Human rights situation that require the Council's attention****Report of the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee\*, \*\****Summary*

Four years of wide-ranging reforms have brought fundamental changes to Myanmar. In November 2015, historic general elections were conducted and a new Government will shortly be formed. However, formidable human rights challenges remain. In the present report, the Special Rapporteur builds on previous reports to identify key priority areas that will need to be tackled by the new administration.

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\* The present report was submitted after the deadline in order to reflect the most 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 28/23, covers human rights developments in Myanmar since the reports of the Special Rapporteur to the Council in March 2015 (A/HRC/28/72) and to the General Assembly in October 2015 (A/70/412). Building on these and other past reports, it identifies key priority areas for the new Government in order to address prevailing human rights concerns.

2. Four years of wide-ranging reforms have brought fundamental changes to Myanmar. Thousands of political prisoners were released, numerous laws were adopted or reformed, and significant steps were taken towards greater media freedom and government transparency. The general elections on November 2015 were positively assessed by national and international observers (despite some irregularities and pre-election concerns) and saw the National League for Democracy (NLD) win an absolute majority.

3. The new Government will now face formidable human rights challenges. The transition period following the elections has been smooth and peaceful but also one of great uncertainty. Allegations of human rights violations continue to be reported, including arrests and prosecutions of civil society actors for peaceful and democratic activities. At this important juncture, the new Government should not only further the reforms initiated by outgoing President Thein Sein but also create an environment in which communities, civil society actors and human rights defenders can speak out and peacefully protest without fear of reprisal. The international community should remain engaged and support Myanmar in furthering reforms and in fulfilling its international human rights obligations.

4. The Special Rapporteur was unfortunately unable to conduct her fourth official visit to Myanmar due to a family medical emergency. She thanks the Government for its cooperation and flexibility in these circumstances, including its readiness to respond in writing to questions submitted by the Special Rapporteur. In the preparation of the present report, conference calls were conducted with national and international stakeholders and information was collected from a wide range of sources.

## II. 8 November 2015 elections

5. On 8 November, Myanmar voted in historic general elections, which were welcomed by the United Nations Secretary-General as “a significant achievement in Myanmar’s democratic transition.” The more than 12,000 international and national observers concluded that the polls were generally well-organized, orderly and peaceful.<sup>1</sup> Turnout was estimated at 70 percent, with thousands casting their votes for the first time. In elections for the Upper House of the Union Parliament, the NLD won 135 seats, the Union and Solidarity and Development Party (USDP) 11 seats and other parties 22 seats. In the Lower House, the NLD won 255 seats, the USDP 30 seats and other parties 38 seats. Elections were postponed in around 600 village tracts, mainly in Kachin and Shan States, due to security concerns.

6. The Special Rapporteur publicly welcomed the elections as “a new chapter in the country’s history”. She recalled, however, that pre-election human rights concerns were symptomatic of broader human rights challenges requiring the urgent attention of the new Parliament and Government. They include the disenfranchisement of hundreds of thousands of

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<sup>1</sup> See Carter Centre, Press release, 10 November 2015 and European Union Election Observers Mission, Press release, 10 November 2015.

people, including from minority communities; the disqualification of many Muslim candidates; as well as continuing restrictions in the exercise of the rights to freedoms of expression, peaceful assembly and association.

7. Following the announcement of the election results, President Thein Sein congratulated Daw Aung San Suu Kyi and affirmed his commitment to an orderly and peaceful transfer of power. The Commander-in-Chief of the armed forces also reiterated past pledges to respect the election outcome. On 18 January 2016, the Union Election Commission announced the military representatives who would fill the 25 percent of reserved parliamentary seats. The last session of the outgoing Parliament concluded on 28 January. The new Parliament, which includes more than one hundred former political prisoners, convened its first session on 1 February. The new Government is expected to take up its functions on 31 March 2016.

### III. Human Rights Situation

#### A. Rule of law and democratic space

##### 1. Legislative reform

8. The Special Rapporteur welcomes the legislative reforms carried out since 2011 and the steps taken by the Government to review and amend some laws that do not meet international human rights standards.<sup>2</sup> She was informed that the Parliament passed over 220 laws during this period. However, as mentioned in past reports, some of these laws as well as older laws still in force do not comply with international standards and should be amended as a priority. The Annex to the present report lists some of these provisions.

9. With the arrival of a new Government and Parliament backed by a strong mandate, Myanmar has the opportunity to transform its domestic legislation. The Special Rapporteur therefore recommends the development of a comprehensive programme of legislative reform which will ensure compliance with international human rights norms and provide protection for the rights of the entire population. Involving civil society in this process, strengthening the independence of the judiciary and improving access to justice will be vital. In this way, Myanmar can strengthen the rule of law and build confidence in national institutions.

10. In June 2015, five proposed amendments to the 2008 Constitution were submitted to Parliament but ultimately rejected. They included a proposed change to article 436, lowering from 75 to 70 percent the proportion of parliamentarians required to approve a constitutional amendment, and to article 59 (f) on the ineligibility for Presidential office of those with spouses and children of foreign nationality. Only an amendment to article 59 (d) replacing the word “military” by “defence” among the required areas of knowledge for presidential candidates was adopted. A positive referendum on this amendment is required before it can enter into force. The Special Rapporteur has previously highlighted the need to reform constitutional provisions that do not comply with international standards.<sup>3</sup> She also believes that the effective operation of the rule of law in Myanmar will require amendment of the 2008 Constitution. While aware that discussions on constitutional reform continue to be politically sensitive, she believes that this is of vital importance for a democratic Myanmar and therefore encourages all political parties and stakeholders to continue their dialogue towards this end.

<sup>2</sup> For example the Wireless Telegraphy Act 1934, the Printer and Published Registration Act 1962, and the Law Relating to the Forming of Organizations 1988.

<sup>3</sup> See A/70/412, para. 68, A/HRC/28/72, para. 25, and A/69/398, paras. 63-67.

11. The current legislative process should be reviewed as a priority. The lack of systematic public consultation on draft laws and involvement of civil society have resulted in laws being adopted which do not meet the needs of the people and which fall below international standards. The Special Rapporteur thus calls upon the new Government to take measures to improve the legislative process and adopt procedures that guarantee transparency and systematic engagement by civil society and the public in law making. The Special Rapporteur welcomes the adoption by the Office of the Attorney General of the Strategic Plan 2015-19. This includes important commitments to draft and vet laws that serve to protect human rights and to uphold prosecutorial ethics. She encourages continued cooperation with the international community to ensure full implementation of the Plan.

12. The Special Rapporteur is concerned by the adoption on 29 January 2016 (the last day of the previous Parliament) of the Former Presidents' Security Law. The law grants immunity for undefined 'measures' carried out during office 'in accordance with the laws' and could potentially grant immunity for grave violations of human rights, in contravention of international law.

13. The draft Prison Law remains pending and falls below international standards in several areas.<sup>4</sup> The Special Rapporteur recommends the amendment of provisions on the use of force by prison superintendents, as well as the inclusion of provisions mandating independent monitoring of prison conditions; providing clear limitations on the use of solitary confinement; and prohibiting fettering as a means of restraint.

14. The draft Child Law is currently before the Office of the Attorney General for review. The Special Rapporteur welcomes the engagement with civil society in its development, as well as provisions which would increase Myanmar's compliance with the Convention on the Rights of the Child, including those on recruitment of children in the armed forces and on the minimum age of criminal responsibility. This important legislation should be quickly adopted by Parliament.

15. An independent judiciary capable of enforcing legislation fairly and consistently is necessary for the operation of the rule of law. The separation of powers and the independence of the judiciary in Myanmar are guaranteed by the 2008 Constitution but are undermined by the control currently exercised by the executive over the judiciary. There is also widespread evidence of judicial corruption. A December 2015 report of the Judicial and Legal Affairs Complaints and Grievances Investigation Committee found that the judiciary remains one of the country's most corrupt institutions. It confirmed the existence of a chain of bribery with judges at different levels taking instructions from their superiors. There is also inadequate training of individuals holding judicial positions.

16. The Special Rapporteur thus welcomes continued efforts to strengthen the judiciary, including the adoption of the 2015-2017 Strategic Plan by the Supreme Court. Yet, further steps are necessary to guarantee the independence of the judiciary. This would include: measures to reform the judicial appointment process in line with Article 10 of the Basic Principles on the Independence of the Judiciary, including by creating a Judicial Appointments Committee; increasing the salaries and pensions for judges to be commensurate with the status and responsibility of their office; creating a specialised, independent body to investigate allegations of judicial corruption; and improving continuing education and training for the judiciary.

17. An independent legal profession is also necessary to facilitate access to justice and ensure that rights are fully upheld, including respect for the right of defence. Recent years have seen positive developments, including the creation of a unified professional lawyers association

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<sup>4</sup> A/70/412, para.74.

to hopefully act as an effective and independent professional body representing lawyers' interests. Nevertheless, the Special Rapporteur remains concerned by the wide powers of the executive and the judiciary to suspend lawyers' practicing licences. For example, on 15 September 2015, Khin Khin Kyaw, a defence lawyer representing the Letpadan student protestors, was charged by the presiding judge under section 228 of the Penal Code (intentionally insulting or interrupting the public servant in the judicial proceedings) and now faces a possible six months prison term and disbarment.<sup>5</sup> Reform of the Bar Council is also necessary to ensure that complaints against lawyers are handled by an independent and impartial tribunal with regard to due process.

## 2. Democratic space

18. Since 2011, Myanmar has enjoyed an opening up of democratic space – with greater media and internet freedom, newfound political freedoms, increased political and social activism, as well as an increase in the number of civil society actors and trade unions. Yet, challenges remain and negative trends, which the Special Rapporteur has previously highlighted, continue to be of concern. These include ongoing restrictions on the exercise of the rights to freedoms of expression, association and assembly; the continuing arrests of individuals in relation to the exercise of these rights; and the increasing intimidation, monitoring and surveillance of human rights defenders.

19. The Special Rapporteur remains concerned about the continuing application of problematic legal provisions (both historic and recently-enacted) to arrest, prosecute, and convict civil society actors, journalists, and human rights defenders. Particular attention is once again drawn in this regard to section 18 of the Peaceful Assembly and Peaceful Procession Law 2011 (as amended in 2014) (Peaceful Assembly Law), sections 143, 145, 146, 147, 500 and 505(b) of the Penal Code, section 17(1) of the Unlawful Associations Act, the Official Secrets Act, the Emergency Provisions Act, and section 66(d) of the Telecommunications Act. The Special Rapporteur reminds the Government that detention under such laws, which are incompatible with international human rights standards, could give rise to its qualification as arbitrary.<sup>6</sup> As long as these and other laws which have been used in the past to silence critics remain in force, there will always be a risk of perpetuating political imprisonment.

20. The Special Rapporteur also remains particularly concerned by the practice of bringing multiple charges against individuals across different townships for the same offence. Often, these additional charges are brought against those already in detention, resulting in some individuals being forced to undergo multiple trials concurrently. Student protestor Phyoe Phyoe Aung, for example, faces multiples charges for her involvement in the demonstration against the National Education Law in Letpadan in March 2015. She is regularly brought to different township courts to undergo several trials with no clear end in sight.

21. In other cases, charges for past offences for which no action was taken at the time are suddenly brought forward. For example, three women from the 88 Generation, Mee Mee, Nilar Thein, and Thet Thet Aung, were charged in February 2016 under section 18 of the Peaceful Assembly Law for their involvement in demonstrations from 2015 and 2014. In December 2015, Su Su Nway was again arrested and charged along with eight farmers under section 18 of the Peaceful Assembly Law for a 2014 protest against land confiscations.

22. Taken together, these trends seem to indicate that the system continues to reflexively restrict the rights of individuals exercising fundamental freedoms and stifle dissent. This generates fear and uncertainty, which could curtail political and social activism. The Special

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<sup>5</sup> She reportedly informed students in the courtroom that the judge had rejected her application to amend the court record, leading them to voice their disapproval.

<sup>6</sup> See A/HRC/22/44 para. 65.

Rapporteur thus encourages the Government to reconsider its response to critical and independent voices. Civil society and human rights defenders play a vital role in democratic societies. The Government should create an enabling environment for these actors to conduct their activities without fear of reprisal.

23. Similarly, the Special Rapporteur is concerned by reports that journalists and media workers continue to face legal action under legislation which is incompatible with international human rights law. There are also increasing reports of government and military interference with individuals' right to freedom of expression online. In this regard, she notes with concern the convictions of Patrick Kum Jaa Lee and Chaw Sandi Tun, who were both sentenced to six months' imprisonment under section 66(d) of the Telecommunications Act 2014, for Facebook posts deemed defamatory to the Commander-in-Chief. The Special Rapporteur calls on the Government to repeal all provisions which provide criminal sanctions for defamation.

24. She notes the Government's efforts to update media-related legislation, including the adoption of the 2014 News Media Law, the 2014 Printing and Publishing Enterprise Law and the 2015 Law Concerning Television and Radio Broadcasting. Whilst many of these laws improve on the previous framework, they also contain problematic provisions.<sup>7</sup> In addition, the enactment of these laws without repeal of earlier provisions has created a complicated media law framework. Concern about harassment, a lack of clarity regarding the operation of regulatory laws, and physical attacks on journalists, has resulted in fear and self-censorship amongst the media, which hampers the functioning of an independent press in Myanmar. The appointment of the first Media Council in October 2015 is a positive development. The Special Rapporteur hopes that they will be a strong and independent professional body providing guidance to the fledgling media. She is also encouraged by the 24 January 2016 statement of the Commander-in-Chief recognising the indispensability of the media during this time of nation building.

25. The Special Rapporteur remains concerned that civil society actors continue to report being monitored by military intelligence and the Special Branch Police. This includes being followed and photographed at meetings whilst their families, friends and colleagues are questioned on their whereabouts. Special Branch informers reportedly engage in online monitoring, including by alleged hacking of Facebook accounts and interception of email communications. Under sections 76 and 77 of the Telecommunications Law 2013, the Government has broad powers to enter and inspect telecommunication services for matters relating to national defence and security or public interest, and intercept data in an emergency situation. However, the Government has yet to draft legislation governing the interception of communications by law enforcement.

26. Procedural failings for individuals in detention, such as the length of pre-trial detention and the denial of bail, including for those with chronic or serious health conditions, remain of concern. Of the 127 individuals arrested in relation to the March 2015 National Education Law protests in Letpadan, 53 individuals remain in Tharyawaddy Prison and are still undergoing trial one year after their initial arrest. 23 reportedly received no treatment for injuries resulting from police action at the time of their arrest and 24 reportedly developed medical conditions in prison due to inadequate nutrition and unsanitary cells. 18 individuals were transferred to Yangon Hospital for specialist treatment on 1 December 2015 after a hunger strike by several students. The Special Rapporteur notes the statement by the Ministry of Home Affairs that all detainees are now in good health and its reference to section 884 of the Prison Manual Act

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<sup>7</sup> See A/HRC/28/72, paras. 6 and 7.

requiring that treatment be provided by medical teams in prisons. She reminds the Government that prisoners must have access to adequate health care and be housed in sanitary conditions.<sup>8</sup>

27. The Special Rapporteur is particularly concerned by the arrest of Gambira (Nyi Nyi Lwin) on 19 January 2016. According to the Government, he was charged under section 13(1) of Myanmar's 1947 Immigration (Emergency Provisions) Act for illegally entering Myanmar. Gambira reportedly suffers from serious mental health issues resulting from six years in detention following his involvement in anti-government protests in 2007. Despite the fact that his psychological well-being is likely to be severely impacted by continued detention, he was repeatedly denied bail in recent hearings. The Special Rapporteur reminds the Government that pre-trial detention should be considered as a last resort.<sup>9</sup> She also calls on the relevant courts to grant bail to all those in detention suffering from serious health conditions, in particular when there is evidence that the detention itself is worsening those conditions.

28. Two presidential amnesties resulted in the release of 6,966 prisoners on 31 July 2015 and 102 prisoners on 22 January 2016 – with 55 human rights defenders and political prisoners among them. However, civil society estimates that 84 political prisoners remain in prison whilst over 400 are detained awaiting trial.<sup>10</sup> This clearly signals that the process of reform and democratic transition has yet to be completed. The Special Rapporteur urges President Thein Sein to use his remaining weeks in office to immediately and unconditionally release all political prisoners. The majority of political prisoners released in recent years received a presidential commutation of their sentence under section 401 of the Criminal Procedure Code. Section 401(3) provides the President broad powers to return individuals to prison if a condition of their release is not satisfied. A release under section 401 also offers no review of the original detention and conviction. Consequently, many released political prisoners are classified as ex-criminals and have difficulty accessing work and education. For example, three student protestors from Yadanabon University were released on 22 December 2015 only to find that they were suspended and faced expulsion.

## **B. Incitement and discrimination**

29. The Special Rapporteur has previously stated that protection of the right to freedom of expression must be accompanied by efforts to combat intolerance, discrimination and incitement to hatred. In this regard, she welcomes the statement delivered by President Thein Sein in January 2016 to the World Buddhist Peace Conference urging religious and political leaders around the world to join hands and teach their followers to practice the “middle way and avoid extremism”. However, she remains concerned about calls to incitement and hatred against minorities, including the Muslim population, which may fuel discriminatory sentiments and divisions. The Secretary-General expressed similar concern “at the continuous resort to hate speech and the incitement of communal animosities...resorted to by extreme elements among the majority community in Myanmar”.

30. On 30 January 2016, a radical monk posted a video on Facebook depicting a graphic recreation of the rape and murder of a Buddhist woman in Rakhine State in 2012. This incident was viewed by many commentators as a trigger of the 2012 violence. A longer video may be released in the near future. Although the video was later removed by Facebook, the Special Rapporteur is very disturbed by this new instance of incitement against the Muslim community and the absolute silence of the Government in this regard.

<sup>8</sup> See UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) and Principle 9 of UN Basic Principles for the Treatment of Prisoners.

<sup>9</sup> Rule 6, United Nations Standard Minimum Rules for Non-custodial Measures.

<sup>10</sup> Figures provided by the Assistance Association for Political Prisoners (Burma).

31. The Special Rapporteur remains concerned by extreme measures called for by radical Buddhist groups such as the Ma Ba Tha in the name of “protecting race and religion”. Attacks and threats are mainly directed at Muslim communities but also often target anyone offering a different perspective and speaking for non-discrimination. Human rights defenders and other civil society actors calling for interfaith harmony or supporting the rights of minorities have been threatened and harassed.

32. Greater efforts must be made to publicly condemn, prevent and combat acts of incitement to discrimination, hostility and violence. Serious and extreme instances of incitement to hatred, which cross a clearly defined multi-step threshold<sup>11</sup>, should be criminalized. For other cases, civil laws should be adopted so as to provide diverse procedural and substantive remedies. However, any measures taken should not impose additional restrictions on the rights to freedom of expression, assembly and association. Underlying root causes should also be addressed, including through a comprehensive series of preventive, education, and awareness-raising measures. In this regard, the Special Rapporteur welcomes and encourages further interfaith activities aimed at promoting intercommunal harmony and building a more tolerant, diverse and inclusive society.

33. The Special Rapporteur remains concerned by the package of four ‘race and religion laws’ adopted in 2015. Since they were first proposed in November 2014, she and other Special Procedures mandate holders have repeatedly drawn attention to the discriminatory impact of these laws, particularly on minorities and women, and their lack of compliance with Myanmar’s human rights obligations. She renews her call for their revision or repeal.

34. As highlighted previously by the Special Rapporteur and her predecessors, it is crucial that the discriminatory 1982 Citizenship Law also be brought in line with international standards. In particular, provisions that provide for the granting of citizenship on the basis of ethnicity or race, which are clearly discriminatory, should be revised.

35. On 31 March 2015, all temporary registration cards (TRC), the main identification documents held by Rohingya as well as people of Chinese and Indian descent, expired. On 2 June, the Government announced that those who had submitted their TRCs by the deadline (around 469,000 people) were eligible to apply for new identity cards (named “cards for those whose nationality will be scrutinized”). To date, there has been low acceptance of the new cards by the affected population, mainly due to a lack of trust in the process. Consequently, most Rohingya and other non-citizen minorities are left without any valid identity document, thus increasing their vulnerability. For many, the only evidence of legal residence in Myanmar is now the compulsory household lists.

### **C. Rakhine State**

36. The need to address the deeply entrenched human rights issues in Rakhine State represents a significant challenge for the new Government, but also a major opportunity to break from the tragic status quo. Innovative approaches could rapidly bring about positive change. This in turn would feed into the wider objective of strengthening the rule of law and national reconciliation across Myanmar.

37. In recent years, significant national and international attention has been given to the situation in Rakhine State. However, there has been no attempt to structurally address the serious human rights concerns on the ground. Rakhine State is the second poorest in Myanmar and faces long-standing social and economic development challenges affecting all communities. Challenges include malnutrition, low-income poverty and weak infrastructure,

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<sup>11</sup> See A/70/412, para. 32.



compounded by natural hazards.<sup>12</sup> Almost four years after the first outbreak of violence in 2012, there are still some 140,000 internally displaced persons (IDPs) in Rakhine State, the majority of whom are Muslim. It is crucial that human rights be placed at the centre of all humanitarian and development responses in order to achieve sustainable peace and reconciliation.

38. The Special Rapporteur is fully aware of the magnitude and complexity of the issues in Rakhine and their highly politicised nature. Ultra-nationalist political parties and religious movements have contributed to fuelling tensions and polarising communities. At the same time, positive forces are also at play. Many actors are working tirelessly to promote inter-faith dialogue and harmony and to build bridges and trust between communities. However, their approach will unfortunately remain limited as long as the deeper structural and legal issues remain unaddressed. In recent months, a number of new reports and articles have once again highlighted alleged widespread and systematic human rights violations faced by the Rohingya for decades and urged for international action.

39. The Special Rapporteur calls upon the new Government to take immediate steps to put an end to highly discriminatory policies and practices against the Rohingya and other Muslim communities in Rakhine. In practice, these policies deny the affected population some of their most fundamental rights. Of particular importance is the need to restore freedom of movement for all, which in turn could facilitate the process of return and reintegration of communities. On-going discriminatory restrictions to freedom of movement are largely used to control the Rohingya population. As a consequence, movement is restricted within and between townships and people must obtain specific authorization to travel outside Rakhine State. These restrictions severely impact all aspects of their life, including access to livelihood. Moreover, they severely hamper interactions between the Rakhine and Muslim communities. Without progress on this key issue, it will not be possible to address many of the other human rights concerns in Rakhine. Local orders in northern Rakhine State also require Rohingya to obtain permission to marry and attempt to limit couples to two children. Subsequent children may not be included in the family household list and remain unregistered (“black-listed”) with multitude of consequences for the child. As children have the right to be registered at birth, the Special Rapporteur calls the Government to take steps towards universal birth registration in Rakhine, regardless of the child’s or child’s parents’ nationality, statelessness or legal status.<sup>13</sup>

40. The Special Rapporteur continues to receive reports of cases of preventable deaths due to lack of access to emergency medical treatment. Of particular concern are patients in need of emergency treatment outside Sittwe who are required to travel to Sittwe General Hospital to receive treatment due to restrictions on their freedom of movement. In certain locations, this trip can take up to several hours and has reportedly led to preventable deaths. The Special Rapporteur calls on the Government to uphold the right to health of the entire population in Rakhine and ensure equal access and medical treatment to all in public health facilities, irrespective of religion, ethnicity or citizenship.

41. In northern Rakhine, alleged arbitrary arrests and detention continue to be reported. Some cases appear linked to extortion as detainees are often released following payment of a bribe. Since January 2016, the Border Guard Police and the MaKaPa (“the Immigration Team for the Prevention of Illegal Immigration of Foreigners”) have been conducting their annual population check to update the Rohingya household lists. They have announced new and cumbersome procedures for adding children to such lists, which may perpetuate the problem of “blacklisted” or unregistered children.

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12 See Center for Diversity and National Harmony, Rakhine State Needs Assessment, September 2015.

13 See 2016 report of the Secretary General on statelessness A/HRC/31/29. See also CRC/C/MMR/CO/3-4 para. 44.

42. On 8 February 2016, the curfew order imposed in northern Rakhine since June 2012 was once again renewed for two months. The order also bans gatherings of five or more people in public areas, including at mosques, further impacting on daily life and basic religious observance. This curfew and associated restrictions are discriminatory as they appear only to be enforced against the Rohingya.

43. The Special Rapporteur highlights the increasingly dire housing conditions for the majority of IDPs, including some 95,000 IDPs located in Sittwe rural camps. Longhouses accommodating multiple families were initially designed to last only two or three years and many are now collapsing. In 2015, some 25,000 IDPs were provided 3,000 individual houses but only a small minority were relocated voluntarily. The Special Rapporteur reiterates her previous calls to the Government to ensure durable solutions to displacement in line with international standards. This should include voluntary returns to places of origin and avoid permanent segregation of communities. The right to adequate standards of living must be ensured to those who remain displaced as well as those who return.

44. There continues to be little progress in resolving the legal status of the more than one million Rohingya in Myanmar, including their access to citizenship. The citizenship verification process, which had drawn international concern, including by the Special Rapporteur,<sup>14</sup> remains effectively stalled. Those granted citizenship from this process, including in Myebon Township piloted in June 2014, reportedly remain in camps and continue to face restrictions on their freedom of movement and access to basic services.

#### **D. Gender and women's rights issues**

45. The Special Rapporteur welcomes the adoption of the National Strategic Plan for the Advancement of Women (2013-2022) and urges the Government to adopt, as a matter of priority, implementation mechanisms with adequate assigned funding to ensure the Plan is put into practice.

46. She notes that while the number of women parliamentarians has increased following the 2015 elections, women only make up 13 percent of the Union Parliament. Equally, women's representation at the regional and local levels remains low, making up just 0.25 percent of Village Tract Administrators for example. Greater efforts should be made to promote women's participation in public and political life, in line with Myanmar's obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

47. Although no national prevalence data currently exists, reports indicate that all forms of sexual and gender-based violence are of serious concern across Myanmar. In particular, anecdotal evidence indicates a high prevalence of emotional, physical, and sexual intimate partner violence committed against women. In this context, the Special Rapporteur welcomes the development of the draft Law on the Prevention of Violence against Women in conjunction with civil society, and highlights that it must comply with CEDAW. The draft Law, currently being reviewed by the Office of the Attorney General, has been subject to several problematic revisions. The new Law should contain a comprehensive definition of rape and include provisions against rape and other forms of sexual violence committed by the military, police and uniformed personnel in conflict. The Law should also address all forms of gender-based violence, including domestic violence and marital rape, and provide for adequate penal sanctions, including against the military, as well as other measures, such as interim protection orders.

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<sup>14</sup> See A/69/398, para. 52 and A/70/412, para. 41.

48. Sexual and gender-based violence, including domestic violence, is a particular problem in conflict areas. The 2015 report of the Secretary-General indicated that sexual violence remains widespread in Kachin State, northern Shan and Rakhine States and areas subject to ceasefire agreements in Chin State and the south-east of the country.<sup>15</sup> Civil society documented 118 cases of sexual violence, allegedly committed by the military across Myanmar between 2010 and 2014. There is significant underreporting of sexual violence and statistics are likely to underestimate the true scale of the problem. Victims are reluctant to report cases for a range of reasons, including fear for their own security. The Special Rapporteur was also informed of cases where small amounts of financial compensation were offered to families to apparently discourage legal action. For example, the family of a girl allegedly raped by a soldier was reportedly induced by the army to sign a statement declaring that they would not pursue prosecution after accepting a financial settlement.

49. When cases are reported and prosecuted, it is frequently through military procedures, which lack transparency and often provide little justice. While the Special Rapporteur welcomes the convictions of two military personnel for rape in 2014,<sup>16</sup> these examples are not reflective of the general trend nor of the structural challenges, which often result in impunity. Section 72 of the Defence Forces Act 1959 requires serious crimes committed against civilians (including murder and rape) to be transferred to civilian courts but contains a wide exception for acts occurring “while on active service.” The Ministry of Defence informed the Special Rapporteur that 61 members of the military were prosecuted for sexual and gender based violence from 2011-2015. Of these, 31 were tried under court martial. While noting information from the Government that families are sometimes invited to witness trials in military courts, proceedings remain opaque and victims frequently remain unaware of whether action has been taken against perpetrators.

50. Investigations, when conducted, are often seen as flawed and lacking in credibility. One year on, the investigation into the alleged rape and murder of two Kachin schoolteachers, Maran Lu Ra and Tangbau Hkwan Nan Tsin, in Shan State has failed to charge a single suspect. Local villagers remain frustrated at the continuing impunity for perpetrators. They also fear future attacks or legal action, as the military allegedly threatened to pursue anyone publicly accusing the army of involvement. Additionally, a large number of rape cases, including child rape, are reportedly handled by traditional justice mechanisms and often resolved by marrying the victim to the perpetrator without fully considering victims’ rights.

## **E. Conflict and peace process**

51. On 15 October 2015, a Nationwide Ceasefire Agreement (NCA) was signed between the Government and eight armed groups. This followed the signature since 2011 of bilateral ceasefire agreements with 14 ethnic armed groups. However, violent clashes continue in parts of Myanmar, including Kachin and Shan States, as well as Chin, Rakhine and Karen States. The Special Rapporteur also notes with concern the conflict between two ethnic groups, the Ta’ang National Liberation Army (TNLA) and the Restoration Council of Shan State (RCSS) - a signatory of the NCA - in Shan State. The conflict first erupted in November 2015 and has recently intensified.

52. Civilians bear the brunt of the ongoing fighting. The Special Rapporteur is concerned by reports of serious human rights violations committed by all parties to the conflict. Attacks against civilian populations, extrajudicial killings and torture (including of those with

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<sup>15</sup> S/2015/203.

<sup>16</sup> One soldier received a 13-year sentence for the rape of a 14-year-old girl and another was sentenced to life imprisonment for rape.

suspected links to specific armed groups), inhumane and degrading treatment, abductions of men, women and children (including for forced labour and for use as possible human shields), as well as looting, property confiscation and destruction, have been reported. Allegations of forced recruitment, child and underage recruitment (in order to maintain troop strength) also persist, notably on the part of ethnic armed groups. Fighting between the parties, with reports of indiscriminate firing and shelling in villages, have resulted in civilian casualties and injuries. Additionally, as noted above, reports of sexual and gender-based violence, including domestic violence in conflict-affected areas, are widespread. There are also reports of trafficking of women and girls, as well as of early and forced marriage, particularly in Shan State.

53. The Special Rapporteur calls on all parties to ensure the protection of civilians during armed conflict and to respect international human rights and humanitarian law. She recalls, in particular, common article 3 of the Geneva Conventions, to which Myanmar is party, which provides for the protection of civilians from inhumane treatment and violence to life and person in non-international armed conflicts. Individual cases should be investigated promptly by an independent body and perpetrators held to account. The Special Rapporteur notes that victims are frequently reluctant to bring official complaints fearing retaliation. Steps should be taken to address such concerns. Preventative activities such as training and awareness-raising amongst the military and armed groups should also be expanded.

54. Over 96,000 people remain displaced in Kachin and northern Shan States as a result of the conflict. New displacements have occurred due to fighting between the RCSS and the TNLA, including 3,000 after one week of fighting in February 2016. In southern Shan State, many of those displaced by the clashes in late 2015 have reportedly now returned. However, 2,000 people remain displaced, some in camps which lack adequate drinking water and sanitation. There is limited access by international organizations to many conflict-affected areas due to their remoteness, security concerns and difficulties in securing authorizations from government authorities or ethnic armed groups. Local community and civil society groups, often with limited resources and capacity, continue to provide much-needed assistance in these areas.

55. The lack of access hampers much-needed information collection and reporting on conflict-related concerns and violations. Humanitarian access to 1,000 civilians displaced in Sumprabum (Kachin State) remains restricted, despite reports indicating an urgent need for emergency shelter and medical supplies.<sup>17</sup> An estimated 4,000 individuals reportedly remain in China displaced from the Kokang self-administered zone.<sup>18</sup> Little information is available on the status of the fighting in this area and on steps taken to investigate alleged human rights violations reported during the fighting in 2015. IDPs in camps in and around this area are apparently facing difficult conditions, with restrictions on movement, and no access to markets, education or livelihoods. Fighting has also flared in Rakhine and southern Chin States between the Arakan Army and the Myanmar army, displacing hundreds of people.

56. The Special Rapporteur emphasises that the rights of IDPs and those affected by conflict must be addressed as a priority. The United Nations and its partners should have regular, independent and predictable access to all those needing humanitarian assistance. The Government and all parties to the conflict should grant immediate access to all IDP locations. She welcomes the commitment to voluntary IDP return in the NCA and the commencement of small, local projects to provide durable solutions to some IDPs in Kachin State. With an estimated 230,000 IDPs in situations of protracted displacement in the southeast of Myanmar and thousands more in Shan and Kachin states, such programmes are vitally important. Any returns must be in line with the Guiding Principles on Internal Displacement and Framework

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<sup>17</sup> OCHA, Humanitarian Bulletin November-December 2015.

<sup>18</sup> Ibid

on Durable Solutions for IDPs. Steps must be taken to ensure that informal or private education of IDP children is recognised and that they have access to public education when they return. Returning individuals should also be assisted with reacquiring legal documents, which are a vital gateway to other services.

57. Landmines and unexploded ordnance are a major factor preventing IDP returns, with casualties from landmines estimated at 3,700 over the past 15 years but likely to be far higher.<sup>19</sup> The Special Rapporteur was particularly concerned by reports of the continuing use of landmines, resulting in casualties and injuries. She calls on all parties to the conflict to immediately cease the use of landmines. The Special Rapporteur was informed that Myanmar continues to study the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction (APMBC) and calls again for its speedy signature. The mapping and clearance of landmines and unexploded ordnance should be prioritized, with assistance from the international community.

58. The Special Rapporteur welcomes the inclusion of the principles of equality and non-discrimination, justice and the right to self-determination in the NCA. Numerous human rights concerns are also addressed in general terms. Having been informed in August 2015 that the dialogue following the NCA will address these issues in more detail, she has followed the progress of the first Union Peace Conference (12 to 16 January 2016) closely. She welcomes the inclusion of land and natural resource concerns in the discussion and emphasises that these complex issues as well as broader entrenched inequalities should be addressed in future talks. She notes that only a limited number of CSO representatives were able to attend the Conference, leading some to feel excluded from the process. The Myanmar Peace Center informed the Special Rapporteur that national dialogues will be organized throughout the country before the next Union Peace Conference and that civil society will have the opportunity to “play the most important role.” Shared ownership and confidence is needed to ensure buy-in from all relevant stakeholders and affected communities. She urges full consultation with local communities and civil society organisations going forward.

59. The Special Rapporteur welcomes the commitment to “enable at least 30 percent participation by women at different levels of political dialogue” in the four point proposals approved at the Conference. This is a first step in ensuring the greater inclusion of women in the peace process. In line with successive Security Council resolutions,<sup>20</sup> women should be represented at all levels including in decision-making and leadership positions. She also calls for the integration of women’s rights issues and a gender perspective in any future dialogue and for women’s civil society organisations to be given formal access to the process. She welcomes the recommendation from a senior officials workshop held in 2015, to formulate a National Strategy or Action Plan on Implementation of Security Council resolution 1325, and urges the Government to work with national organizations and the international community in this regard.

60. Truth seeking, accountability and reparations processes for current and historic conflict-related violations are critical for building a sustainable and inclusive peace. This should not be seen as threatening, but rather an opportunity to foster national reconciliation and build trust. The Special Rapporteur urges the Government to consider wide and public consultations on possible frameworks and forms for such processes.

61. She welcomes the Government’s signature of the Optional Protocol to the Convention on the Rights of the Child on children and armed conflict (OP-CRC-AC) in September 2015 and hopes that it will be ratified quickly. She also welcomes efforts to implement the 2012

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<sup>19</sup> Landmines and cluster munition monitor, Landmine Monitor 2015. Mine free Myanmar estimate 40,000 casualties.

<sup>20</sup> Security Council resolutions 1325 (2000) and 1889 (2009).

Joint Action Plan to end and prevent the recruitment and use of children in armed conflict. In November 2015, the military discharged 53 underage recruits. This brings to 698 the total of released children since the signing of the Joint Action Plan. According to the Ministry of Defence, 18,699 members of the military have received training on preventing underage recruitment; disciplinary actions were taken against 382 military personnel; the Country Task Force on Monitoring and Reporting made a total of 40 monitoring visits and efforts are being made to raise public awareness of the issue. Yet, the recruitment and use of children in the military, border guard forces, and particularly in non-state armed groups, continues. Additionally, the continued detention of children as “deserters” remains a concern. The Special Rapporteur calls on the Government and all armed groups to end and prevent the recruitment and use of children. She also urges the Government to accelerate the identification, release and reintegration of all children in the armed forces. The Government should also strengthen age verification and monitoring and oversight mechanisms for recruitment, and ensure that all those responsible for child recruitment and use, including civilian brokers, are brought to justice.

## **F. Development, economic, social, and cultural rights**

62. The Special Rapporteur welcomes Myanmar’s ongoing commitment to improving economic and social development for its people. This remains of vital importance for the future transformation of the country. She reiterates the need to ensure that development and investment are proactively managed to ensure rights-based and people-centred processes which bring benefits to all. Such processes should include poverty reduction, equitable resource-sharing and non-discrimination as central pillars. Steps should be taken to amend legislation where relevant but also to change existing mind-sets and practices. In this context, the Government’s signature of the International Covenant on Economic and Social Rights (ICESCR) is particularly welcome as, together with the Sustainable Development Goals, they can provide a comprehensive framework and benchmarks for Myanmar’s development.

63. Land issues will be one of the most pressing challenges for the new Government. An estimated 70 per cent of Myanmar’s population live in rural areas dependent on agriculture and related activities. Forced evictions, land-grabbing and land confiscations for development projects, mining and other natural resource extraction remain of serious concern. . This has resulted in increased poverty, displacement and ruined livelihoods, with consequent effect on a host of other rights, including access to health and education, and a loss of cultural and traditional knowledge. There is often little or no consultation with affected communities, limited or no compensation provided, and limited access to effective legal remedies.

64. The Special Rapporteur has previously highlighted how the complex existing legal framework provides insufficient protection against evictions and does not recognise customary land tenure or community managed resources.<sup>21</sup> She therefore welcomes the new National Land Use Policy, adopted in January 2016 following consultations, which addresses some of these concerns. The adoption of an overarching land law following a similar process of extensive consultation with all stakeholders could help protect the rights of farmers and rural communities across Myanmar, and increase the confidence of the private sector looking to invest.

65. The Land Confiscation Investigation Commission reported to the Union Parliament on 25 January 2016 that many land disputes remain unresolved and that government bodies on different levels did not abide by relevant laws, procedures and recommendations from the Commission. In line with the Guiding Principles on Business and Human Rights (Principle 25),

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<sup>21</sup> See A/70/412 para 62.

the Government should take appropriate steps to ensure access to effective remedy, whether through judicial, administrative, legislative or other appropriate means. The Special Rapporteur believes, therefore, that the creation of a system for dealing with land complaints, which has the necessary powers to provide redress, would be an important safeguard for future cases. Meaningful redress must also be provided to the thousands of individuals whose land was confiscated in the past.

66. In an attempt to protect their rights, people have increasingly resorted to public protests against land confiscations. Unfortunately some of those exercising their right to peaceful assembly, including farmers and land-rights activists, continue to face harassment, intimidation and criminal prosecution. Such prosecutions should immediately cease and those detained for peaceful protests should be released.

67. The Special Rapporteur welcomes the adoption of the Environmental Impact Assessment Procedures in January 2016, which may positively impact the way development projects are conducted. Consultations should genuinely seek the input of affected communities. Other requirements, such as the public disclosure of assessments must be consistently implemented and enforced. She welcomes the fact that the new standards apply to all projects, including those which have already commenced.<sup>22</sup> Cooperation between civil society and regional or local authorities could assist in prioritizing among the many projects to be examined.

68. One area requiring urgent review is the jade mining industry. There were 37 landslides in Hpakant in 2015, which killed over 150 people. These tragic events demonstrate the urgent need to guarantee the safety of those whose livelihoods depend on the mines, as well as the rights to life, health of communities living near such sites. The Special Rapporteur notes the creation of a “Fact-Finding or Data Collecting Group” in January 2016, which will focus on illegal vehicle importation. However, she urges a broader investigation into mining operations, which should include consultation with affected communities and civil society.

69. Transparency is also vital to enable local communities to hold vested interests to account and ensure that development is beneficial to all. The Special Rapporteur thus welcomes the publication of Myanmar’s first Extractive Industries Transparency Initiative report on 2 January 2016.<sup>23</sup> She notes, however, the lack of detailed information related to the jade industry, estimated to comprise up to 48 percent of Myanmar’s total gross domestic product,<sup>24</sup> including on beneficial ownership and contract terms. She urges the release of such information, which could help tackle corruption in the sector. The new Government should also consider reviewing existing legislation and regulations to ensure they include transparency requirements and environmental, social and human rights protection.

70. Private companies have a responsibility not to cause or contribute to human rights abuses. The Special Rapporteur thus welcomes the increasing awareness among some Myanmar companies of human rights and notes that several have now adopted human rights policies. She encourages all investors and businesses to proactively ensure that they abide by the Guiding Principles on Business and Human Rights as well as relevant standards such as the Guidelines on Responsible Governance of Tenure of the Food and Agriculture Organization of the United Nations. She also encourages the Government to develop a National Action Plan on Business and Human Rights following consultation with relevant government departments, civil society and the private sector.

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<sup>22</sup> See articles 8 and 9 of the Procedures.

<sup>23</sup> Myanmar Extraction Industries Transparency Initiative, EITI Report for the Period April 2013-March 2014, December 2015.

<sup>24</sup> Global Witness, “Jade, Myanmar’s big state secret” October 2015, page 6.

71. Drug addiction is underreported but of increasing concern, particularly in conflict-affected Kachin and Shan States. The Special Rapporteur has heard concerns about the increased availability of drugs and the severe impact on the health and livelihoods of those affected, particularly the youth. She thus welcomes the permission recently given to the United Nations Office on Drugs and Crime to conduct the first National Drug Use Survey. She is concerned, however, by emerging reports of community ‘vigilante’ groups discriminating against or calling for extreme measures against drug users, such as public caning. The use of amphetamine type stimulants in parts of Myanmar has more than tripled in recent years<sup>25</sup> and treatment options are severely limited. While production has stabilised, Myanmar remains the second largest producer of opium in the world,<sup>26</sup> with poverty and continuing conflict driving poppy cultivation. Steps should be taken to improve the treatment options available for drug users, while efforts to tackle production should ensure long term sustainable development for farmers.

### **G. Engagement with the international human rights system**

72. The Special Rapporteur welcomes the ratification of several instruments since 2011, including the Convention on the Rights of Persons with Disabilities; the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography; and recently the Chemical Weapons Convention. In 2015, Myanmar also became a signatory to the ICESCR and the OP-CRC-AC. She urges the new Government to ratify both instruments quickly and welcomes the assurances of the Ministry of Foreign Affairs that priority will be given to these treaties. The Special Rapporteur welcomes the Government’s decision to join the Group of Friends of the Convention against Torture Initiative and efforts towards translation of the Convention. She hopes this will be followed by early ratification. She also urges the new Government to sign and ratify the International Covenant on Civil and Political Rights (ICCPR), which would comprehensively underpin the consolidation of democracy and rule of law in the country.

73. Myanmar underwent its second Universal Periodic Review (UPR) in November 2015. While the Special Rapporteur commends the Government for its active engagement in the process, she regrets that many important recommendations were not accepted. These include recommendations related to the Peaceful Assembly Law, the Citizenship Law and the four ‘race and religion’ laws. She calls on the new Government to nonetheless consider implementing these recommendations. The Special Rapporteur hopes that the Government will take the necessary steps to ensure follow-up to accepted recommendations and those of other human rights mechanisms. In this regard, she welcomes the statement by the Ministry of Foreign Affairs that Myanmar will consider the development of a national human rights action plan to support the implementation of accepted UPR recommendations.

74. In November 2015, the Sub Committee on Accreditation of the International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights (ICC-SCA) classified the Myanmar National Human Rights Commission as B status. The Special Rapporteur urges the Government to amend the Myanmar National Human Rights Commission Law 2014 and act on the ICC-SCA’s recommendations, particularly regarding the appointment process and the need to ensure adequate funding and safeguard the Commission’s financial independence.

75. Finally, given the broad scope of prevailing human rights challenges and priorities for the new Government, the Special Rapporteur continues to highlight the value of establishing an

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25 UNODC Southeast Asia Opium Survey 2014.

26 UNODC Southeast Asia Opium Survey 2015.



office of the United Nations Office of the High Commissioner for Human Rights (OHCHR) with a full mandate. The continued restrictions on visas and travel authorisations faced by the OHCHR team currently operating in Myanmar illustrate the need for a sustainable long-term solution. The establishment of a full-fledged OHCHR office in Myanmar in the coming months could provide much needed assistance and support to the Government and Parliament in their efforts to consolidate democratic reforms and ensure greater respect for human rights during this important period.

#### IV. Conclusions

76. Myanmar is a very different country compared to just a few short years ago. Four years of wide-ranging reforms have undeniably changed the human rights situation. The impact of the historic elections in November 2015 resulting in the formation of a new Government and Parliament, with more than one hundred former political prisoners among them, cannot be overstated. But now is not the time for complacency. The uncertainty and lack of clarity in government authority and functioning during this transition period will hopefully not be accompanied by instability and political tensions, which could provide an environment for further human rights abuses and violations. The situation should be monitored closely.

77. There is now a real opportunity to address and tackle key human rights challenges, which continue to affect the people of Myanmar from all communities. These should be at the top of the country's agenda over the coming weeks and months. The Special Rapporteur believes that this is essential in order to make meaningful and real progress towards democratic transition, national reconciliation, sustainable development, and peace in Myanmar. Whilst progress can and should be made quickly and urgently in some areas, others will take time. These are complex issues that will require not only legislative and policy change, but also a change in behaviour and mindset. The Government should consider civil society and human rights defenders as vital partners in this process. Strengthened cooperation and closer engagement with the United Nations and international human rights mechanisms will also be important and would be greatly facilitated by an OHCHR office. The Special Rapporteur hopes she will have the opportunity to work closely and constructively with the new Government and all other stakeholders in Myanmar to improve the human rights situation in the country.

#### V. Recommendations

78. **The Special Rapporteur recognises the legacy of reform left by President Thein Sein, in particular his progressive release of political prisoners through a succession of amnesties. She urges him to use his remaining weeks in office to immediately and unconditionally release all political prisoners, including peaceful protestors charged or convicted under the Peaceful Assembly and Peaceful Procession Law and the Penal Code, and those charged or convicted under outdated defamation, trespassing and national security laws.**

79. **In its first 100 days in office, the Special Rapporteur urges the new Government to:**

- (a) Immediately cease the arbitrary arrest and prosecution of those exercising their rights to freedoms of assembly, association and expression and release any remaining political prisoners.**
- (b) Publicly condemn acts of incitement to discrimination, hostility and violence against minorities, while upholding freedom of expression.**
- (c) Lift the curfew and restrictions on freedom of movement in Rakhine State.**

(d) Ensure access to adequate health, education and other basic services for all displaced persons, particularly in Rakhine State, without discrimination.

(e) Reach early agreement with the High Commissioner for Human Rights for the establishment of a country office in Myanmar with a full mandate.

80. Regarding the peace process and conflict-related violations, all relevant actors should

(a) Ensure the greater participation of women in the peace process, including greater representation of women in delegations, particularly in leadership roles, with the 30 percent quota as a minimum and the integration of women's issues and a gender perspective in the political dialogue.

(b) Immediately cease the use of landmines and issue clear directives to adhere to international humanitarian and human rights law, and ensure the protection of civilians.

(c) Ensure that the United Nations and its partners have regular, independent and predictable access to all those in need of humanitarian assistance wherever they are located.

81. Before March 2017, concrete steps should be taken to achieve the following recommendations:

**Rule of Law**

(a) Undertake a comprehensive review of legislation and legal provisions that limit fundamental freedoms and contravene international standards, with clear target dates for the conclusion of the review. Priority legislation for urgent review should be identified, including those previously identified by the Special Rapporteur and her predecessors. These are included in the attached Annex.

(b) Establish a process of legislative reform with clear timelines for the drafting, consultation, and review of amendments to existing legislation or new draft bills. The timeline should allow for the full consideration of the proposed laws. An appropriate consultation process should be established and applied consistently to ensure transparency and adequate engagement by civil society organisations and members of the public. A vetting mechanism should also be established to ensure that all draft legislation is in line with international human rights standards.

(c) Continue to give priority attention to judicial reform and the capacity-building and training of judges and lawyers to strengthen the independence and effectiveness of the judiciary.

(d) Initiate a process of consultation with all relevant stakeholders on the review and amendment of the Constitution to bring it in line with international standards.

**82. Democratic space**

(a) Amend or abolish section 18 of the Peaceful Assembly Law and section 505 (b) of the Penal Code and drop all charges currently being brought against individuals under these provisions. Ensure that multiple charges are not brought against an individual for the same offence.

(b) Establish systems to prevent the surveillance and monitoring of civil society and human rights defenders. Systematically investigate and redress any threats, acts of intimidation and harassment against media and civil society actors.

(c) Provide adequate compensation and support, including psychological support and employment training, for released political prisoners.

(d) Initiate reform to the Myanmar penal system to ensure compliance with international standards, particularly in relation to the minimum standards of accommodation and access to health facilities.

83. Incitement and discrimination

(a) Implement a comprehensive set of measures to combat and prevent acts of incitement to discrimination, hostility and violence against minorities, while upholding internationally recognized human rights.

(b) Ensure respect for the rights of minorities, including through education and awareness-raising measures to address the root causes of discrimination, promote interfaith and intercommunal dialogue, as well as confidence-building.

(c) Review and amend the discriminatory 1982 Citizenship Law to bring it into line with international standards. In particular, remove any provisions that provide for the granting of citizenship on the basis of ethnicity or race.

(d) Resolve the legal status of habitual residents of Myanmar, including former Temporary Registration Card Holders, and ensure that they have equal access to citizenship through a non-discriminatory process.

84. Rakhine State

(a) Review and revise all local orders, instructions and other policies and practices that are discriminatory in law and practice.

(b) Address long-standing social and economic development challenges through a human rights-based approach, while ensuring the participation of affected communities, and fostering reconciliation and greater integration between communities.

85. Gender equality and ensuring respect for women's rights

(a) Enact a Prevention of Violence against Women Law which is compliant with international law and take more effective measures to prevent and respond to all forms of sexual and gender-based violence, including in conflict. Develop a programme of comprehensive support to victims and survivors, including access to justice, and take the necessary steps to ensure that perpetrators are prosecuted and convicted. Create a system to collect disaggregated data on all forms of gender-based violence in order to understand the scope and scale of the problem.

(b) Ensure that members of the military who perpetrate serious crimes against civilians, including murder and rape are prosecuted, and that such cases are transferred to civilian courts.

86. Conflict-related human rights concerns

(a) Ensure prompt, independent and impartial investigations into allegations of violations committed in conflict areas, and the prosecution and punishment of all perpetrators.

(b) Ensure that complainants are not penalized or threatened with legal action for bringing complaints and seeking redress against violations committed by the military.

(c) End all child recruitment in the armed forces through strengthened recruitment procedures, age verification mechanisms and independent monitoring and oversight of all armed forces. Release all children currently in the armed forces and armed groups. Expedite ratification of the OP-CRC-AC.

(d) Ensure full participation of local and affected communities, civil society, and women, in the peace process, including in Union level dialogue and in implementation and monitoring mechanisms.

(e) Ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction and prioritize the clearance of landmines and unexploded ordnance; at the same time undertake comprehensive mine survey, marking and fencing activities.

87. Economic, social and cultural rights

(a) Ensure that the Environmental Impact Assessment procedures are consistently implemented and enforced, include genuine consultations with affected communities and ensure that all relevant information is freely and easily available.

(b) Enact a new Land Law in line with international standards following an extensive and inclusive consultation process.

(c) Create a system for dealing with land complaints following consultation with civil society and affected individuals, which includes mechanisms for redress for current and historic cases.

(d) Review existing legislation and regulations governing the extractive industries to ensure they include transparency requirements and environmental, social and human rights protection.

88. The Special Rapporteur also calls on all investors and businesses, domestic and international, to abide by the Guiding Principles on Business and Human Rights and other relevant standards in their investment and operations in Myanmar.

89. The Special Rapporteur calls on Myanmar to ratify ICESCR, ICCPR and all other core international human rights instruments.

90. The continued support and constructive engagement of the international community is vitally needed at this important juncture. The Special Rapporteur thus urges the international community to continue to monitor the human rights situation closely and to engage the Government of Myanmar on the human rights concerns highlighted in the present report. She also calls on the international community to assess progress on the basis of international human rights standards and hold Myanmar accountable to its international commitments and obligations.

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## Annex - Selected legislation in need of reform in Myanmar

*The Special Rapporteur and her predecessor have repeatedly brought attention to legal provisions, both historic and newly enacted, which are not compliant with international human rights standards. As highlighted in the present report, such legislation should be amended in priority. In the table below, the Special Rapporteur compiled a list of some particularly problematic provisions. This list is not exhaustive of the legislation in need of reform but she hopes it will be of assistance to the new Parliament in any effort to reform Myanmar's legal framework.*

Legislation	Provision	Summary	Right at stake	References in reports by Special Rapporteurs on Myanmar since 2011
<b>Democratic Space</b>				
<b>Penal Code</b>	141 – 145	Imposes criminal penalties for membership of ‘unlawful assemblies,’ including up to six months’ imprisonment for anyone joining or continuing an assembly, and up to two years for knowingly joining an assembly after it has been commanded to disperse.	Right to freedom of assembly	A/70/412 paras. 21 and 81(c); A/HRC/25/64 paras. 25 and 86(c); A/68/397 para. 67; A/HRC/22/58 paras. 26 and 90(b); A/HRC/19/67 para. 10; A/66/365 paras. 51 and 94(c)
	146, 147, 149	In an unlawful assembly, if any individual uses force or violence, all other members of the assembly can be prosecuted and imprisoned for violence, irrespective of their actual involvement.	Right to freedom of assembly	A/70/412 paras. 21 and 81(c)
	295	Imposes penalties of up to two years’ imprisonment for speech intended to cause religious outrage which insults, or attempts to insult, religion or religious belief.	Right to freedom of expression	A/HRC/25/64 para. 86 (c); A/HRC/19/67 para. 10; A/66/365 paras. 51 and 94 (c)
	298	Imposes penalties of up to one year’s imprisonment for acts committed with deliberate intent to wound religious feelings.	Right to freedom of expression	
	499 - 502	Impose criminal penalties of up to two years’ imprisonment for defamation	Right to freedom of expression	
	505	Imposes penalties of up to two years imprisonment for publishing or circulating statements, rumours or reports with intent to cause members of the military to disregard their duty or which are likely to incite or induce the public to commit a broad range of offences.	Right to freedom of expression	A/70/412 paras. 21 and 81(c); A/HRC/25/64 paras. 25, 74 and 86(c); A/68/397 para. 67; A/HRC/22/58 para. 90(b); A/HRC/19/67 para. 10; A/66/365 paras. 51 and 94(c)
<b>Code of Criminal Procedure</b>	401	Allows the President to reverse a decision to grant amnesty if, ‘in his opinion,’ any condition imposed at the time of release is later breached.	Right not to be arbitrarily detained	A/HRC/25/64 paras. 62 and 86(c); A/68/397 paras.5 and 67; A/67/383 para.9 and 95(c); A/HRC/22/58 para.7; A/HRC/19/67 para.25

Legislation	Provision	Summary	Right at stake	References in reports by Special Rapporteurs on Myanmar since 2011
<b>Peaceful Assembly and Peaceful Processions Act 2011 (as amended in 2014)</b>	4, 8	Requires individuals organising protests to seek prior permission from the authorities rather than to notify them. The permission granted by the authorities will be limited to a specific date, time, location and number of attendees, and will detail the specific chants to be used. If permission is denied, there is no right to appeal.	Right to freedom of assembly	A/70/412 paras. 20 and 81(c); A/HRC/28/72 paras. 13 and 64(a); A/69/398 paras. 27 and 79(d); A/HRC/25/64 paras. 24, 74 and 78(a); A/68/397 paras. 23, 62 and 84(a); A/HRC/22/58 paras. 26, 29, 32 and 90 (a)
	12	Imposes a broad range of restrictions on assembly participants. In particular, they must not cause annoyance, behave in a way which could affect the country or Union, or use chants other than those prescribed in the permission.		
	18, 19	Impose penalties including prison sentences for unlawful assemblies or for breaching the above rules.		
<b>The Unlawful Associations Act 1908</b>	2, 16	Allow the President to declare any association illegal on the basis of a range of broad grounds related to security and maintenance of law and order.	Right to freedom of association	A/HRC/25/64 paras. 25, 74 and 78(b); A/HRC/22/58 paras. 26 and 90(b); A/67/383 paras. 28 and 95 (c); A/HRC/19/67 para. 10; A/66/365 para. 51 and 94 (c)
	17	Imposes penalties of up to three years' imprisonment for any member of an unlawful association or anyone who assists the association's operations. The manager of an unlawful association may be imprisoned for up to five years.		
<b>Political Parties Registration Law (Second Amending Legislation) 2014</b>	2	Amends section 4 of the Political Parties Registration Act to remove the right of associate and naturalized citizens and Temporary certificate holders to form political parties.	Right to freedom of association	A/70/412 para. 12; A/HRC/28/72 para. 22; A/69/398 para. 14
	4	Amends section 10 (a) of the Political Parties Registration Act to remove the right of Temporary certificate holders to become members of political parties.		
<b>Electronic Transactions Law 2004</b>	34	Imposes penalties of up to five years' imprisonment for using electronic technology in relation to information which causes detriment to the interest of any organisation or person.	Right to freedom of expression	A/68/397 paras.17, 67 and 83(c); A/HRC/25/64 paras. 19 and 76(c); A/HRC/22/58 para. 89(d); A/67/383 paras. 26 and 95(c)
<b>Telecommunications Law 2013</b>	66 (d)	Imposes penalties of up to three years' imprisonment for a range of broadly worded acts carried out through the telecommunications network, including defamation.	Right to freedom of expression	A.HRC/31/71 para. 19
	76	Allows government bodies unlimited power to enter and inspect any telecommunications service, or require them to submit documents, if it is in the public interest or in the interests of national security.	Right to privacy	A.HRC/31/71 para. 25
	77	Allows the Ministry of Information and Communications Technology broad powers to suspend or take control of any telecommunications service in an emergency situation.		

Legislation	Provision	Summary	Right at stake	References in reports by Special Rapporteurs on Myanmar since 2011
<b>Ward or Village Tract Administration Law 2012</b>	13, 17	Require individuals to register with the Ward or Village Tract Administrator any overnight guest who is not registered as part of the family unit. Allow the Administrator to conduct household inspections to determine if unregistered guests are present.	Right to privacy	A/70/412 para. 29
<b>News Media Law 2014</b>	9	Imposes a Code of Conduct on all media workers, including an obligation to avoid writing news that deliberately affects the reputation of a specific person or organization and obey unspecified regulations published by the Media Council.	Right to freedom of expression	A/70/412 para. 72; A/HRC/28/72 paras. 7 and 64(b); A/69/398 para 23
	25	Imposes a fine of up to 1,000,000 kyats for breach of certain sections of the Code of Conduct, including the prohibition on deliberately causing reputational damage.		
<b>Printing and Publishing Enterprise Law 2014</b>	4 - 7	Require publishing business to apply to the Ministry of Information for a licence.	Right to freedom of expression	A/70/412 para. 72; A/HRC/28/72 paras. 6 and 64(c);
	15, 16	Imposes fines of up to 5,000,000 Kyats on those failing to do so. Allow the Ministry to revoke or suspend licences if the organisation is found to have applied dishonestly.		
	19	This decision may only be appealed to the Minister of Information.		
<b>The Television and Video Law 1985</b>	22	Creates a Video Censor Board which includes the Managing Director of the Myanmar Motion Picture Enterprise (administered by the Ministry of Information) and representatives from 'relevant' government departments.	Right to freedom of expression	A/HRC/25/64 para 76(c); A/68/397 paras. 67 and 83(c); A/HRC/22/58 paras. 89(d) A/HRC/19/67 paras. 10 and 42; A/66/365 paras. 51 and 94(c)
	24	Allows the Video Censor Board unlimited power to prohibit the public exhibition of a video tape, to seize and destroy any such video tape, and to require a video to be amended or partially erased before public exhibition.		
	26	Allows the Video Censor Board to revoke a video censor certificate if there is a 'valid reason' for doing do.		
	38	Provides the Video Censor Board unlimited power to limit the public exhibition of foreign imported video tapes and amend or erase 'unsuitable' elements of video tapes before export.		
	32	Imposes penalties of up to three years' imprisonment for anyone committing a range of offences including distributing or exhibiting a video without a video censor certificate and operating a video business without a licence.		
<b>The Motion Picture Law 1996</b>	10	Provides for the creation of a Motion Picture Censor Board which includes the Managing Director of the Myanmar Motion Picture Enterprise (administered by the Ministry of Information) and representatives from 'relevant' government departments.	Right to freedom of expression	A/68/397 paras 67 and 83(c); A/HRC/25/64 para 76(c); A/HRC/22/58 para 89(d); A/67/383 paras 26 and 95(c);

Legislation	Provision	Summary	Right at stake	References in reports by Special Rapporteurs on Myanmar since 2011
	12	Allows the Motion Picture Censor Board to refuse permission to film a feature or only allowing filming to begin once a feature has been modified.		A/HRC/19/67 paras. 10 and 42; A/66/365 paras. 51 and 94(c).
	13	Allows the Motion Picture Censor Board unlimited power to prohibit the public exhibition of a motion picture, to retain or destroy any motion picture films at will; and to require a motion picture to be amended, before public exhibition.		
	17	Allows the Motion Picture Censor Board to revoke a censor certificate if there is a 'valid reason' for doing so.		
	33	Imposes penalties of up to one year's imprisonment for anyone carrying on a motion picture business without a licence or screening a motion picture without a Certificate.		
<b>The Computer Science Development Law 1996</b>	34	Imposes penalties of up to 15 years' imprisonment for anyone who uses information technology to distribute information or to carry out an act which undermines a range of broadly worded categories including 'national unity' and 'national culture.'	Right to freedom of expression	A/68/397 paras. 67 and 83(c); A/HRC/25/64 para 76(c); A/HRC/22/58 para 89(d); A/67/383 paras. 26 and 95(c); A/HRC/19/67 paras. 10 and 42; A/66/365 paras. 51 and 94(c)
<b>The Emergency Provisions Act 1950</b>	5	Imposes penalties of up to seven years' imprisonment for 'anything' that is done with various broad categories of intent, including anything done to affect the 'loyalty' of civil servants or to 'spread false news.'	Right to freedom of expression	A/HRC/25/64 paras 19, 74 and 76(c); A/68/397 paras. 67 and 83 (c); A/HRC/22/58 para. 89(d); A/67/383 para. 95(c); A/66/365 para. 94(c)
<b>The State Protection Act 1975 (as amended in 1991)</b>	10, 11, 14,	The Central board may order the detention of an individual for up to 180 days which may be extended to five years upon approval by the Cabinet. Restriction on the movement of an individual can also be ordered by the Central Board for up to one year. Detention must be reviewed every 60 days by the Cabinet or the Central Board. The article is silent on procedural guarantees for the detained individual.	Right not to be arbitrarily detained	A/68/397 para. 67 and 83(c); A/HRC/25/64 para. 76(c); A/HRC/22/58 para. 89 (d); A/67/383 para. 95(c); A/HRC/19/67 para. 10; A/66/365 paras. 51 and 94(c)
	20	Appeals against decisions made by the Central Board can only be made to the Cabinet.	Right to an effective remedy	
<b>Independence of Judges and Lawyers</b>				
<b>The Contempt of Courts Law 2013</b>	2(d), 10	Imposes penalties of up to six months' imprisonment for a range of acts relating to judicial proceedings, including 'impairing the public trust' in the judiciary or commenting on a judicial decision before it is passed, the latter subject to a defence of truth.	Right to freedom of expression and opinion	A/HRC/25/64 paras. 56 and 86(b)
<b>Penal Code</b>	228	Imposes penalties of up to six months' imprisonment for anyone who intentionally 'offers any insult' or 'causes any interruption' to any public servant sitting in a judicial capacity.	Right to freedom of expression and opinion	A/HRC/31/71 para. 17



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<b>Minorities and citizenship</b>				
<b>Religious Conversion Law 2015</b>	2 (c), 5, 7, 10	Creates a state regulated system for changing religion, which requires application, justification, and registration for conversion, followed by an interview, mandated study, and approval by the Registration Board.	Right to freedom of religion and belief	A/70/412 paras. 76 and 81 (d); A/HRC/28/72 paras. 28 and 67 (b)
<b>Population Control Healthcare Law 2015</b>	2	Refers to ‘population control’, which could be seen as regressive and coercive approach to population and development.	Sexual and reproductive health and rights	A/70/412 para 76 and 81(d); A/HRC/28/72 para 28 and 67 (b)
	14 (f)	Provides a list of functions and duties of township groups including ‘organizing’ married couples to practice 36-month birth spacing between pregnancies.		
<b>Buddhist Women’s Special Marriage Law 2015</b>	9 (c )	Requires Buddhist women above 18 and under age 20 to seek parental consent to enter into marriage with non-Buddhist men. This requirement is not imposed on Buddhist men.	Right to marry  Right to equality and non-discrimination	A/70/412 para. 76 and 81 (d), A/HRC/28/72 para 29 and 67 (b)
	26, 27	Provides that a cohabiting couple, where the female partner is Buddhist and the male partner is not, shall be assumed to have married in certain circumstances. The Buddhist women’s parents, guardians or relatives may provide information about this cohabitation which can result in the couple being forced to marry or being sued in court. The provision is only applicable to Buddhist women cohabiting with non-Buddhist men.		
	32	Provides protections against some forms of domestic violence for Buddhist women married to men of other faiths but does not extend these protections to all women. In cases of separation, dissolution of marriage or divorce, non-Buddhist fathers are denied custody of children in all circumstances.		
	24, 39, 40	Impose broad and vague obligations on non-Buddhist men married to Buddhist women such as not to “insult, in words or in writing or through visible representation or gesture, with bad intention to cause bitter feeling to the Buddhist”. Penalties for breach of these obligations include possible prison sentences.		
<b>Monogamy Law 2015</b>	10, 16, 17	Imposes criminal penalties for extramarital relationships.	Right to privacy  Right to non-discrimination	A/70/412 para 76 and 81 (d), A/HRC/28/72 para 29 and 67 (b)

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<b>The Citizenship Law 1982</b>	3 (1)	Gives full citizenship only to those ethnic groups which settled in Myanmar prior to 1823 AD.	Right to equality and non-discrimination	A/70/412 para 41 & 81 (b) , A/HRC/28/72 para 67 (e), A/69/398 para 12 and 53, A/HRC/25/64 para 49 and 83 (f), A/68/397 para 57 and 91 (n), A/HRC/22/58 para 56 and 94 (h), A/67/383 para 65 and 94 (f)
	35	Allows the revocation of associate citizenship on vague grounds of ‘disaffection or disloyalty’ to the state or offences ‘involving moral turpitude.’		
	58	Allows the revocation of naturalized citizenship on vague grounds of ‘disaffection or disloyalty’ to the state or offences ‘involving moral turpitude.’		
<b>Economic, Social and Cultural Rights</b>				
<b>Farmland Law 2012</b>	12, 15, 17, 19	Forms management bodies made up of representatives of Ministries who are in charge of resolving land disputes and approving land use change. Prohibits the farmer granted the right to use the land from various activities without permission from the management bodies including growing other crops or leaving the land to fallow. Breach of the requirement can lead to a fine, eviction or the removal of buildings constructed without permission.	Right to adequate standard of living, including the right to adequate housing, food, water and sanitation	A/70/412 para. 62; A/69/398 para. 57; A/HRC/25/64 para. 27; A/68/397 para. 29; A/67/383 paras. 38
	22, 29, 30	The Farmland Management Body and the Cabinet can authorise the use of land for other purposes if it is deemed to be in the national interest, subject to compensation. There is no right to appeal to an independent body.		
<b>The Vacant, Fallow and Virgin Lands Management Law 2012</b>	2-4, 25	Defines vacant, fallow and virgin land and creates a committee made up of ministry personnel and other ‘suitable persons’, charged with authorising the right to use vacant fallow and virgin land. It has the vague duty to work with relevant government departments to protect farmers utilizing land without formal recognition.	Right to adequate standard of living, including the right to adequate housing, food, water and sanitation	A/70/412 para. 62; A/68/397 para. 29; A/HRC/25/64 para. 27
<b>Land Acquisitions Act 1894</b>	4, 6 (1), 7, 16	Allows the President to order the confiscation of land if in his opinion it ‘is needed or is likely to be needed for any public purposes’ subject to a procedure and compensation.		A/70/412 para. 62
<b>Other</b>				
<b>Penal Code</b>	377	Imposes penalties of up to ten years’ imprisonment for sexual intercourse ‘against the order of nature’, which includes consensual same sex conduct.	Right to privacy, equality and non-discrimination	A/68/397 paras. 43 and 89(a)
	497, 498	Imposes penalties of up to five years’ imprisonment for adultery when committed by a man.	Right to privacy	

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<b>Former Presidents' Security Law 2016</b>	10	Gives former Presidents immunity from judicial prosecution for measures taken during their term of service 'in accordance with the law'.	Right to remedy and accountability	A/HRC/31/71 para. 12
<b>Myanmar National Human Rights Commission (MNHRC) Law 2014</b>	5, 8, 9	Grants authority to a Selection Board containing a significant number of Government officials to adopt its own undefined procedures for nominating 30 prospective Commission members. The President, in conjunction with the speakers of both houses of Parliament, selects up to 15 Commission members from this shortlist and also appoints the Chair and Vice Chair.	Not fully compliant with Paris Principles on composition, independence and pluralism	A/HRC/31/71 para. 74
	46	The law is silent on how the Commission's budget is developed.		