Flygtningenævnets baggrundsmateriale

Bilagsnr.:	**277**
Land:	Myanmar
Kilde:	UN Human Rights Council
Titel:	Report of the Special Rapporteur on the situation of human rights in Myanmar
Udgivet:	4. marts 2020
Optaget på baggrundsmaterialet:	7. maj 2020

Advance Unedited Version

Distr.: General
4 March 2020

Original: English

Human Rights Council
Forty third session
24 February–20 March 2020
Agenda item 4
Human rights situation that require the attention of the Council

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

Note by the Secretariat

Summary

The present report of the Special Rapporteur on the situation of human rights in Myanmar is submitted pursuant to Human Rights Council resolution 40/29. The report reflects on the Special Rapporteur's tenure, identifies developments in human rights issues, and makes recommendations for the furtherance of human rights in Myanmar.

* The report was submitted after the deadline in order to reflect recent developments.
** The annexes to the present report are circulated as received, in the language of submission only.

I. Introduction

1. The present report submitted pursuant to Human Rights Council resolution 40/29, covers developments in Myanmar since the previous report of the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, to the Council in March 2019 (A/HRC/40/68), oral updates presented to the Council in June and September 2019 and report to the General Assembly in September 2019 (A/74/342). This is her last report before ending her term.

2. Despite the Government of Myanmar having withdrawn cooperation with the Special Rapporteur, she continues to seek engagement to address human rights issues in the country. She requested to visit Myanmar in January 2020; however, this was denied.[1] Continuing nevertheless to seek opportunities for dialogue, she sent a list of questions to the Government to which she has not received a response.[2]

3. The Special Rapporteur conducted visits to Thailand from 15 to 17 January and Bangladesh from 17 to 23 January. She thanks the Governments of both countries for facilitating the visits. In Thailand, she met with the United Nations and non-government organisations working on human rights issues in Myanmar. In Bangladesh, she met with Government officials and the United Nations in Dhaka and Cox's Bazar. She visited the refugee camps in Cox's Bazar and met refugees, civil society organisations, and non-government organisations working on the refugee response. She held a videoconference with the United Nations Country Team for Myanmar.

4. The Special Rapporteur observes the period of her mandate has spanned significant moments in Myanmar's recent history. She recalls the great spirit of optimism she and others had when she took up her mandate in 2014, in particular regarding the transition to democracy. She enjoyed access to the country during which she had frank dialogues with the Government, and civil society, the United Nations and international community. She travelled widely over three years, visiting Yangon, Nay Pyi Taw, Kachin, Shan, Rakhine, Kayin and Mon and met with a wide variety of stakeholders, including victims of human rights violations, communities affected by development projects, internally displaced persons (IDPs) and people detained in prison.

5. When she took up her mandate in 2014, it was broadened by Council resolution 25/26 to include progress in the electoral process and reform in the run-up to the 2015 election, and in March 2016, resolution 31/24 asked her to identify benchmarks for progress and priority areas for technical assistance and capacity-building. The Special Rapporteur prepared draft joint benchmarks based on prior recommendations that she shared with the Government and proposed a timeline for implementation. She notes that she had engagements with the Government on some benchmarks but observes limited progress has been made. She further observes that her recommendations provide Myanmar with the practical means by which to protect, respect and fulfil human rights, she has repeated them, and few have been implemented.

6. The magnitude and tragedy of what occurred in Myanmar during the Special Rapporteur's tenure cannot be overstated. Following the violence in northern Rakhine in October 2016, the Special Rapporteur visited the area. She also visited Cox's Bazar for the first time and met with those who fled the military's operations. After hearing the brutality they suffered at the hands of security forces, she recommended that the Human Rights Council establish a commission of inquiry into what occurred in Rakhine, and hold a special session on the situation in Kachin and Shan. The Council in resolution 34/22 established the independent international fact-finding mission that was mandated to establish the facts and circumstances of the alleged recent human rights violations by military and security forces, and abuses, in Myanmar. After further extreme violence was perpetrated in northern Rakhine from 25 August 2017, which the Special Rapporteur found bore the hallmarks of genocide, she proposed that the Human Rights Council set up an accountability mechanism. The Independent Investigative Mechanism for Myanmar was established by Council resolution 39/2 in September 2018 and was operationalised in

[1] See Annex 1.
[2] See Annex 2.

August 2019. The Special Rapporteur also called for the United Nations to undertake an independent investigation into its actions in relation to Rakhine. Gert Rosenthal undertook a review in early 2019.

7. The Security Council has met several times to discuss Myanmar since September 2017, visited Myanmar and Bangladesh in April 2018 and issued a statement on the situation following those visits. However, the Special Rapporteur is disappointed that it has so far failed to unite to pass a resolution that would show unanimity of resolve to address the situation. She renews her call for the Security Council to refer the situation in Myanmar to the International Criminal Court, or for the international community to establish an international tribunal to prosecute alleged perpetrators of international crimes committed in Myanmar.

II. Situation of Human Rights

A. Democratic space

8. In 2015, Myanmar held a landmark democratic election, and in 2016, the National League for Democracy (NLD) government took up office. The Special Rapporteur anticipated expansive opening of democratic space under the new Government, which has not been the case.

1. General elections

9. Myanmar is now once again approaching general elections. There are several issues that need to be addressed for elections to attain the international standards of being transparent, inclusive, participatory, free and fair.

10. In the lead-up to and during the elections, particular efforts should be made to widen the space for free and open public debate by all and to seek, receive and impart information. However, despite repeated calls for reform by the Special Rapporteur, the legal framework governing rights to freedom of expression, assembly and association remains inconsistent with international standards and stifles free expression. Journalists, activists and others continue to face charges and convictions under laws that criminalise legitimate expression and democratic activity. Additionally, there is a total suspension of mobile internet services in nine townships in Rakhine and Chin States, ordered under section 77 of the Telecommunications Law 2013, affecting a host of rights. The Special Rapporteur is concerned that this provision could be used in other parts of the country to suppress information and public debate. The legal framework must be reformed as a matter of urgency, in particular sections of the Telecommunications Law, Unlawful Associations Act 1908, Right to Peaceful Assembly and Peaceful Procession Law 2011, Citizenship Law 1982 and Penal Code.

11. During elections, it is critical that all of the population is able to exercise their right to participate, stand for election and vote. The Political Parties Registration Law 2010 provides that only full citizens may form political parties and that only full citizens and naturalized citizens are allowed to be political party members. As a result of the discriminatory Citizenship Law and its arbitrary implementation, the former Law affects the rights of members of religious and ethnic minorities who face unnecessary hurdles in gaining citizenship documentation, especially Muslims. They most severely impact on the right to freedom of association and political participation of Rohingya.

12. The majority of Rohingya were disenfranchised prior to the 2015 election, and those who remain in Myanmar ahead of this year's election largely remain disenfranchised. There are well over a million refugees from Myanmar outside its borders unable to participate in the election. The Special Rapporteur has also been informed multiple times of the concerns stakeholders have over whether voting will take place in conflict-affected areas, in particular Rakhine and southern Chin State, and northern Shan, and that this would disproportionately affect the representation of ethnic and religious minorities. The Government must not continue to deny political rights to large swathes of its population: it should reform the legal framework to ensure the right to vote and stand for election for all, and ensure that polls are carried out in all parts of the country. If there are concerns about

security in a particular area, it should explore alternative means to in-person voting to guarantee that all voters are able to place their vote. During the election, polling should be open to independent local and international observers and media to ensure that polls are carried out freely, credibly, fairly and peacefully.

2. Hate speech, nationalism and populism

13. The Special Rapporteur has repeatedly raised the issue of speech amounting to incitement to violence, discrimination and hatred in Myanmar, which remains a pervasive and serious concern, particularly on social media. It is the Government's duty to condemn this speech; however, it has not done so. The Special Rapporteur continues to be informed that on Facebook, legitimate expression is over-moderated through the use of blanket bans and automatic takedowns. However, simultaneously, incidents of incitement to violence, discrimination and hatred online are reported to remain under-moderated. The Special Rapporteur has been informed that the draft "anti-hate speech law" is being prioritised for enactment by the Ministry of Home Affairs. She remains concerned that the law could be used to further restrict freedom of expression by relying on censorship and criminal penalties as the means of addressing broadly defined "hate speech". This approach is inconsistent with international human rights law. Instead, the Special Rapporteur repeats her call for the Government to undertake wide-ranging action, including enacting an anti-discrimination law, in accordance with the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

14. Rising nationalist, extremist and populist narratives are antithetical to human rights and are equally of concern in particular regarding ethnic and religious minorities as they fuel incitement to violence, discrimination and hatred against those groups. These narratives demonise civil society and human rights activists and lead them to self-censorship. The Government has a responsibility to counter those narratives publicly and instead promote pluralism, tolerance and inclusion. The Special Rapporteur notes the role of the media and social media in this area, and that it should be harnessed to promote positive norms, diversity and openness to ideas.

3. Politically motivated arrests and prosecutions

15. As of January 2020, there are a reported 647 political prisoners in Myanmar. Seventy-three are serving prison sentences, 141 are detained while facing trial and 433 facing trial while living outside detention. By November 2019, military officers had reportedly filed 47 defamation cases against 96 people under numerous laws since the NLD government took office, including against activists, journalists, religious leaders, artists, and members of political parties. During the same period, complaints have been filed against 37 individuals by members of parliament and their associates for defaming parliamentarians. From March 2016 to November 2019, members of parliament and their representatives opened 22 lawsuits against 30 people who allegedly criticised them over the performance of their duties. These politically motivated prosecutions must end.

16. In November 2019, six Karenni youth were sentenced to six months in prison with hard labour by Loikaw Township Court, Kayah State, under section 8(d) of the Law Protecting the Privacy and Security of Citizens 2017. They opposed construction of a statue of General Aung San and allegedly issued a statement that the Kayah State Chief Minister and Planning and Finance Minister were political criminals and enemies of ethnic unity. The Special Rapporteur is concerned this is a violation of multiple rights; she calls for their release and for arrests of peaceful protesters to cease.

17. The Special Rapporteur has been informed that Ohn Hla, Karen environmental and land rights defender, was again sentenced to one month in jail, along with three others, under section 19 of the Right to Peaceful Procession and Peaceful Assembly Law. Ohn Hla was arrested in April 2019 after joining with residents of the Shwe Mya Sandi Housing Project to protest the loss of their land. She was arrested after her name was allegedly not included in the protest request letter. The Law's overly burdensome requirements must be repealed, the charges withdrawn and Ohn Hla released.

18. The unjust prosecutions of members of the Peacock Generation Thangyat troupe – Kay Khine Tun, Zayar Lwin, Paing Phyo Min, Paing Ye Thi, Zaw Lin Htut, Su Yadanar

Myint, Nyein Chan Soe – for performances in April 2019 that satirised the Myanmar military, also known as the Tatmadaw, and were circulated online, have continued. In February, three members were convicted of defamation under section 66(d) of the Telecommunications Law by Botahtaung Township Court. Four members had already received six-month jail terms for defamation under section 66(d) from Mayangon Township Court. In addition to the charges of defamation, in November 2019 six members were sentenced to one year in prison under section 505(a) of the Penal Code by Botahtaung Township Court; five had already been convicted in October 2019 under the same charges by another court in Mayangon and will serve a minimum of two years in prison. Zayar Lwin, Paing Ye Thu, and Paing Phyo Min still face charges under section 505(a) in four other township courts in Ayerwaddy Region. The Special Rapporteur calls for their immediate release and for all the charges to be withdrawn; satire is not a crime. She also notes that it is against the rule of law principles for individuals to face multiple charges in different township courts relating to the same act; their right to a fair trial must be upheld.

19. Journalists Swe Win, Ye Ni, Aung Marm Oo and Ye Kyi Myint all continue to face charges under the Telecommunications Law, Unlawful Associations Act and Penal Code, respectively. In October 2019, the military filed defamation complaints under section 505(a) of the Penal Code against lawyer Kyi Myint, former Myanmar army Captain Nay Myo Zin and poet Saw Wai for remarks they made at a public gathering in Kawthaung Township, Tanintharyi Region, in April in support of amending the Constitution. The Special Rapporteur calls for the charges against these individuals to be withdrawn.

B. Land rights, business and human rights

20. During the Special Rapporteur's mandate, there have been massive changes to the business environment in Myanmar. Key features have been economic liberalization and lifting economic sanctions, which opened opportunities for investment and development. This has undoubtedly brought benefits to many people but has also exacerbated existing human rights issues. The Government has a duty to protect all people on its territory against human rights abuse, including by business enterprises. At present, the legal framework governing business activities in Myanmar fails to fulfil this duty, while realities on the ground add to the complexity and increase the risk of business adversely impacting on human rights.

21. The Special Rapporteur has also observed the severe impact of large-scale development projects and industries across the country. In many cases, this occurs without prior consultation with the affected communities and results in loss of land, environmental destruction, forced displacement, and intimidation, suppression and even violence against those in opposition. She recalls visiting the banana plantations in Kachin which span for miles on former communal land and contaminate the rivers with pesticides. There have been protests and public opposition over the Mytisone and Thanlwin River dams; Thilawa and Kyaukphyu special economic zones; the Letpadaung copper mine; Swe Ko Ko casino; Tigiyt power plant; Alpha Cement Factory; and trans-Myanmar oil and gas pipeline. The lack of transparency surrounding these and many more major projects erodes public trust in the Government, and people have little faith that they will be the ones to derive any benefit from these developments. This remains particularly so in ethnic States. To date, the Government has failed to deliver on implementing a transparent, inclusive and rights-respecting approach to development; doing so remains a vital priority.

1. Land rights

22. As it has been throughout the Special Rapporteur's tenure, the question of land rights remains one of utmost importance for Myanmar. Long-standing disputes over cases of land expropriation are yet to be resolved and have been aggravated by recent developments in the legal framework, while new cases of alleged land confiscation continue to be reported. Rights to land tenure were addressed in the national land use policy of 2016, which recommended a national land law be enacted in line with the Policy. The Government has not yet implemented this recommendation.

23. The Land Acquisition, Resettlement and Rehabilitation Law 2019 increases the risks to the security of land tenure. The Law fails to reflect the complex reality of land use and displacement in Myanmar and contains overly broad provisions on "public purposes" for

which land may be acquired by the Government. It is unclear on its compatibility with procedures for land expropriation identified in the Environmental Impact Assessment Procedure 2015, and fails to meet international standards, including on the prohibition of forced evictions under the International Covenant on Economic, Social and Cultural Rights.

24. The absence of adequate legal protection for rights to customary and communal land use can be exploited by companies, the military and others, and infringes on rights. The Special Rapporteur is informed that in 2017 and 2018 the Orchard Company filed complaints against 29 farmers in Maubin Township, Ayeyarwady Region under the Vacant, Fallow and Virgin Lands Management Law 2012. The farmers had been cultivating land alleged to have been appropriated by the company since 1991. In April 2019, the company filed a further complaint against villager Sein Sein Soe under section 8(f) of the Law Protecting the Privacy and Security of Citizens, after she raised the issue of the farmers' cases during a visit of the State Counsellor. In September 2019, 11 of the farmers were sentenced to prison under the Vacant, Fallow and Virgin Lands Management Law. The Special Rapporteur calls for their immediate release and for their land to be returned or adequate compensation provided.

25. In 2019, 21 farmers cultivating their land in Demoso Township, Kayah State had complaints of mischief under section 6(1) of the Public Property Protection Act 1947 filed against them by military personnel. Twelve of the farmers are also facing further charges of criminal trespass under section 447 of the Penal Code, as the land is alleged to have been seized by the military 30 years ago. In Loikaw Township, also in Kayah State, military personnel have filed multiple complaints under the Penal Code and Public Property Protection Act 1947 against 20 farmers. The military claims they have continued to use land that has been seized, despite several of the farmers having obtained Land Use Certificates under the Farmland Law 2012 for the land. The Special Rapporteur calls for the charges against these farmers to be withdrawn.

26. The Special Rapporteur repeats that the Government should cease implementation of regressive legislation. Myanmar needs land laws to protect the rights of the rural population. The Special Rapporteur calls on the Government to prioritise drafting a national land law in line with the National Land Use Policy and international standards through a transparent and consultative process. The broader legal framework concerning land use and appropriation must then be reformed to incorporate the national land law's provisions on rights with consistency and clarity.

2. Data protection

27. At the beginning of the Special Rapporteur's mandate in 2014, internet penetration in Myanmar was at around one per cent and mobile phone penetration five per cent. Those figures have since soared. Rapid development of the information and communications technology sector has brought many opportunities, but also given rise to serious human rights concerns. One of these concerns is the absence of laws regulating data protection and surveillance. The Telecommunications Law regulates the actions of telecommunications companies and affords the Government overly broad control of services and data, without clearly defined justifications.

28. In 2015 the Government introduced mandatory subscriber identity module (SIM) card registration for mobile phone users. There are serious concerns about this due to the absence of a clear and comprehensive procedure for regulating lawful data interception, in line with international standards, and an independent and effective justice system to oversee it. Mandatory registration creates an ability to track and locate registered individuals without proportionate and necessary justification. It also has the potential to be used for surveillance, censorship, targeting political opponents, and infringing on freedom of expression. This poses serious risks to security, safety, privacy and other rights. Furthermore, the Special Rapporteur has been alerted to Government plans to establish a national database for storing biometric information of registered SIM card users which will seriously increase the risk of surveillance and security breaches, and further infringe on rights.

29. The Special Rapporteur is further concerned over Government plans to introduce digital identification cards as part of a system that will include biometric information. There are serious risks relating to how such information will be used and stored, particularly in

the absence of data protection laws. Additionally, these plans raise serious concerns to the rights and safety of marginalised groups in Myanmar, including, but not limited to, the Rohingya. The Special Rapporteur urgently calls on the Government to suspend these plans until the necessary legal framework for data protection has been adopted through an extensive, inclusive and consultative process. More broadly, the rule of law, an independent judiciary and reform of the Citizenship Law are all needed to ensure that the collection and storage of personal data are consistent with human rights protection. Companies involved in the development of digital governance systems must be alert to the potential serious human rights risks and exercise heightened due diligence, which should include declining sales of their services if the risks are found to be too high.

3. Natural resource extraction

30. Throughout the mandate, the Special Rapporteur has reported on natural resource extraction in Myanmar in relation to human rights implications and impacts on the environment, conflict dynamics and communities. The Special Rapporteur notes that regulating natural resource extraction in conflict-affected areas remains particularly problematic and poses serious governance challenges. Parties to armed conflicts have interests in the extraction of Myanmar's natural wealth, which adds to the complexity of peace negotiations.

31. The Special Rapporteur continues to receive reports of human rights abuses because of irresponsible mining across the country. Survivors of a landslide that took place in Paung Township, Mon State in August 2019, which reportedly killed more than 70 people, claim the disaster was caused by irresponsible sand mining. There has yet to be an investigation into this serious incident, despite calls in November 2019 from a Mon State parliamentarian. In December 2019 subsistence farmers in Tachileik District, eastern Shan were forced to relocate as a result of the environmental impact of gold mining in the area. Mining waste was dumped by companies, reportedly operating without permits, into nearby streams and rivers and flowed into their paddy fields. The farmers have not received compensation, and their right to an adequate standard of living has been severely impacted.

32. The governance framework in Myanmar still does not support responsible mining. The complexity, lack of clarity and consistency between relevant policies, laws and regulations create legal uncertainty. Furthermore, the Government has limited resources and technical capacity, particularly at State and Regional Government level, to enforce the environmental and social regulations that do exist. Companies are taking advantage of this situation and must be held to international standards. The Special Rapporteur urges the Government to ensure that continued reform of the extraction sector remains high on its agenda. She calls on the Government to prioritise effective implementation of the Environmental Impact Assessment Procedure 2015, making it a consistent, transparent and enforceable requirement. The right to a healthy environment, which brings together environmental dimensions of fundamental rights that enable a life of dignity, must be protected from the impacts of natural resource extraction.

33. The Special Rapporteur once again commends Myanmar's continued participation in the Extractive Industry Transparency Initiative (EITI), which is a positive means of increasing transparency and accountability in the sector. This will support greater realization of rights, including the rights to information and access to remedy. She welcomes recent Government initiatives to increase disclosure of information on beneficial owners and "Politically Exposed Persons" in the extractive industries, described by the EITI as someone who is or has been entrusted with prominent public functions. The Special Rapporteur calls on the Government to continue its efforts to ensure transparent, consistent and enforceable reporting requirements for extractive companies in line with EITI standards.

34. The Special Rapporteur is concerned by information received about a draft law on petroleum that appears to be flawed in several key areas. The draft law reportedly does not address the conflict of interest inherent in the dual role of state-owned enterprise Myanma Oil and Gas Enterprise as both commercial partner and regulator, which is inconsistent with plans for reform of the state-owned enterprises under the Myanmar Sustainable Development Plan. The draft law also fails to include provisions on disclosure of information that are aligned with Myanmar's obligations under the EITI, which would seriously undermine efforts to improve transparency and accountability. It does not address the contentious issue of revenue sharing, which risks exacerbating the grievances of those

in Rakhine State. Rakhine has received a significant proportion of foreign investment in Myanmar in recent years, mainly due to its offshore oil and gas reserves. However, poverty in Rakhine remains far higher than the national average. It is essential to peace that an effective system of revenue sharing be established. Additionally, the Special Rapporteur emphasises that under the International Covenant on Economic, Social and Cultural Rights, the Government is obliged to guarantee that rights within the Covenant are exercised without discrimination. Further, substantive equality should be advanced through economic policies, budget allocations and resource distribution.

4. Garment factories

35. The Special Rapporteur has received reports concerning seven labour strike leaders and a labour rights activist facing charges under section 19 of the Right to Peaceful Assembly and Peaceful Procession Law for their role in a strike at Myanmar Knitting Factory in Pathein, Ayeyarwady Region, in August 2019. The strike was called after workers were reportedly paid less than minimum wage, refused leave and bathroom breaks. Some also reported verbal abuse and sexual harassment by their employers. In February, five labour rights activists were fined under that Law regarding a protest of 400 workers they led to the Yangon Regional Government offices in November 2019. As Myanmar's garment exports are increasing and there are reported plans for construction of many more garment factories around the country, the Special Rapporteur stresses the importance of strengthening labour governance and protections in Myanmar through a consultative and tripartite process.

36. Under the International Covenant on Economic, Social and Cultural Rights, the Government has an obligation to ensure the right to just and favourable conditions of work. This involves fair and equal remuneration, safe and healthy conditions, equal opportunities, and rest, reasonable limitation of working hours, and periodic and public holidays with pay. Myanmar has also ratified several International Labour Organisation (ILO) Conventions, and in December 2019 parliament endorsed ratification of Convention 138 on minimum age. Workers should be trained on their rights, and the Government must protect the rights to freedom of association and assembly, and work with employers' associations and unions to empower workers and improve working conditions. Efforts should also continue for the eradication of forced labour and the worst forms of child labour. Foreign and domestic companies must ensure that human rights are respected throughout their supply chains, in line with the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (Guiding Principles).

5. Due diligence

37. Given the human rights issues that relate to the business environment in Myanmar, the Special Rapporteur emphasises the importance of all business enterprises undertaking heightened human rights due diligence. It is through effective and ongoing due diligence that business enterprises translate the responsibility to respect human rights, in line with the Guiding Principles, into everyday practice.

38. Due diligence processes should include identifying and assessing actual or potential human rights impacts, including undertaking conflict analysis; taking appropriate action to cease or prevent impact and use leverage to mitigate remaining impact where involvement in adverse impact is found; tracking the effectiveness of measures and processes to address adverse impacts; and communicating with stakeholders on how adverse impacts are being addressed. Furthermore, remediation of adverse impacts through the establishment of operational-level grievance mechanisms in line with the Guiding Principles are critical.[3]

39. As it is the Government's duty to protect against human rights abuses, including by business enterprises, the Special Rapporteur calls on the Government to drive due diligence amongst business through strengthened legal, policy and regulatory frameworks. This includes in the context of its current investment policy review. The Government must display leadership in due diligence, for example, through state-owned enterprises' word. Investors also have a significant role to play and should leverage their influence to promote human rights.

[3] A/73/163.

C. Situations of armed conflict and violence, and the peace process

40. Throughout the Special Rapporteur's mandate, she has monitored the armed conflicts and situations of violence around Myanmar. There was optimism that the decades of conflict might be ended after the Nationwide Ceasefire Agreement (NCA) was signed in 2015. However, the process of drafting that agreement was not inclusive, and the agreement that was signed and the peace process that has followed excluded some key ethnic armed organisations (EAOs). Conflict has continued to be waged at different times in Kachin, Shan, Kayin, Chin and Rakhine, with devastating impacts on civilians and alleged commission of international crimes. This has included armed conflict between the Tatmadaw and EAOs, including those who are signatories to the NCA, and between EAOs. The number of militias allied to or under the command of the Tatmadaw has also grown over the course of the mandate.[4] The prospects for national peace appear to be elusive.

1. Rakhine and Chin States

41. In September 2016, the Government established the Advisory Commission on Rakhine State, headed by Kofi Annan and comprising international and national experts. The Commission was imperfect in its composition, having no Rohingya members, and its mandate was not to investigate human rights violations. However, it produced a report in August 2017 that had wide-ranging findings regarding the issues facing the people of Rakhine, including human rights. The report's recommendations were accepted by the Government and the international community. The Government claims that the majority of the recommendations have been implemented. However, a review of the Government's implementation committee's reports suggests that none of the recommendations have been fully implemented, and many have not been implemented at all. Implementation of those recommendations remains the way forward for Rakhine.

42. Crimes against humanity, war crimes and genocide may have been perpetrated against the Rohingya in northern Rakhine in 2016 and 2017. The Special Rapporteur has received information regarding ongoing violence, forced labour, extortion and looting of Rohingya in northern Rakhine, as well as continuing movement restrictions and low access to food, livelihoods, healthcare and education. National Verification Cards (NVCs) continue to be imposed, with harsher movement restrictions reportedly on those who continue to refuse to accept them and limited benefits for those who receive them.

43. It has now been over a year of escalating armed conflict between the Arakan Army (AA) and the Tatmadaw, affecting many townships in Rakhine and Paletwa Township in Chin. There has been a significant build-up of security forces in the States, including the Myanmar navy and air force. Intense fighting between the parties to the conflict is severely impacting civilians and war crimes have been alleged. The Special Rapporteur is concerned that the Tatmadaw is systematically attacking civilians across Rakhine, particularly ethnic Rakhines, especially if they are actual or perceived supporters of the AA.

44. There are now reported to be around 58,000 people who have fled to displacement sites due to the conflict, and more than 128,000 in total displaced across Rakhine State, including those sheltering in other villages, monasteries and religious buildings. The majority of them are ethnic Rakhine and around 1,800 mainly ethnic Chin people are displaced within Chin State. In January, it was reported that soldiers from Tatmadaw Light Infantry Division 66 destroyed a temporary displacement site in Myebon, firing shots in the air to eject the IDPs and giving little reason or warning to the camp organisers.

45. The total suspension of mobile internet services was re-imposed in Maungdaw, Buthidaung, Rathedaung and Myebon in Rakhine and Paletwa in Chin on 3 February for three months for "security requirement and public interest". These townships had already been subject to an internet shutdown from June to August 2019. Ponnagyun, Mrauk-U, Kyauktaw and Minbya have had no access to mobile internet services, indefinitely, since June 2019. The shutdown severely impacts on the fundamental rights of more than 1,000,000 people, the Government has failed to justify the blanket shutdown as being necessary and proportionate, and it may amount to collective punishment. The Special Rapporteur is deeply troubled to have received reports that security operations in

[4] See Annex 3.

Maungdaw, Buthidaung, Rathedaung, have escalated in February, with some civilians killed and dozens injured. Thousands of people fled their villages in Buthidaung and Rathedaung, as well as Kyauktaw and Mrauk-U, townships amid daily shelling, which is reported to have set fire to many homes. On 13 February, 21 Khami children in Kha Mawe Cahung village, Buthidaung were injured after their school was reportedly shelled.

46. Strictly enforced curfews imposed in all conflict-affected townships since April 2019, adding to those already in place in Maungdaw, Buthidaung and Rathedaung, have a far-reaching impact on rights, livelihoods and services, including healthcare and education. Restrictions on humanitarian access have been imposed by the Government since January 2019 and exacerbated effects of the conflict.

47. There have been many reports of indiscriminate fire and fighting in close proximity to villages causing multiple civilian deaths and injuries, including of children. Reports have also been received of arson in villages. In December, Tatmadaw soldiers are reported to have entered Satetara village in Minbya Township firing their guns, reportedly killing a woman. The soldiers then reportedly beat the village administrator to death. The body of the Kyaukmaw village administrator, who had been visiting, was also found. Investigations must be carried out by the Government into all these incidents, and perpetrators held to account.

48. By November 2019, the number of people arrested over alleged association with AA had reportedly reached over 500 in Rakhine State. The Special Rapporteur is concerned about allegations of torture and inhuman and degrading treatment in custody, with several deaths in custody in Rakhine State reported in 2019. She is also very concerned about the family members of senior AA members, including those residing outside Myanmar, being targeted for arrest for political purposes. She has received reports of the AA kidnapping local officials, including the administrator of Taung Shey village, Myebon Township, on 21 February.

49. The escalation of conflict has led to a significant rise in the use of children by the Tatmadaw, including digging trenches, building fences, carrying bricks, clearing bushes and harvesting fields. The Special Rapporteur notes that recruitment and use of children by the Tatmadaw contravenes Myanmar's international obligations and the Child Rights Law 2019, and as such perpetrators must be held accountable.

2. Kachin and Shan States

50. War crimes and crimes against humanity are alleged to have been perpetrated in Kachin and Shan since 2011. In September 2019 the Tatmadaw did not renew its unilateral ceasefire in five regional commands that included northern Shan State. The Brotherhood Alliance – comprising the Ta'ang National Liberation Army (TNLA), AA and Myanmar National Democratic Alliance Army – has announced its unilateral ceasefire extends until 25 March 2020.

51. Throughout November 2019, there were sporadic clashes between the Tatmadaw and TNLA in Kutkai Township, and between the Tatmadaw and Restoration Council of Shan State in Namtu Township. In December, there was a clash between the Tatmadaw and Kachin Independence Army (KIA) in Muse Township. Despite the de-escalation in conflict since August 2019, security and safety remain serious concerns. Reportedly between August 2019 and January 2020, 75 civilians were injured, 88 civilians were detained by the Tatmadaw or militia groups, and six civilians were tortured.

3. Kayin and Mon States

52. Tensions continue in Kayin State between the Tatmadaw and the Karen National Union (KNU) and its Karen National Liberation Army (KNLA) as a result of the Tatmadaw's ongoing efforts to construct a road in Lu Thaw Township (in KNU territory), which began in 2018. The KNU claims that the road construction violates the NCA, and that the Tatmadaw is expanding its troops into the area. On 9 January, there was fighting between the Tatmadaw and KNLA in Lu Thaw, wounding two civilians. In early February, the Tatmadaw reportedly shelled Lu Thaw, causing over 300 villagers to flee.

53. In November 2019, there was fighting between the Tatmadaw and its allied Border Guard Force and the Mon National Liberation Army (MNLA), armed wing of the New

Mon State Party (NMSP), resulting in Tatmadaw seizure of an MNLA base. The fighting took place near the Three Pagodas Pass on the Thai border and caused more than 1,000 Mon villagers to flee to Thailand, who have since returned home. The NMSP considers the action a violation of the NCA. On 3 December 2019, the military withdrew from the MNLA base, but continues to occupy an MNLA outpost in the area. Local people report being fearful that the tension and the proximity of the Tatmadaw could result in another clash.

4. Landmines

54. Landmines and improvised explosive devices (IEDs) continue to be used by parties to the conflicts resulting in killings and maiming of civilians. Reportedly there were 221 civilians killed or injured by landmines and IEDs in 2019, and seven civilians were killed and 32 injured in January 2020 alone. A young man in Myoi Thit, Nam San in Shan was reportedly killed by a landmine when he was collecting water on 9 January. The Special Rapporteur believes that these incidents are underreported due to restricted humanitarian access in conflict-affected areas. The Government's plans to establish a National Mine Action Authority are welcome, and the Special Rapporteur hopes it will work towards a humanitarian mine action programme in line with international standards.

5. Internally displaced persons

55. The Government's Strategic Plan for Resettling Internally Displaced Persons (IDPs) and Closing IDP camps was adopted on 19 December 2019. The strategy refers to international standards including durable solutions, safety and dignity, voluntariness and sustainability, full enjoyment of human rights, non-discrimination, do no harm and humanitarian access. The Special Rapporteur calls on the Government to ensure that its implementation adheres to international standards and takes a human rights approach. IDPs must be afforded their right to return to their place of origin or choice. She urges the Government not to prematurely return or resettle people to areas affected by armed conflict or landmines, and to address the causes of displacement prior to any return.

56. Around 500 villagers from Nam San Yang in Waingmaw, Kachin State, have returned home since January 2019. In November 2019, there was a clash between the Tatmadaw and KIA close to the village that caused significant fear that they would be forced to flee again. It has also been reported to the Special Rapporteur that the villagers are unable to cultivate their land due to landmine contamination, leaving them little access to food and livelihoods.

57. The Special Rapporteur visited IDPs in Sittwe several times and saw the deplorable conditions that over 130,000 mostly Rohingya have been confined to for nearly eight years. The Special Rapporteur visited IDPs in Kachin where there are 97,000 IDPs, and in Shan, there are 9,600 IDPs, all of whom have been living in displacement camps since around 2011. The United Nations and international humanitarian organisations have not had access to 40,000 people displaced in areas controlled by EAOs in Kachin since mid-2016, and access for international and national humanitarians to Government-controlled areas in Kachin and northern Shan is limited.

6. Refugees

58. The Special Rapporteur has visited the Rohingya refugees in Cox's Bazar camps since up to 80,000 people fled after the October 2016 security operations in Rakhine. There are now 914,998 Rohingya refugees in the Cox's Bazar camps, over 730,000 of whom fled following the August 2017 security operations, and refugees continue to arrive. While a repatriation agreement was reached by the Bangladesh and Myanmar Governments in late 2017, and two attempts to start repatriation have been made, refugees remain firm in their view that they will not return home until they can do so in safety and dignity. The conditions in Myanmar are not conducive for their return at this time, and vast changes must be made in order for that to be the case. The Special Rapporteur welcomes the recent announcement by the Government of Bangladesh that they will pilot a formal education programme for Rohingya children following the Myanmar curriculum. However, the Special Rapporteur is concerned about recent constraints in the camps that are worrying the refugees and plans to relocate refugees to Bhashan Char. All decisions concerning the refugees must be carried out with their full, prior and informed consent.

59. Around 100,000 refugees from Myanmar remain in camps in Thailand. The situation there has deteriorated, as donor priorities have failed to recognise that the situation in Myanmar remains unstable. Fears over landmine contamination, ongoing militarization and renewed conflict prevent refugees in Thailand from returning. The Special Rapporteur has been informed about refugees' concerns regarding data collection for "pre-national verification" by the Government of Myanmar. This must not occur without safeguards and their full, prior and informed consent.

III. Conclusion and Recommendations

A. A way forward

1. National dialogue

60. **While Myanmar's democratic transition began around 2010, it is apparent to the Special Rapporteur that it remains in its very early stages. Even within the constitutional confines created by the military, the NLD-led Government has had every opportunity to display leadership and undertake reform to further the transition and improve the situation of human rights. However, those opportunities have been squandered. There has been backsliding in many areas, notably in the democratic space, the peace process has stalled, armed conflict rages on, and international crimes may have been perpetrated. While constitutional amendment was a key aim and some attempts been made to start the process, those efforts are uncertain to achieve results now as the military remains opposed to them. The Special Rapporteur is gravely concerned that the country may be steering itself away from democracy; however, she believes that it is not too late to change course.**

61. **In view of this, the Special Rapporteur proposes that Myanmar embark upon a national dialogue to bring the nation together, provide a forum for debate and discussion about the past and future, and reinvigorate a vision for nation building. The national dialogue needs to be inclusive, participatory, and firmly grounded in human rights. It should involve stakeholders including women, men, youth, people with disabilities, LGBTI people, civil society, and people of different religions and ethnicities, across the country, and include refugees forced from Myanmar. Genuine local ownership over the process would be key: local level dialogue should feed into dialogue at the State and Region level, and the national level. With transparency and public engagement throughout, it should address a wider scope of issues than the current peace process, including civic space, land use, resource sharing, sustainable development, legacies of conflict and refugee and IDP return. Additionally, ongoing issues of discrimination and inequality should be addressed, and ways to move towards an equal, tolerant and pluralistic society espoused. The dialogue should look into reasons for grievances, and explore victim-centred approaches to addressing them, including transitional justice mechanisms in accordance with truth, justice, reparations and guarantees of non-recurrence. The dialogue should build consensus about the future of the nation and could include proposals for peace, and constitutional, legal, security and administrative reform. This would provide a solid foundation for the democratic transformation to proceed.**

2. Justice and accountability

62. **The Government-established Independent Commission of Enquiry submitted its report to the President on 21 January 2020. The Special Rapporteur has reviewed the executive summary published by the President's Office, as well as annexes 16-28 and repeats her call for the full report to be released publicly. Without the full report, it is impossible to understand the basis of the factual findings and legal conclusions. She notes that there is no information available about methodology and the sources of most information relied on. She continues to question whether the Commission was independent and impartial and notes that it cites facts and figures it says were given to it by the Government, apparently unquestioningly. This includes the number of people who fled to Bangladesh, which she observes is vastly lower than the number recorded by the United Nations and Government of Bangladesh. The findings that**

there was no evidence of rape or "gang rape", and searches by male defence personnel may constitute sexual violence, are incredulous. The Special Rapporteur recalls the interviews that she has held with Rohingya survivors of sexual violence, including rape. Several findings are analogous to statements made by the Government on previous occasions, including the claim that Rohingya burned down their own houses, with no evidence cited.

63. **The Commission found that war crimes, serious human rights violations and violations of domestic law took place in northern Rakhine after 25 August 2017, and the Judge Advocate General and Attorney-General are now reportedly undertaking further investigations. It is entirely doubtful that those most responsible will ever be held accountable as war crimes do not exist within Myanmar's domestic law. Furthermore, under the Defence Services Act 1959, the only human rights violations that are criminalised are murder, culpable homicide and rape, and these fail to cover all that occurred. The Special Rapporteur fears that the work of the Commission will only perpetuate impunity. She advises the international community not to accept the executive summary of the Commission's report as a step towards real accountability and to follow the responses by the Government and military closely.**

64. **There has been significant international progress in achieving justice for the alleged crimes committed in Rakhine State since 2016. The Pre-Trial Chamber of the International Criminal Court authorised the opening of an investigation into the situation in Bangladesh/Myanmar on 14 November 2019. Alleged crimes that occurred with at least one element occurring on the territory of Bangladesh or another state party after 1 June 2010, or before that date if they are continuing crimes, will be investigated. The Special Rapporteur notes that the authorization is for any crime within the jurisdiction of the Court that is linked to the violence that occurred in Rakhine in 2016 and 2017, and could include persons or groups in addition to the Rohingya.**

65. **On 11 November 2019, The Gambia brought a case against Myanmar to the International Court of Justice alleging violation of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and seeking the institution of provisional measures. During the hearing on the question of provisional measures, the State Counsellor, as Myanmar's Agent, addressed the Court and stated that from 25 August 2017 there was an internal armed conflict in which war crimes and disproportionate use of force and human rights violations may have occurred. This is the first time such an acknowledgement has been made by the Government, and it is positive that the earlier stance of denial has now ended. On 23 January, the Court found prima facie jurisdiction and standing, and indicated provisional measures for Myanmar. The Special Rapporteur calls on Myanmar to comply with the provisional measures. She notes that Canada and The Netherlands have publicly expressed their intention to jointly explore all options to support and assist The Gambia in its efforts at the Court, and The Maldives announced it would file a declaration to intervene in support of the Rohingya. She encourages other states to follow their initiative.**

66. **A criminal complaint has been filed in Argentina under the principle of universal jurisdiction by civil society organisations alleging genocide and crimes against humanity were committed against the Rohingya. The Special Rapporteur encourages other cases to be brought under universal jurisdiction in different states. The Independent Investigative Mechanism on Myanmar is now functioning and could assist states in doing so. More must be done to achieve justice and accountability for all victims in Myanmar who have suffered at the hands of the military, and the Mechanism's mandate covering the entire country is paramount in this regard. The Security Council should refer the entire situation to the International Criminal Court, or for the international community to establish an international tribunal to try alleged perpetrators of international crimes that have occurred in Myanmar.**

67. **Myanmar's transition cannot succeed without an end to the impunity that permeates all levels of the justice system. It is the Government's responsibility to hold perpetrators to account. To do so, it needs to reform the justice system, ensure judicial independence, remove systemic barriers to accountability and build judicial and investigatory capacity in accordance with international standards. It is inconsistent with international human rights law for human rights violations to be military court**

jurisdiction. Provisions in the Constitution that grant jurisdiction over crimes committed by the military exclusively to military tribunals, from which there is no prospect of appeal, and guarantee military personnel immunity from prosecution for acts done before 2011 should be reformed. Furthermore, the Defence Services Act should be amended to bring crimes that constitute human rights violations committed by the military under the jurisdiction of civilian courts. The police, including border guard police, are subject to the Myanmar Police Force Maintenance of Discipline Law 1995, and this must also be reformed to bring crimes that constitute human rights violations by police under the control of civilian courts. International crimes, including war crimes, crimes against humanity and genocide must be legislated in the domestic criminal law. The justice system must be reformed to afford victims of human rights violations an effective remedy such that full and effective reparations are made, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-recurrence.

3. Rule of law, reform and building capacity to protect rights

68. **Rule of law was one of the NLD's priorities but has not been brought about, despite it being paramount for consolidation of democracy. This is demonstrated by prosecutions of individuals that routinely violate their right to a fair trial, and cases of gross miscarriages of justice. The Special Rapporteur recalls the conviction of Wa Lone and Kyaw Soe Oo of Reuters, who were found guilty under the Official Secrets Act 1923 for exposing a massacre in Inn Din, Rakhine State in 2017. Throughout her mandate, the Special Rapporteur has recommended the reform of laws that may violate human rights. This includes an annex to her report A/HRC/31/71 that set out a non-exhaustive list of legislation, to which she referred in her proposed joint benchmarks. Very few provisions she listed have been amended or repealed and the legislative review and drafting process continues to lack transparency. A systematic consultation process for legislative drafting and review to ensure adequate consultation with stakeholders should be developed.**

69. **The Citizenship Law must be reformed urgently. It continues to be applied discriminatorily, and there are increasing concerns about Muslims outside of Rakhine being rendered stateless as a result. The NVC process must be brought to an end as it has no basis in law, is discriminatory, and according to the Government's figures, does not result in individuals' citizenship being recognized. The Special Rapporteur is concerned to have received information about Hindus and other religious minorities being issued NVCs. The fabric of Myanmar society must not be based on a hierarchy of citizenship statuses but equality. The connection between citizenship and membership of a "national race" must be removed, and instead recognition of the benefits of diversity.**

70. **The proposed prevention of violence against women law has been introduced to parliament. The Special Rapporteur has repeatedly raised issues with some of its contents; it should fully comply with international standards and Myanmar's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women. All forms of sexual violence, in particular, must be criminalised. The Special Rapporteur is informed that rules and procedures for the Child Rights Law are being developed, and this should occur quickly. The guiding principles of non-discrimination and the best interests of the child are of particular importance for accessing health and education.**

71. **The Special Rapporteur observes that to move the country forward, reform, increased capacity and modernization are necessary at every level of governance in Myanmar to protect rights. The Constitution must be amended to ensure that rights are guaranteed to all, and they do not contain vague grounds for restrictions that do not accord with international law such as "community peace and tranquillity". Furthermore, the entire Government and security forces should be brought under civilian control. She notes the progress made with the General Administrative Department having been brought under civilian control in 2019.**

72. **The Government must continue to work with the international community to create modern institutions that have the capacity and ability to carry out their function to serve the people of the country, without discrimination. This includes**

reforming the Myanmar National Human Rights Commission for compliance with the Paris Principles and to become an institution that genuinely promotes and protects human rights. The Special Rapporteur was disheartened by the recent appointment of Commissioners. The new Commission includes four women, which is three more than the previous membership. However there was no transparency in the appointments, and there is no religious or ethnic diversity, no member from civil society and all Commissioners are former civil servants with direct or indirect ties to the military. This demonstrates serious backtracking on forwarding human rights.

4 International instruments and mechanisms

73. **Myanmar must become a party to all remaining international human rights instruments and incorporate those rights in its law, policy and practice. The same goes for incorporating obligations under the treaties to which it is already a party. Doing so will provide Myanmar with the means to bring about reforms to further the transition and overcome longstanding issues. Engaging with all human rights mechanisms, including special procedures of the Human Rights Council, universal periodic review and treaty bodies, and the Office of the High Commissioner for Human Rights will provide Myanmar with necessary guidance and assistance. The Special Rapporteur notes that Myanmar has a number of outstanding and upcoming reporting obligations that it should meet.**

IV. Recommendations

74. **The Special Rapporteur recalls the recommendations she has previously made that have not been implemented and calls for their implementation. She makes particular recommendations in relation to the thematic matters reported, as well as the following recommendations to assist the Government with the way forward:**

(a) **Plan and hold a national dialogue that is inclusive, participatory and grounded in human rights, involving a wide variety of stakeholders from across the country at the local, State and Region and national levels, to establish a foundation for the democratic transformation to proceed.**

(b) **Sign and ratify all core human rights instruments. Fully engage with international human rights mechanisms, including timely treaty body reporting, universal periodic review and Special Procedures mandates.**

(c) **Open an Office of the High Commissioner for Human Rights with a full mandate.**

(d) **Follow through on its declaration that it will fully cooperate with the next Special Rapporteur on the situation of human rights in Myanmar.**

75. **To the Government regarding the democratic space:**

(a) **Widen space for free and open public debate by all in the community in advance of the elections. Ensure that all persons entitled to vote are able to exercise that right, in particular in states affected by conflict. Restore the Rohingyas' right to vote. Ensure that elections are transparent, inclusive, participatory, free and fair and that they are open to independent local and international observers and media.**

(b) **Withdraw the draft "anti-hate speech law" and work in open consultation with a wide range of local and international stakeholders on an effective anti-discrimination law. Take wide-ranging positive action to combat incitement to violence, discrimination and hatred in accordance with the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.**

(c) **Publicly counter nationalist, extremist and populist narratives and promote pluralism, tolerance and inclusion.**

(d) **Release all political prisoners and provide them with redress and rehabilitation. Withdraw all charges against individuals for legitimate expression and**

democratic activity. Halt all politically motivated charges that contravene the rights to freedom of expression, assembly and association.

76. **To the Government regarding land rights, business and human rights:**

(a) **Recognise and protect rights to land tenure for those practicing communal and customary land use, and those displaced by conflict. Cease forced evictions and land confiscations without consultation and adequate compensation in line with international standards.**

(b) **Enact a national land law in line with the National Land Use Policy and international law and standards, after a transparent and consultative drafting process. Following this, reform the existing land use and appropriation laws for consistency with the national land law, in compliance with international standards.**

(c) **Prioritise an inclusive, consultative process to develop an appropriate legal framework for data protection that accords with international standards. Amend the Telecommunications Law 2013 to bring it into line with international standards.**

(d) **Continue to reform the legal framework that governs natural resource extraction to reduce inconsistency and complexity, in consultation with affected communities and civil society. Allocate sufficient resources and training to enforcing environmental and social regulations. Ensure that affected communities have a right to remedy. Implement and enforce the Environmental Impact Assessment Procedure 2015.**

(e) **Continue to participate in the EITI and ensure transparent, consistent and enforceable reporting requirements for extractive companies in line with EITI standards.**

(f) **Ensure that the proposed law on petroleum supports compliance with Myanmar's obligations under the EITI. Establish a fair system of revenue sharing.**

(g) **Protect workers' rights to freedom of association and assembly, and work with employers' associations and unions to end forced labour and hazardous child labour, empower workers in Myanmar and improve working conditions.**

(h) **Drive due diligence amongst business through effective legal, policy and regulatory frameworks in accordance with the Guiding Principles on Business and Human Rights.**

77. **To the Government, military and EAOs regarding situations of armed conflict and violence:**

(a) **Strictly comply with international humanitarian law and human rights law in the conduct of hostilities, including protecting all civilians and civilian objects. Cease conduct that amounts to grave violations against children.**

(b) **Immediately stop laying landmines, ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, clear mines and unexploded ordnance in accordance with international standards, mark and fence mine areas and carry out systematic mine-risk and education activities.**

(c) **Immediately allow full and unfettered humanitarian access to people in need in all areas affected by armed conflict and violence, and access to the media and human rights monitors.**

(d) **Bring about conditions for the voluntary, safe, dignified and sustainable return to the country of all Myanmar refugees. Ensure that returning refugees enjoy their fundamental rights, including justice, citizenship, return to places of origin and compensation for burned, damaged or looted property, as well as adequate access to livelihoods, education and healthcare.**

(e) **Ensure that any closure of IDP camps fully complies with international standards, respects IDPs' rights and returns are to their place of origin or choice, and that they are not resettled in places affected by ongoing armed conflict or landmines.**

78. **To the Government regarding rule of law:**

(a) **Dismantle structural impunity including by amending the Constitution, the Defence Services Act 1959 and the Myanmar Police Force Maintenance of Discipline Law 1995 to bring crimes that constitute human rights violations under the jurisdiction of independent civilian courts. Enact legislation to criminalise war crimes, crimes against humanity and genocide that accords with international standards.**

(b) **Reform the Constitution, including by establishing civilian control over all Government ministries and security forces and stipulating rights and freedoms for the whole population that accord with international law.**

(c) **Reform all laws that may violate human rights, including those in the annex to A/HRC/31/71.**

(d) **Develop a systematic consultation process for drafting and review of amendments and new bills.**

(e) **Reform the Citizenship Law 1982 including by removing the hierarchy of citizenship classes and reliance on "national race" as a determining factor in citizenship. Ensure any new citizenship law is implemented without discrimination. Stop the NVC process and restore citizenship to the Rohingya.**

(f) **Enact the proposed prevention of violence against women law, ensuring that it complies with international standards and Myanmar's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women.**

(g) **Quickly develop rules and procedures for the Child Rights Law 2019 in accordance with the guiding principles of non-discrimination and best interests of the child.**

(h) **Publicly release the full report of the Independent Commission of Enquiry.**

(i) **Fully comply with the provisional measures indicated by the International Court of Justice. Cooperate with the International Criminal Court and the Independent Investigative Mechanism for Myanmar.**

(j) **Reform the Myanmar National Human Rights Commission for full compliance with the Paris Principles, including its founding law. Appoint Commissioners who will uphold the Commission's independence, represent of civil society, and include ethnic and religious minorities to reflect the diversity of the country.**

79. **To the United Nations and the international community:**

(a) **Refer the situation in Myanmar to the International Criminal Court immediately, or alternatively establish an international tribunal to try alleged perpetrators of international crimes.**

(b) **Consider commencing cases against alleged perpetrators of international crimes under universal jurisdiction.**

(c) **Support The Gambia's case against Myanmar under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide at the International Court of Justice.**

(d) **Support a national dialogue in Myanmar and ensure that it is inclusive, participatory and grounded in human rights, involving a wide variety of stakeholders from across the country at the local, State and Region and national levels.**

(e) **Assist Myanmar with wide-ranging reform, in particular of the justice sector and the Myanmar National Human Rights Commission, and to create modern institutions that will serve the people of the country without discrimination.**

(f) **Encourage Myanmar to sign and ratify all core human rights instruments, fully engage with international human rights mechanisms and open an Office of the High Commissioner for Human Rights with a full mandate.**

(g) **Ensure that companies operating in Myanmar respect human rights throughout their work and supply chains, in line with the Guiding Principles on Business and Human Rights. They must undertake heightened due diligence, particularly regarding conflict areas, and consider declining sales if the risks are found to be too high.**

(h) **Work with the Tatmadaw and all EAOs to remove them from the list of groups who recruit and use children annexed to the reports of the Secretary-General.**

(i) **Ensure full funding of humanitarian assistance programmes inside and outside Myanmar, including supporting Bangladesh and funding the joint response plan for the Rohingya humanitarian crisis, and refugees in Thailand.**

(j) **Be united in supporting the Government of Myanmar in complying with its human rights obligations, and engage with and fund programmes in Myanmar, including in relation to the peace process, on a principled basis, making both parameters and funding contingent on genuine reform efforts.**

Annex 1

Permanent Mission of the Republic of the Union of Myanmar to
the United Nations Office and other International Organizations
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No. 639 / 3-27 / 91

30 December 2019

Madame,

I am writing this letter to you in response to your proposal on 12 December 2019 to visit my country in connection with the mandate of Special Rapporteur on the situation of human rights in Myanmar.

As a member of the United Nations, Myanmar believes in enhancing cooperation with the UN through a constructive engagement to address human rights issues.

It is in the spirit of cooperation that the authorities of Myanmar had granted you to visit the country to carry out your mandate as UN Special Rapporteur on the situation of human rights in Myanmar.

However, as we have repeatedly stated that, your continued failure to comply with the code of conduct, as well as the lack of impartiality and the lack of genuine goodwill towards Myanmar in a non-objective manner have caused not only public resentment against you but also negative effects to my country in its democratic transition.

In this regard, I am obliged to reaffirm Myanmar's position to discontinue cooperation with you and our inability to accept your proposed visit at this time.

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

(Kyaw Moe Tun)
Ambassador and Permanent Representative

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

Annex 2

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

Previous recommendations

1. Please provide information on your plans to implement the recommendations in my report to the General Assembly of October 2019.

Law and institutional reform

2. I understand that the Constitutional Amendment Committee has now submitted two Charter Amendment Bills to parliament. Please provide an update on the progress of this.

3. I refer to the non-exhaustive list of laws, which are not compatible with human rights standards and are in need of reform, provided in my report to the Human Rights Council of March 2016. What progress has been made to amend this legislation? Please give a detailed list of laws from that list that have been amended or reformed.

4. Please provide an update on the progress of the Prevention and Protection of Violence against Women Law, and in particular how the law will define sexual violence so as to properly protect women and meet international standards.

5. I understand that committee under the Office of the Attorney General tasked with drafting the National Land Law has been established. Please provide details on the progress being made in drafting the National Land Law, and on how the Law will be aligned with the National Land Use Policy.

6. Please provide an update on the progress of the draft Prisons Law, and how it will be aligned with the Minimum Rules for the Treatment of Prisoners.

7. Please provide an update on the progress of the draft Petroleum Law, and how it will align with Myanmar's obligations under the Extractive Industry Transparency Initiative.

8. I understand that all previous members of the Myanmar National Human Rights Commission (MNHRC) have been replaced with new commissioners. Please provide information on the selection process. Please also provide information on plans to amend the MNHRC's enabling Law, and how it will be aligned with the Paris Principles.

Administration of justice

9. It is reported that there are 74 political prisoners currently serving sentences. What is obstructing their release? Please provide information on the steps being taken to bring about the release of all political prisoners.

10. Please provide information on the reported conviction of the following people, including the proceedings that were commenced against them, any trial that took place and whether they had legal representation:

(a) Thein Aung Myat (reportedly sentenced to two years in prison in Ayeyarwady Region under section 17(1) of the Unlawful Associations Act for publishing a calendar using terminology used by the Arakan Army)

(b) Kaung Myat Thu (reportedly sentenced to two years in prison in Ayeyarwady Region under section 17(1) of the Unlawful Associations Act for publishing a calendar using terminology used by the Arakan Army)

11. Please provide information, including the status of proceedings and whether the defendants have legal representation, about the following cases that are ongoing:

(a) Nay Zar Tun (reportedly jailed and facing two charges for defamation in Yangon in relation to her campaigning for release of her brother, Aung Ko Htwe)

(b) Swe Win (reportedly facing charges of defamation in Mandalay under section 66(d) of the Telecommunications Law)

(c) Ye Ni (reportedly facing charges of defamation in Yangon under section 66(d) of the Telecommunications Law)

(d) Aung Marm Oo (reportedly facing charges under the Unlawful Associations Act)

(e) Aung Kyi Myint (reportedly jailed in solitary confinement and facing charges sections 114, 147, 332, 333 and 353 of the Penal Code)

(f) Kyi Myin (reportedly facing charges in Tanintharyi Region under section 505(a) of the Penal Code)

(g) Nay Myo Zin (reportedly facing charges in Tanintharyi Region under section 505(a) of the Penal Code)

(h) Saw Wai (reportedly facing charges in Tanintharyi Region under section 505(a) of the Penal Code)

General election and democratic space

12. Please provide information on plans to ensure that polling for the 2020 General Election will be carried out in all areas and that all communities will be eligible to participate and exercise their right to vote.
13. What steps are being taken to address the spread of hate speech on social media, and what specific measures will be taken in the run up to the 2020 General Election?

Natural resources

14. What steps are being taken to strengthen transparent implementation, monitoring and enforcement of the Environmental Impact Assessment Procedure?
15. What steps are being taken to establish a fair and effective system of revenue sharing from natural resource extraction?
16. Please provide information on plans to ensure that companies will disclose details of their beneficial owners and that "Politically Exposed Persons" will be transparent about their ownership in natural extraction companies in line with Myanmar's obligations under the Extractive Industry Transparency Initiative.

Business and human rights

17. I understand that the government is planning to develop a digital identification database alongside digital identification cards. I also understand that the government is planning to require biometric registration of mobile subscriber identification module (SIM) cards. Please provide information on the progress of these plans, and details of what data will be collected, from whom, from where and how it will be used and stored. Please also provide details of plans to develop legislation to regulate data protection.
18. What measures are being taken to empower workers and improve conditions in all sectors including garment factories and the fishing industry?

Armed conflict and peace process

19. Please provide information on reports civilian casualties of the conflict between the Tatmadaw and the Arakan Army in northern and central Rakhine and southern Chin States.
20. Please provide information as why the suspension of mobile internet services was reinstated in Maungdaw, Buthidaung, Rathedaung, Myebon in Rakhine and Paletwa in Chin, bringing the number of affected townships to nine. Please provide information about when the suspension of mobile internet services in all the nine townships will be lifted, and details of any interim arrangements being implemented to ensure the rights to information and freedom of expression. Please explain how communities affected by armed conflict are adequately supported and protected under the suspension.
21. Access to humanitarian assistance remains severely restricted in northern and central Rakhine and southern Chin States, as does freedom of movement. Please provide detailed information as to what is being done to ensure access of humanitarian access to civilians affected by the conflict, and to ensure safe passage to those displaced and / or in need of healthcare and assistance.

22. I have received reports that Rohingya in Rakhine State continue to face violence, intimidation and harassment. Please provide information about this, any investigations undertaken and perpetrators held to account.
23. I have received reports that village administrators in Rakhine State are being targeted by the Tatmadaw and subjected to violence, intimidation and harassment. Please provide information about this, any investigations undertaken and perpetrators held to account.
24. I understand that charges have been filed against an approximate 500 people in Rakhine State over alleged links to the Arakan Army. Please provide information, including whether the defendants have access to legal representation
25. How has the expiration of the Tatmadaw's unilateral ceasefire covering Shan and Kachin States affect the peace process?
26. Please provide information about civilian casualties of the conflict between the Tatmadaw and ethnic armed organizations in northern Shan State.
27. I understand that there has been recent fighting between the Tatmadaw and the Karen National Liberation Army. Please provide information on reports of civilians affected. How will this affect the peace process?
28. I understand that there has been recent fighting between the Tatmadaw and the Mon National Liberation Army. Please provide information on reports of civilians affected. How will this affect the peace process?
29. Is the Tatmadaw continuing to lay landmines? Please provide details of where, the precautions that are taken to minimize harm to civilians and any demining programs in place.

Refugees and internally displaced persons (IDPs)

30. Please provide details on measures to support the voluntary, safe, dignified, and sustainable return of refugees currently living in Thailand.
31. Please provide details on the reported voluntary repatriation of Rohingya refugees from Bangladesh. How many have returned; their place of origin; and where they are currently residing.
32. Please provide information on the progress of implementation of the "National Strategy for the closure of the IDP camps in Myanmar."
33. Please provide information on what measures are being taken to protect the rights of the growing number of IDPs in Rakhine State, now reported to have reached 100,000. Given there are restrictions on humanitarian access, how are you ensuring that they have the assistance that they require?
34. Please provide information on the recent reports of the Tatmadaw destroying IDP camp in Myebon Township, Rakhine State.

Accountability

35. Please provide a copy of the full version of the report of the Independent Commission of Enquiry. How was independence and impartiality of the Commission secured? Do you plan to implement all the recommendations that were made? If so, please provide information on how you plan to do this and the timeline.
36. Please provide information about how you plan to comply with the provisional measures indicated by the International Court of Justice on 23 January 2020.

Annex 3

Militia and Drug Addiction in Conflict-Affected Areas

I. Introduction

This briefing paper, annexed to the report of the Special Rapporteur, provides a brief overview of the situation of militia and drug addiction in Myanmar, which is impacting on human rights. The aim of the briefing paper, which is drawn from open source material,[5] is to raise awareness of and encourage further research into the issues.

For decades there has been a range of armed actors involved in Myanmar's internal armed conflicts. Alongside the Myanmar military, or Tatmadaw, and ethnic armed organisations (EAOs), there are numerous smaller armed groups known collectively as militia. The majority of militia are allied with the Tatmadaw and operate under its command.[6]

Currently, Myanmar may be the second largest producer of heroin in the world and the largest producer of methamphetamine.[7] EAOs are often reported to be highly involved in the narcotic industry in Myanmar, however analysts suggest that militia allied to the Tatmadaw are among the key players.[8]

The scale of the industry and its connection to Myanmar's conflicts has many serious implications for the situation of human rights in Myanmar. One of these is the serious harm it is inflicting on the civilian population by having resulted in high rates of drug addiction across the country, that is particularly acute in conflict-affected areas.

II. Militia and the narcotic industry

A. Background

For decades the Tatmadaw has been engaged in armed conflicts in Myanmar's border areas against dozens of EAOs from amongst the Karen, Karenni, Shan, Mon, Kachin, Chin and Rakhine and other ethnic groups. The peace process launched by the Government in 2011 is it at a standstill, and recent years have seen intense fighting in Myanmar.

Alongside the Tatmadaw and the EAOs, there are many smaller conflict actors known collectively as militia. The majority are pro-Tatmadaw, operate under its command to varying degrees, and are part of its defence strategy; although they differ significantly in type, size and precise nature of their relationship with the Tatmadaw (for example, some may be under its direct command, some may even travel with Tatmadaw battalions, whereas some carry out security operations in designated areas).[9] The Tatmadaw has long incorporated militia into its command structure. However, despite the role they play for the Tatmadaw, they are expected to be self-funding. Under General Ne Win, the Government did not provide militia allied to the Tatmadaw with funding and instead authorized them to

[5] With supporting research by Htike Htike for dissertation titled "The Politics of Illicit Drug Trade in Conflict: A comparative study of the contemporary Kachin War and Rohingya Crisis in Myanmar (Burma)" MSc Politics of Conflicts, Rights and Justice Department of Politics and International Studies, SOAS, University of London, 2019.

[6] For more information see "Militias in Myanmar" by John Buchanan for the Asia Foundation, 2016.

[7] For more information see "Transnational Organized Crime in Southeast Asia: Evolution, Growth and Impact" by the United Nations Office on Drugs and Crime (UNODC), 2019 and ICG, 2019.

[8] For more information see "Fire and Ice: Conflict and Drugs in Myanmar's Shan State" by the International Crisis Group (ICG), 2019.

[9] Buchanan, 2016.

control the administration of the areas in which they operated and engage in profit-generating activities – including the narcotic industry.[10]

The Tatmadaw-drafted 2008 Constitution states that "all the armed forces in the Union shall be under the command of the Defence service".[11] Accordingly, from 2009 to 2010, the Tatmadaw attempted to transform EAOs into pro-government militia, namely People's Militia Forces (PMF) and Border Guard Forces (BGF). This contributed to the breakdown of several long-standing bilateral ceasefire agreements.[12] However, several pro-government militias, EAOs with bilateral ceasefire agreements with the Tatmadaw and anti-government EAOs in Myanmar's conflict areas did become PMFs and BGFs. In a continuation of the policy initiated under General Ne Win, rather than being provided with funds from the military budget, BGFs and PMFs are allowed to control territory and conduct their own profit-generating activities within it, while they perform security duties and if necessary fight alongside the Tatmadaw.[13]

There also remains many militias that are not PMF or BGF but are allied to the Tatmadaw, operate under its command and supervision, and are authorised to conduct their own profit-generating activities within designated territory.[14]

B. Conflict areas

Shan State has long been a global epicentre of illicit drug production. It was the primary global source of opium and heroin for decades and is now the centre of a massive regional methamphetamine production and trafficking industry, linked to transnational criminal organisations.[15] By 2019, the United Nations Office on Drugs and Crime (UNODC) estimated that the Southeast Asian methamphetamine market could value up to USD $61.4 billion annually, and the heroin market around USD $10.3 billion.[16] Sites of drug production on an industrial scale need to remain hidden and inaccessible to law enforcement or others who may scrutinise them. With many areas under the control of Tatmadaw allied militia and BGF, and large enclaves under the full territorial control of EAOs that have bilateral ceasefire agreements with the Tatmadaw, much of Shan State provides the necessary environment for mass synthetic drug production and trafficking.[17]

After the 17-year long ceasefire between the Kachin Independence Army (KIA) and the Tatmadaw broke down in 2011, some armed groups that had splintered off from the KIA transformed into BGF and PMF. For example, the Kachin Defence Army became a PMF and the New Democratic Army - Kachin became several BGF units.[18] Civil society groups report that the increased number of PMF and BGF has corresponded with a rise in the production, distribution and sale of narcotics in Kachin State.[19]

Since 2008 as many as fifteen separate BGF battalions have been established in Kayah and Kayin States.[20] Again, civil society report this period as having corresponded with an increase in production, distribution and sale of narcotics in those States. Tatmadaw allied militia, such as the Democratic Karen Buddhist Army also hold territory and are reported to

[10] For more information see "A Return to War: Militarized Conflicts in Northern Shan State" by the Institute for Security and Development Policy, 2018.
[11] Constitution section 338.
[12] Buchanan, 2016, "Silent Offensive How Burma Army strategies are fuelling the Kachin drug crisis" by the Kachin Women's Association Thailand (KWAT), 2014.
[13] Buchanan, 2016.
[14] Buchanan, 2016.
[15] ICG, 2019.
[16] UNODC, 2019.
[17] ICG, 2019.
[18] KWAT, 2014.
[19] KWAT, 2014.
[20] Buchanan, 2016.

be engaged in methamphetamine production, allegedly with the support of the United Wa State Army.[21]

In Rakhine State, the Border Guard Police (BGP) operates in addition to PMFs. The BGP is under the command of the Myanmar Police Force, which is controlled by the Tatmadaw-run Ministry of Home Affairs. BGP forces control regional checkpoints and other parts of the administration in Rakhine State. Since 2012, central and northern Rakhine State has become heavily militarised. Following the 2016 and 2017 security operations against the Rohingya in northern Rakhine, and in the context of the Tatmadaw's current serious armed conflict with the Arakan Army, people and the transport of goods have been subject to curfews and movement restrictions. Over this same period, seizures of narcotics in Rakhine State have increased. By 2018, Rakhine accounted for the largest portion of methamphetamine pill seizures besides Shan[22] and is reported to be along a major trafficking route for methamphetamine going into South Asia.

III. Drug addiction

A. Trends in use

From the 1950s to the 1990s heroin was the predominant drug produced in Myanmar, and has been widely available and used in parts of Myanmar for decades. In the 1990s heroin production began to decline but was replaced by the production of methamphetamines.[23] These typically take the form of "yaba" - tablets containing a mixture of low-purity methamphetamine and caffeine. Since the early 2000s, yaba use has surged in Myanmar, corresponding with increased production of the drug. Yaba has become steadily cheaper and more readily available, despite significant increases in large and small seizures, and arrests of users and small-time dealers.[24]

More recently there has been a sharp rise in the production of crystal methamphetamine,[25] a high-purity crystalline form of methamphetamine, also known as "ice". Crystal methamphetamine is reportedly becoming increasingly popular in the southeast Asia region, and while retail supply and demand in Myanmar at the present time is limited, it may increase. This has public health implications as crystal methamphetamine is more potent that yaba, and it is suitable for injection.[26]

B. Conflict areas

Drug addiction affects people around Myanmar, however a confluence of factors in ethnic states affected by conflict can fuel rates of drug use and addiction and exacerbate the negative impacts for individuals and communities. The presence of Tatmadaw, militia, BGF, and EAOs, all of whom may be involved in the production, sale and distribution of narcotics, combined with weak rule of law, results in drugs being readily available.

Marginalisation, discrimination and economic deprivation faced by ethnic communities have contributed to conditions conducive to high rates of drug use and addiction. These issues are acute in internally displaced persons camps in Myanmar and refugee camps on Myanmar's borders with Thailand and Bangladesh. A joint report by Mon, Kachin, Karen, Karenni, Shan, Pa-o and Ta-ang civil society groups on the impact of protracted

[21] Buchanan, 2016.
[22] UNODC, 2019.
[23] For more information see "Addressing drug problems in Myanmar: 5 key interventions that can make a difference" Drug Policy Advocacy Group Myanmar, 2017.
[24] For more information see "Methamphetamine use in Myanmar, Thailand and Southern China: assessing practices, reducing harms" by Renaud Cachia and Thura Myint Lwin for the Transnational Institute, 2019.
[25] ICG, 2019.
[26] Cachia and Thura Myint Lwin, 2019.

displacement amongst ethnic communities due to armed conflict described how drug addiction is common in many displacement sites. This is due to easy availability of drugs and fuelled by the hopelessness and frustrations of displacement. These civil society groups report that in recent years the reduction of aid in eastern Myanmar and to refugee camps on the Thai border coupled with uncertainty about the future and a lack of options seen by people in these areas have led to higher rates of drug dependency.[27]

Humanitarian access restrictions by the Myanmar Government on the United Nations and international organisations to parts of Kachin, northern Shan and Rakhine State have undermined services, including health services. This makes it more difficult for those suffering from drug addiction to receive adequate treatment and support. Local initiatives aimed at breaking the cycle of addiction and treating addicts have been established in some areas, but they are under resourced, and in some cases have reportedly been forced to stop their activities after receiving threats.[28]

A local actor involved in drug rehabilitation estimated that in Kutkai, northern Shan, every household has a drug addict.[29] Drivers on the Muse-Mandalay road, the main trading route to China, reportedly use both heroin and yaba.[30] At some petrol stations in Muse, syringes and distilled water are reportedly given instead of small change.[31] The Lahu National Development Organisation has estimated that in about 70% of households in the villages surveyed there are young men who are addicted to drugs and that this is a threefold increase from 2008. Lahu villagers say that the reason for the increase in addiction is the greater availability of drugs, and that militia groups actively promote local drugs sales. They report that militia members have stopped local addicts from entering drug rehabilitation programs, because they fear a loss of income.[32]

In Kachin State, civil society report that drugs are flooding into Kachin towns and mining sites, and along trading routes. Levels of drug addiction have been described by local actors as having reached epidemic proportions.[33] In the jade mines of Hpakant, which are tightly controlled by armed actors including the Tatmadaw and Tatmadaw allied militia, drug use takes place openly and permeates every aspect of life. Informal mine workers report being paid in heroin and methamphetamine. Local residents have estimated that 90% of workers in the Hpakant jade mines are drug users.[34]

Myitkyina, the capital of Kachin State, is reported to have one of the highest concentrations of drug addicts in the world.[35] The Kachin Baptist Convention, which runs a drug rehabilitation programme, claims that approximately 80% of ethnic Kachin youth are drug addicts. Health and social workers report that about a third of students at Myitkyina and Bhamo universities are injecting drug users.[36] Another local actor estimates that almost every Kachin family has been affected by the drug problem. According to one drug user, "You can get drugs everywhere in Myitkyina city. I was arrested many times. I have 4 older brothers, but they all died because of drugs."[37] People from Kachin communities reportedly blame the Tatmadaw for targeting them with illicit drugs and have accused the Tatmadaw

[27] For more information see "The Is No One Who Does Not Miss Home: Report on Protracted Displacement
Due to Armed Conflict in Burma/Myanmar" by fifteen ethnic community-based organizations and locally-based civil society organizations, coordinated by Progressive Voice, 2019.

[28] For more information see "Drug crisis ravages Myanmar's Shan State" Agence France-Presse, 2019.

[29] AFP, 2019.

[30] KWAT, 2014.

[31] KWAT, 2014.

[32] For more information see "Naypyidaw's drug addiction: The Burma Army's strategic use of the drug trade in the Golden Triangle and its impact on the Lahu" by The Lahu National Development Organisation, 2016.

[33] KWAT, 2014.

[34] For more information see "Battling for blood jade" by Hannah Beech for Time, 2016

[35] For more information see "Drug addiction lurks in Myanmar conflict's shadow" by Gemunu Amarasinghe for the Associated Press, 2013.

[36] KWAT, 2014.

[37] KWAT, 2014.

of using drugs as a weapon against their communities, and suspect drugs are promoted to Kachin youth to distract them from political activism.[38]

In Kayin and Kayah States local people have been reporting their concerns over rising drug use in recent years. They report that yaba in particular is being widely used by many children, students and men, as it is not difficult to buy. In Hlaingbwe Township in Hpa-an District, Kayin State, high school students reportedly know how to use these drugs and are already addicted to them,[39] and there are four BGF battalions present in Hlaingbwe Township.[40] According to a community member from southeast Kayin State, "The methamphetamine drugs came from the organizations [armed groups], then [they] spread it to the civilians."[41] A mobile health worker described their sense of helplessness in the face of rising drug addiction, "We cannot solve the problem. Only the leaders of the armed groups can set up the rules and prohibit people from using drugs. It really affects our development. The young people do not have interest in the other things [education, etc.] anymore. It is like people stole and destroyed our future."[42]

It is challenging to obtain information on rates of drug use and addiction in Rakhine State. However, according to testimony of Rohingya living in displacement camps in Sittwe since 2012, a yaba pill costs only 200-300 Kyats (which is about 0.13 to 0.20 USD) and this is cheaper than food. Drug dealers reportedly distributed free samples when the camps were set up by the Tatmadaw and State authorities in 2012. Since then, yaba is widely available in the camps, and many Rohingya are addicted.

C. Government response

The Tatmadaw also has significant influence over the central Government response to illicit drugs, as the Central Committee for Drug Abuse Control is part of the Ministry of Home Affairs.

The Narcotic Drugs Act and Psychotropic Substances Law 1993 has for years been used to target opium farmers, small-scale dealers and drug users, rather than those responsible for large-scale drug production and supply. In 2018, Myanmar released its National Drug Control Policy, which was developed by the Central Committee for Drug Abuse Control after extensive consultation with UNODC. The Policy focuses on harm reduction, prioritising public health approaches for users and refocusing law enforcement and criminal justice efforts toward combating organised crime and corruption. However, amendments to the Narcotic Drugs Act and Psychotropic Substances Law 1993 were enacted shortly after and retain a focus on criminal penalties for those in possession of any quantity of drugs.[43]

The National Drug Control Policy states that in 2016, 48% of Myanmar's 60,000-80,000 prisoners were detained for drug-related offences, with the percentage of drug-related offenders as high as 70-80% in some prisons (such as in Myitkyina, Kachin State, and Lashio, Shan State).[44] Imprisoning drug users exacerbates issues of drug addiction, as drug use rates in prison are high, and once imprisoned users are unable to access rehabilitation services. At the same time, the militia running and profiting from the illicit drug industry operate with impunity.

[38] KWAT, 2014..
[39] Interview KHRG #15-83-A2-I1, Karen Human Rights Group (KHRG), 2015.
[40] Buchanan, 2016.
[41] For more information see "Growing drug use and its consequences in Dooplaya and Hpa an districts" KHRG, 2015.
[42] Interview KHRG #14-63-A3-I1, KHRG, 2014.
[43] ICG, 2019.
[44] The National Drug Control Policy, developed by the Myanmar Police Force (MPF) Central Committee for Drug Abuse Control (CCDAC), the Ministry of Home Affairs, with support from the UNODC Regional Office for Southeast Asia and the Pacific and Country Office for Myanmar.

D. Harm caused

Drug addiction can inflict severe physical, psychological, emotional, financial and other harm on an individual, which has consequential negative effects for the family, and also society. The mental and physical harm caused by high and/or prolonged use of methamphetamine can include insomnia, anxiety, palpitations, loss of teeth, confusion, irrational behaviour, hallucinations and paranoid thoughts, bleeding cough, loss of memory, fatigue and exhaustion, impatience, anger and increased aggressiveness. There is also an increased risk of tuberculosis transmission due to sharing smoking equipment. [45] Heroin is more commonly injected. The mental and physical harm caused by high and/or prolonged use of heroin can include damage to veins and arteries that can lead to gangrene and to infections, severe depression, insomnia, anxiety, fatigue, intense craving and death by overdose or vomiting.[46] Sharing needles and syringes carries a high risk of HIV, hepatitis B or hepatitis C transmission. Nearly 1 in 3 injecting drug users in Myanmar is living with HIV, which is 48 times higher than the prevalence in the general population.[47]

The impacts of drug addiction are also felt by families of drug addicts. Although increasing numbers of women, particularly in trading sites for goods transported to China, are reportedly taking drugs, most users in Myanmar are reportedly male. Gender inequality in Myanmar society heightens problems, as already bearing the burden of all domestic work, women struggle when husbands, sons and fathers not only stop providing income to the family but sell off family possessions and steal to feed their drug habit. Women are also expected to care for drug users when they fall ill.[48]

IV. Conclusion

The high rate of drug addiction in Myanmar is affecting fundamental rights of many individuals, particularly within ethnic communities affected by conflict. This includes the rights to an adequate standard of living, work, just and favourable conditions of work, the highest attainable standard of physical and mental health, education, take part in cultural life, life, freedom from cruel, inhuman or degrading treatment, liberty and security of person, and privacy and family life.

More research into this area, and in particular the human rights implications, is needed. The Government must do more and implement the National Drug Control Policy, focusing on tackling organised crime and corruption. At the same time community level interventions should be centred on education and harm reduction instead of punitive criminal justice measures, with the assistance of international agencies. Finally, there must be accountability for the Tatmadaw, and militias involved in drug production and sales.

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[45] Cachia and Thura Myint Lwin, 2019.
[46] National Institute on Drug Abuse https://www.drugabuse.gov/publications/drugfacts/heroin .
[47] Drug Policy Advocacy Group Myanmar 2017.
[48] KWAT, 2014.