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MYANMAR: ELEVEN-POINT HUMAN RIGHTS AGENDA

MYANMAR'S NEW GOVERNMENT MUST CHAMPION HUMAN RIGHTS

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INTRODUCTION

As Myanmar's new government takes office, following the general election of November 2020, it is imperative that the urgent human rights situation in the country is made a top priority. The next government must change course and champion human rights.

Human rights violations and crimes under international law are committed apace across Myanmar by a range of actors, both in conflict-affected areas and in society at large. From arbitrary arrests, prosecutions, and imprisonment of activists to legally-sanctioned discrimination against minority groups, there is a pressing need for reform.

The past few years have been some of the darkest chapters in Myanmar's recent history. In Rakhine State, the scorched-earth military campaigns of 2016 and 2017 drove hundreds of thousands of Rohingya people from their homes, across the border into Bangladesh. The exact number of Rohingya killed during that period is unknown, and in 2020 the Myanmar government continues to systematically block independent investigators from the region.

In 2020, Amnesty International documented grave human rights violations and crimes under international law committed by the Myanmar military, including war crimes in conflict-affected areas in Rakhine and Chin States, including unlawful attacks, killing and injuring of civilians, arbitrary arrests, torture and other ill-treatment, enforced disappearances, extrajudicial executions and forced labour. In Rakhine State, the Rohingya people are subject to systemic segregation and discrimination amounting to apartheid, a crime against humanity under international law. Human rights violations and abuses also continue in conflict-affected Kachin and northern Shan States.

Crimes are perpetrated by both Myanmar security forces and ethnic armed groups, in government-controlled areas, as well as in areas of contested governance. Civil society, humanitarian actors and media workers face threats and are at risk of arrest and violence in the course of their work.

Amnesty International urges all newly elected Members of Parliament to make a public commitment to respect, protect, and promote human rights for all. The new government should publicly commit to fulfil and expand Myanmar's international human rights obligations, promoting a national agenda founded on principles of liberty, dignity and inclusion. Amnesty International urges all newly elected Members of Parliament and the new government to make progress in, at least, the following areas:

1. Respect and promote the rights to freedom of expression, association and peaceful assembly
2. Protect human rights defenders
3. Ensure access to information
4. Promote women's rights and gender equality, and take a survivors' rights-centred approach to legislation
5. Protect LGBTI rights and promote equality
6. Protect civilians in armed conflict and ensure unfettered and sustained humanitarian access to at-risk populations
7. Ensure justice, truth, accountability and reparation for crimes under international law in minority areas
8. Dismantle discriminatory laws that disproportionately affect ethnic minorities
9. Protect children and ensure their rights are upheld
10. Promote environmental rights and address climate change as a human rights issue
11. Abolish the death penalty

1. RESPECT AND PROMOTE THE RIGHTS TO FREEDOM OF EXPRESSION, ASSOCIATION AND PEACEFUL ASSEMBLY

The authorities in Myanmar continue to use a range of repressive laws to arrest, prosecute and imprison individuals who exercise their rights to freedom of expression, association, and peaceful assembly.

Amnesty International's 2020 briefing "I Will Not Surrender": The Criminalization of Human Rights Defenders and Activists in Myanmar spotlights 16 recent cases of arbitrary and politically-motivated arrest, prosecution, and imprisonment, involving 58 people. These and other cases, highlight a growing trend toward punishing activists, students, journalists, trade unionists, satirists and government critics. Often, people were charged when they tried to speak out against injustice, or in support of others by advocating for their rights.

While criminal defamation charges brought under section 66(d) of the 2013 Telecommunications Law have soared, the authorities continue to use some of the older means of repression, for example in Myanmar's colonial-era Penal Code. Sections 505(a) and 505(b) of the Penal Code were often go-to charges for the authorities during the years of military rule, with its excessively broad and vague language routinely used to restrict people's rights to freedom of expression and peaceful assembly.

One prominent case involves a satirical poetry troupe called the Peacock Generation. Several of its members have faced charges under both Section 66(d) of the Telecommunications Law, and Section 505(a) of the Penal Code. In 2019 and 2020, six members were convicted and sentenced to between two to six years in prison under both Section 66(d) of the Telecommunications Law and Section 505(a) of the Penal Code.

The right to freedom of association is similarly under-attack. The 1908 Unlawful Associations Act was originally written to curb opposition to the British colonial rule, but it continues to be used to target, harass, intimidate and punish activists, especially those belonging to ethnic and religious minorities.

The authorities accused news editor Aung Marm Oo of violating the Unlawful Associations Act in 2019, for his work at Development Media Group (DMG). This local news outlet reported extensively on armed conflict in Rakhine State, including on violations by the Myanmar military. He faces charges under Section 17(2) of the Unlawful Associations Act, which provides for up to five years' imprisonment. He remains in hiding. This case, and others, have had a chilling effect on the free press and civil society.

Public gatherings, such as peaceful demonstrations or processions, require organizers to notify police before the event. Under the Peaceful Assembly and Peaceful Procession Law, failure to comply with these stringent bureaucratic hurdles can attract criminal penalties, including jail time.

Steps that the authorities have taken to address the COVID-19 pandemic have necessarily affected public life, but they have also contributed to the shrinking space for human rights, including the right to freedom of expression in the country. Controlling the virus should not be used to justify a crackdown or unwarranted restrictions on human rights. Preventive measures that limit public gatherings should be proportionate, and only imposed where truly necessary.

Amnesty International's recommendations to the new government:

- Highlight arbitrary detentions and prosecutions of individuals solely for exercising their rights to freedom of expression, peaceful assembly and association, and call for immediate and unconditional release of those imprisoned;
- Repeal or amend laws commonly used to persecute human rights defenders, activists, and media workers including Section 66(d) of the Telecommunications Law and Sections 505(a), 505b, 124(a), 295(a) of the Penal Code, and bring them into conformity with international standards;
- Cease using the Unlawful Association Act to impede, threaten and silence journalists and activists;
- Repeal, review or amend all laws whose provisions violate the rights to freedom of expression, association and peaceful assembly to ensure these and other laws comply with international human rights standards. Pending the amendment of these laws to bring them in line with international standards, the laws should not be used to harass, intimidate, arrest, prosecute, or imprison human rights defenders, activists, and others simply for exercising their human rights;
- Ensure that civil society, legal experts, and others can fully participate in the process when drafting, reviewing, and amending legislation that adversely affect people's human rights;
- Accede without delay and reservation to core international human rights treaties and their additional protocols, including the UN Convention on the Elimination of all forms of Racial Discrimination, incorporate their provisions into domestic law, and fully and effectively implement their provisions in law, policy, and practice;
- Ratify the International Covenant on Civil and Political Rights without making any reservation and recognize the competence of the Human Rights Committee; and
- Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment.

2. PROTECT HUMAN RIGHTS DEFENDERS

Myanmar has a long history of activism, and ensuring protections for human rights defenders and activists should be a key concern for the new government.

Yet the authorities continue to target human rights defenders (HRDs) and activists, subjecting them to surveillance, harassment, arbitrary arrest and detention. These defenders and activists include those working to improve the rights of women and lesbian, gay, bisexual, transgender and intersex (LGBTI) people, environmental rights, Indigenous peoples' rights and workers' rights.

Calls for constitutional amendment remain an area of extreme sensitivity for the Myanmar military and government. In April 2019, human rights lawyer Kyee Myint attended a rally in Kawthaung town in Tanintharyi Region, southeastern Myanmar. There he called for the Constitution to be amended to protect the people of Myanmar and prevent the military from staging a coup. He has been charged under 505(a) of the Penal Code, which prohibits the circulation of statements and reports with "intent to cause, or which is likely to cause, any officer, soldier, sailor or airman, in the Army, Navy or Air Force to mutiny or otherwise disregard or fail in his duty".

Attempts to organize to advance workers' rights can also see activists face charges. In September 2019, labour rights activist Kha Kha was charged under Section 19 of the Peaceful Assembly and Peaceful Procession law, along with seven factory workers, over a peaceful demonstration outside a garment factory in the Patheingyi Industrial Zone, in Ayeyarwady region. The group faced up to three months in prison for this act of peaceful protest. Beyond the potential legal ramifications for carrying out their vital work, defenders, their families and colleagues are sometimes placed under surveillance and subjected to harassment and intimidation.

The Myanmar government and its armed forces, as well as ethnic armed groups, should refrain from persecuting human rights defenders, activists and critics.

Amnesty International's recommendations to the new government:

- Acknowledge the important role played by HRDs and activists, state their opposition to arbitrary and politically-motivated arrests, detention, prosecution and imprisonment, and publicly commit to reforming laws used to target defenders, activists and critics;

- Immediately and unconditionally release all those detained or imprisoned solely for the peaceful exercise of their human rights, and drop all charges pending against those who are facing imprisonment simply for the peaceful exercise of these rights;
- Expunge the criminal records of all those convicted solely for the peaceful exercise of their rights;
- Ensure that human rights defenders, activists, and others peacefully exercising their human rights are free from harassment, intimidation, discrimination, and the threat of criminalization through the application of repressive laws; and that they are able to conduct their important work in a safe environment and without any reprisals;
- Ensure that security forces do not obstruct or stop human rights defenders, activists and others from exercising their human rights;
- Adopt laws, policies, and practices to ensure the right to an effective remedy in line with international human rights standards to redress any human rights violations; and
- Repeal, review or amend all laws whose provisions violate the rights to freedom of expression, association, and peaceful assembly, and bring them into line with international human rights standards. Pending the amendment of these laws to bring them in line with international standards, stop using these laws to harass, intimidate, arrest, prosecute, or imprison human rights defenders, activists, and others simply for peacefully exercising their human rights.

3. ENSURE ACCESS TO INFORMATION

In Myanmar, the government continues to exercise sweeping and arbitrary controls over access to information more than eight years after abolishing pre-publication censorship. Both colonial-era laws and newer legislation such as the Electronic Transactions Act and the Telecommunications Law are broadly worded and allow for the prosecution of human rights defenders, activists, and journalists.

Government-ordered restrictions on mobile internet connectivity were in place from June 2019 in conflict-affected areas of northern Rakhine and southern Chin States. The order was only partially lifted in August 2020, and where service has been restored there has been a drastic reduction in connection speeds. This has impeded documentation of human rights violations and abuses and dealt a critical blow to the spread of crucial healthcare information during the COVID-19 pandemic.

The authorities continue to restrict meaningful access of independent media and human rights monitors to conflict-affected areas, in particular Rakhine State. While the government has held dozens of guided and heavily controlled tours for media in northern Rakhine State, it has increasingly restricted visits by journalists to camps for internally displaced people and communities in central Rakhine State around the state capital Sittwe.

Journalists and media outlets continue to face pressure, intimidation and harassment when reporting on sensitive issues in Myanmar, and at least three journalists have been prosecuted in the last six months for interviews with the outlawed armed group the Arakan Army. Some have gone into hiding. As a result, self-censorship is on the rise and media reports on armed conflict now routinely feature disclosures that the outlet could not contact the relevant ethnic armed group for comment, for fear of prosecution under Sections 17(1) and 17(2) of the Unlawful Associations Act. This disproportionately affects journalists from ethnic minority groups.

Myanmar is also using broad powers to block websites critical of government narratives under the rubric of national security. As Amnesty International [reported in April 2020](#), the Myanmar authorities issued three directives between 19 and 31 March 2020 to block a total of 2,147 websites under Section 77 of the Telecommunications Law, which grants the government broad and arbitrary powers to suspend telecommunications networks.

The majority of the blocked websites contain ‘explicit’ content, but a separate category exists for what the government deems “fake news”. This has affected ethnic media and small independent news outlets, several of which have hundreds of thousands of readers in ethnic minority communities where armed conflict, poverty and displacement are rife and information access is a vital lifeline.

The use of Unlawful Association Act and Counter Terrorism Law charges (and threats thereof) by the authorities has had a major chilling effect on the news media, leaving them unable to report accurately on the ongoing conflict in Rakhine and Chin States.

Amnesty International’s recommendations to the new government:

- Remove blockage of independent media websites;
- Lift mobile internet restrictions in Rakhine and Chin States;
- Commit to media freedom and ensure journalists’ ability to freely report on armed conflict, pandemic measures and other issues in the public interest;
- End politically-motivated arrests, detention, prosecution and imprisonment of journalists;
- Adopt an Access to Information law with a functional Freedom of Information mechanism in line with international human rights standards with meaningful and effective consultations by civil society organizations;
- Amend the Official Secrets Act; Unlawful Associations Act; Counter-Terrorism Law; Sections 66 (d), 68(a), 77, 78 of the Telecommunications Law and bring them into conformity with international standards;
- Repeal all laws criminalizing defamation, so that it becomes a matter for civil litigation, whether of public figures or private individuals; and
- Repeal or amend all laws violating the right to access to information in line with international human rights standards.

4. PROMOTE WOMEN'S RIGHTS AND GENDER EQUALITY, AND TAKE A SURVIVOR'S RIGHTS-CENTRED APPROACH TO LEGISLATION

Myanmar is a State party to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The country's constitution provides, in theory, for equal rights and equal protections for women. However, this belies the true situation.

No legal definition for discrimination against women has been adopted in the 2008 Constitution or in any other legislation. Women are disproportionately represented in displaced populations, and uniquely affected by restrictions that curb their ability to access healthcare services and education. Women remain under-represented in many areas of public life due to structural gender and intersectional discrimination and inequalities. Access to education is a key factor for this, which disproportionately disadvantages women and girls from ethnic minorities and in conflict-affected areas.

Progress toward a Prevention of and Protection from Violence Against Women (PoVAW) law has stalled. From 2013, momentum gathered as civil society and women's rights groups called for the development and implementation of such a law, and amendments to relevant existing laws. The push was championed by the NLD-led government.

However, the PoVAW bill has been a subject of considerable disagreement. This has been due in part to its definition of rape, including provisions for marital rape — which remains permissible under the colonial-era Penal Code. The PoVAW assigns a lesser degree of criminality to marital rape, and attracts lighter sentences.

Domestic violence is prevalent across the country, and affects women more often than it does men. Few mechanisms exist for women to formally challenge such abuses, particularly in rural areas. The PoVAW law is intended to improve services for survivors of domestic violence, providing

for legal and medical support, as well as access to safe houses. Until it is passed and implemented, women and others experiencing domestic violence have little chance for recourse.

The push for reforms to the 1949 Suppression of Prostitution Act has also stalled. This leaves sex workers at risk of exploitation and extortion. It is imperative that discussions around this piece of legislation include sex workers, and take into consideration the “Shadow Laws” that disproportionately affect trans sex workers.

Amnesty International’s recommendations to the new government:

- Promote gender equality by addressing the drivers of inequality, including poverty, displacement and entrenched gender and intersectional discrimination;
- Promote a survivor-centred approach in the legal and policy frameworks to address domestic, sexual and gender-based violence;
- Revise the draft PoVAW law to protect the rights of all women and girls including those from marginalized groups, as well as engaged in sex work and trans women; and
- Develop amendments to the 1949 Suppression of Prostitution Act in meaningful consultation with civil society and sex workers in order to prevent discrimination and abuse.

5. PROTECT LGBTI RIGHTS AND PROMOTE EQUALITY

Consensual same-sex conduct remains illegal in Myanmar, and both overt and covert forms of discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) people continues. In 2019, the suicide of a gay man highlighted the impact of prevalent workplace bullying and violent marginalisation of LGBTI people in Myanmar.

Some positive steps have been taken in recent years, with a greater representation of LGBTI advocates in civil society. In early 2018, a National Youth Policy was adopted, which called for an end to discrimination on the basis of sexual orientation or gender identity. While this is a welcome symbolic step, there has yet to be any meaningful legal reform. Section 377 of the colonial-era Penal Code, pertaining to ‘carnal intercourse against the order’ of nature, in effect criminalises consensual same-sex relations.

Myanmar could look to India on how the British Penal Code can be revised to protect rather than endanger LGBTI people. Whilst both countries inherited the British Penal Code, in 2018 India’s Supreme Court found that Section 377 was a violation of the country’s constitution, which enshrines the rights to privacy, equality, non-discrimination and dignity, and decriminalised consensual same-sex conduct between adults.

The groundbreaking judgment in *Navtej Singh Johar et al & Others v Union of India and others* was also informed by international law; Section 377 was found to violate India’s obligations under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Although Section 377 is rarely enforced in Myanmar, its mere existence creates a hostile environment that legitimises harassment, discrimination and violent othering of LGBTI people, and leaves them vulnerable to attacks from people, and extortion from the police.

The mistreatment and discrimination against LGBTI people are not often discussed or acknowledged openly, and abuses regularly go unreported. The mistrust of authorities, lack of faith in the justice system, and entrenched stigma against LGBTI people are all factors that dissuade survivors from coming forward and reporting incidents of harassment, abuse, sexual violence and extortion, leaving such incidents un- or under-reported.

Provisions under several colonial-era laws, referred to amongst LGBTI people as “Shadow Laws” or “Darkness Laws”, are ripe for abuse. They are worded vaguely and provide the police with a high degree of impunity when carrying out their crime prevention and detection duties. Consequently, rights groups continue to document reports of abuse at the hands of the very people that crimes should be reported to.

Amnesty International’s recommendations to the new government

- Repeal Section 377 of the Penal Code;
- Promote diversity and inclusion within their ranks, and publicly signal their support for LGBTI rights; and
- Repeal “Shadow Laws,” including Section 35 of the 1945 Police Act at both Union and State/Region level, and Section 30 of the 1899 Rangoon Police Act, Section 268 of the Penal Code, and Section 320 of the Penal Code; Reinvigorate the push for reforms to the 1949 Suppression of Prostitution Act and include explicit protections for LGBTI sex workers.

6. PROTECT CIVILIANS IN ARMED CONFLICT AND ENSURE UNFETTERED AND SUSTAINED HUMANITARIAN ACCESS TO AT-RISK POPULATIONS

There are some 300,000 individuals displaced in Rakhine, Chin, Kachin, and northern Shan States due to armed conflict between the Myanmar military and various ethnic armed groups. Along the Thai-Myanmar border, tens of thousands remain displaced from conflict decades earlier.

In 2020, Amnesty International documented the killing of civilians through indiscriminate airstrikes and shelling by the Myanmar military in Rakhine State and Paletwa Township in Chin State.

Since the conflict between the Myanmar armed forces and the Arakan Army began to escalate in earnest from early 2019, there has been an uptick in forced labour, arbitrary detention, torture and ill-treatment of civilians at the hands of the Myanmar military, as well as a marked pattern of failure to distinguish between civilians and combatants — which disproportionately affects men and boys from ethnic minority groups. Many of these violations constitute war crimes.

Grave abuses are also committed against civilians by ethnic armed groups, including abductions, killings, arbitrary detention, forced and child recruitment, forced portering and extortion.

The ongoing use of anti-personnel mines and Improvised Explosive Devices (IEDs) by both ethnic armed groups and the Myanmar military has created further danger for civilians, as have the increased use of reckless airstrikes and indiscriminate artillery attacks by the Myanmar military in 2020.

So far, 162 countries are party to the Mine Ban Treaty. Myanmar is not one of them. It is among a handful of countries that routinely abstain from voting in favour of an annual UN General Assembly resolution supporting the Mine Ban Treaty.

In a press conference in Nay Pyi Taw on 12 June 2020, Union Minister of Social Welfare, Rescue and Resettlement, Dr Win Myat Aye said that the government would establish a National Mine Action Center and a national body to clear landmines. Amnesty International most recently documented the use of such devices by the Myanmar military in Northern Rakhine State, near the border with Bangladesh, in September 2020.

It is imperative that the new government allows full and unfettered humanitarian access. Humanitarian actors in recent years have faced significant impediments to their ability to conduct activities in Myanmar, which include providing health services, clean water and food aid to internally displaced persons and others. Humanitarian access to areas controlled by ethnic armed groups is routinely denied by the Myanmar state and security apparatus.

Restrictions on humanitarian actors are acute in Rakhine State, where a cumbersome bureaucracy and outright government-imposed travel bans preclude access to at-risk populations, including in conflict and displacement settings. In April 2020, a World Health Organization driver was killed while carrying COVID-19 test samples through Minbya, Rakhine State. Both the Arakan Army and Myanmar army denied responsibility for his death. This incident highlighted, once again, the need for safe passage for humanitarian organizations and workers in conflict zones, both in government-controlled and contested areas.

Humanitarian workers are also at risk in other parts of the country. In August 2019, a volunteer ambulance driver was shot in the head while working to provide medical care to victims of ongoing fighting between the Myanmar military and ethnic armed groups in northern Shan State. Neither side took responsibility for the death.

Amnesty International's recommendations to the new government:

- Ensure access to at-risk populations for NGO/ humanitarian actors and civil society groups;
- Press the Myanmar military and ethnic armed groups to suspend the use of anti-personnel mines and IEDs in civilian areas;
- Provide immediate, unfettered, and sustained humanitarian access throughout the country, including in Rakhine, Kachin, and Shan States, including by allowing UN, international, and national humanitarian organizations to assess and monitor the needs of displaced persons and others in need and to deliver assistance to them;
- Immediately lift internet restrictions in Rakhine and southern Chin States;
- End the use of antipersonnel landmines and IEDs. Support the expansion of mine clearance programmes and, in the meantime, take all necessary measures to warn civilians about areas with landmines or landmine-like devices, including through signs and public announcements in both Burmese and in the language of ethnic minorities in the area; and
- Promptly adhere to, without making any reservation, the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (Mine Ban Treaty) and implement it under national law.

7. ENSURE JUSTICE, TRUTH, ACCOUNTABILITY AND REPARATION FOR CRIMES UNDER INTERNATIONAL LAW IN MINORITY AREAS

Impunity for human rights violations and crimes under international law remains commonplace in Myanmar.

Amnesty International has documented a litany of serious crimes in Rakhine, Chin, Kachin and northern Shan States in recent years. These include indiscriminate attacks, killing or injuring civilians, extra-judicial executions, enforced disappearances, arbitrary arrest and detention, torture and other ill-treatment, forced labour, looting and confiscation of property.

Crimes under international law committed by the Myanmar military in Rakhine State in 2016 and 2017 are now the subject of international legal action. The brutal campaign of killings, rapes, torture and burning to the ground of hundreds of Rohingya villages was executed in two main waves, ostensibly in response to attacks by the Arakan Rohingya Salvation Army (ARSA). A UN Fact-Finding Mission has called for senior military officials to be investigated and prosecuted for genocide.

As international justice processes play out in the International Criminal Court and the International Court of Justice, the government has attempted to keep accountability a domestic affair. However, this is deeply problematic. The investigative bodies established to date have lacked methodological rigour and integrity. The domestic judicial system is rife with bias and blighted by corruption and incompetence. The military justice system enjoys scant external oversight, and affords little transparency to its closed-court proceedings.

Elsewhere in the country, justice remains elusive on grave crimes perpetrated against civilians. Over five years on from the rape and murder of two Kachin teachers, Maran Lu Ra and Tangbau

Hkawn Nan Tsin, no perpetrators have been arrested, much less prosecuted, and witnesses are afraid to speak out.

It is therefore crucial that the new government cooperates with the international community in their efforts to ensure accountability for atrocities against the Rohingya people and other ethnic minorities in Rakhine, Chin, Kachin, and northern Shan States. All those suspected of criminal responsibility must be brought to justice in fair trials before ordinary civilian courts, and without recourse to death penalty.

Amnesty International's recommendations to the new government:

- Take all measures in order to promptly adhere to the Rome Statute of the International Criminal Court, and implement it into national law;
- Press the military for greater transparency in its closed-court proceedings and seek to bring it under civilian oversight;
- Cooperate fully with UN human rights mechanisms, including by granting access to the UN Special Rapporteur on the situation of human rights in Myanmar and the Independent Investigative Mechanism for Myanmar, ensuring they have full access to all parts of the country;
- Cooperate fully with international efforts to investigate and prosecute individuals suspected of involvement in crimes under international law and human rights violations, including those with command or other superior responsibility;
- Ensure prompt, independent, impartial, and effective investigations into allegations of human rights violations by members of the security forces; ensure that those suspected of responsibility – including those with command responsibility – are brought to justice in fair trials in an independent, civilian court; and that victims receive reparation; and
- Suspend from active duty any military or police personnel suspected of ordering or committing violations of international law pending the completion of investigations.

8. DISMANTLE DISCRIMINATORY LAWS THAT DISPROPORTIONATELY AFFECT ETHNIC MINORITIES

Ethnic minorities in Myanmar continue to face systematic discrimination and experience routine human rights violations, both in everyday life and in conflict settings.

This discrimination is, in many cases, lent an air of legitimacy through legal provisions including, but not limited to, the discriminatory 1982 Citizenship Law, land and natural resource-related laws such as the 2018 Vacant, Fallow and Virgin Lands Management Law and the four so-called 'Race and Religion' laws which entrench ethno-religious Bamar and Buddhist supremacy in this diverse nation.

Ethnic minority representation in the parliaments at both the Union and State/Region levels is an important step toward elevation of minority voices and integration of their concerns in the policy agenda. However, the removal of the Rohingya from political life through disenfranchisement prior to the 2015 election has had a disastrous impact on representation, exacerbating the already-abysmal conditions faced by this group.

Ethnic minorities in Kachin, northern Shan, Chin, Kayin (also known as Karen) and Rakhine States have been subjected to arbitrary detention on the basis of ethnic identity. This disproportionately affects young men and boys, who often find themselves accused of membership of, or aiding and abetting ethnic armed groups.

Access to education remains a major barrier to equality for ethnic minority communities. Progress has been made on the inclusion of some mother-tongue languages in schools and curriculums, which is a welcome step.

Internal armed conflict has often resulted in protracted mass displacement. Along the Thai-Myanmar border, tens of thousands of people remain displaced after decades of conflict, unable to access their full rights. Land in ceasefire and non-ceasefire areas in ethnic minority areas is often unsafe, due to the historical and ongoing use of anti-personnel mines.

In particular, the development of ethnic minority areas is the source of major grievances. While the economic opportunities afforded by development and connectivity may be welcomed by those in impoverished towns and villages, these often come with caveats. When the NLD-led government championed road-building as a key step for national development, it failed to take into consideration the fact that, for many villagers, this left them open to extortion at checkpoints by both state and non-state actors, and reduced logistical barriers to armed conflict.

Myanmar's next government must work to address the urgent situation for human rights in the country, with addressing ethnic minority grievances key to securing a sustainable and equitable peace in the future.

Amnesty International's recommendations to the new government:

- Amend the 1982 Citizenship Law to ensure that citizenship is granted free of any discrimination on the bases of race, colour, ethnic origin, sex/gender, language, religion, ethnic identity or other status;
- Take immediate steps to restore citizenship rights to holders of formerly valid identity cards, and their children, ensuring they are not required to undergo any further citizenship determination process;
- Revoke all local orders and policies which place arbitrary and discriminatory restrictions on the Rohingya, in particular on their freedom of movement, and ensure Rohingya people can access healthcare, education, and livelihood opportunities without discrimination;
- Amend the Vacant, Fallow and Virgin Lands Management Law in consultation with minority representatives, to ensure compliance with human rights provisions on access to tenure and adequate housing without discrimination, and protection against forced eviction;
- Publicly and unequivocally condemn any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence, take effective action to end its dissemination and provide protection and redress for those targeted by it, in accordance with international human rights law;
- Promote ethnic and other forms of diversity within parties and government, including through recruitment practices;
- Replace all military jurisdictions with ordinary civilian courts and in the meantime set up a civilian oversight on any trial before a military court;
- Ensure justice for survivors of crimes perpetrated by the Myanmar military, with a premium placed on ensuring their safety and dignity; and
- Cooperate with international justice mechanisms, and allow investigators and media unfettered access to conflict-affected areas in ethnic regions.

9. PROTECT CHILDREN AND ENSURE THEIR RIGHTS ARE UPHELD

Children's rights are regularly violated in the context of armed conflict in Myanmar. This was highlighted in a shocking incident on 13 February 2020 — Myanmar's Children's Day — when an artillery shell allegedly fired by the Myanmar military landed on the Basic Education Post-Primary School, Kha Mhwe Chaung village, in Buthidaung Township, injuring at least 17 students.

School buildings have been occupied by soldiers for temporary bases in both Rakhine and Northern Shan States. The use of schools for military purposes can have the effect of turning schools into military targets, putting the lives and safety of children and other civilians at risk.

Mass displacement due to ongoing conflict between the Myanmar military and Arakan Army has caused major disruption to education access for countless children from Chin and Rakhine ethnic minorities. In Kachin State, where conflict has displaced over 100,000 people since the breakdown of a ceasefire in 2011. Of this displaced population, children account for around half.

Across the country, it is estimated over two million children remain out of school. Children with disabilities are disproportionately affected, with an estimated two-thirds of this population without access to education. This trend is more pronounced in conflict and displacement scenarios.

Since 2012, segregation and discrimination have resulted in many Rohingya and Kaman Muslim children in Rakhine State villages being unable to access official government education, relying instead on local community schools staffed by mostly untrained volunteer teachers. Government-imposed restrictions on movement also mean that since 2012 Muslims have not been able to access higher education at the state university in Sittwe.

According to UNICEF, Myanmar's under-five mortality rate of 50 per 1,000 live births is one of the highest in the ASEAN region, with "many of those deaths preventable and half of all deaths occurring among newborns". Stunting and malnutrition are prevalent, particularly in conflict-hit communities.

In 2019, Myanmar enacted a Child Rights Law, bringing the country's legislative framework closer

into line with the UN Convention on the Rights of the Child that it ratified in 1991. This law shifted the definition of a child to anyone under 18, established minimum ages for employment (14) and marriage (18). It also guaranteed — in theory — the fundamental right to birth registration.

However, in the context of conflict-affected and displaced communities, this right is not always within reach. According to the 2015-16 Myanmar Demographic and Health Survey, children in Rakhine State are least likely to have their births registered. This issue is particularly acute for the Rohingya Muslim population. As Amnesty International documented in the 2017 report [‘Caged Without a Roof’](#), requirements of documentation for the Rohingya to register births and have newborns placed on household lists are stringent, and costs often prohibitive. For example, a couple who are unable to produce a recognised marriage certificate may not be able to register their child.

Under the Child Rights Law, children are forbidden from undertaking dangerous forms of labour, however the Ministry of Labour, Immigration and Population has yet to finalise a hazardous jobs list. According to estimates from the International Labour Organization, one million children are employed in underage and often dangerous work in Myanmar.

In 2019, public outrage erupted when the Myanmar Police Force named a three-year-old rape victim following a court ruling that a suspect who had been arrested was not guilty. Protests were held around the country, combined with a grassroots online campaign dubbed “Justice for Victoria”, in a reference to a pseudonym for the girl. This galvanised a political appetite to toughen laws around child protection and laws on gender-based and sexual violence, as well as to take action on police misconduct. Additionally, the case highlighted the need for prevention measures, as well as effective survivor-centred approaches to domestic, sexual and gender-based violence.

Amnesty International’s recommendations to the new government:

- Ensure there are effective survivor-centred approaches to legislation on sexual and gender-based violence, and all forms of violence against children;
- Ensure the fundamental right to birth registration is extended to all newborns, regardless of ethnic or religious minority;
- Ensure access to education is extended to all children, including those in conflict zones and displacement settings, and without discrimination on the basis of gender, religion ethnicity or disability status;
- End the military appropriation of schools in conflict zones; and
- Ensure obligations under the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights are met.

10. PROMOTE ENVIRONMENTAL RIGHTS AND ADDRESS CLIMATE CHANGE AS A HUMAN RIGHTS ISSUE

Climate change and its associated environmental and human rights impacts is a pressing concern for Myanmar.

Research has shown that climate change has led to the increased intensity and frequency of weather-related disasters and drives slow-onset events such as sea-level rise, land and forest degradation, and increasing temperatures. These events have devastating impacts for people and communities, for example by pushing them out of their homes and lands into precarious living conditions with tremendous impact and risks to their human rights.

Myanmar is one of the countries predicted to be hardest-hit by the effects of climate change in the coming decades. Already, according to the Global Climate Risk Index 2020 Myanmar was one the three countries most affected by extreme weather events from 1999 to 2018.

The country ratified the Paris Agreement in 2017, and in 2019 the government launched its National Environmental Policy and the Climate Change Policy. These are commendable steps.

However, broader concerns about harassment of environmental human rights defenders potentially threaten progress on environmental issues more generally. It is imperative that environmental concerns — including climate — can be raised without fear of punishment, and that activists and civil society are able to exercise their rights to freedom of expression and assembly.

In early 2020, Karen environmental activist Saw Tha Poe was informed indirectly that the Hpa-An General Administration Department had filed a complaint against him, accusing him of “incitement” under Section 505(b) of the Penal Code. This was reportedly due to his involvement in a community prayer meeting on 17 January 2020, which was attended by around 1,000 people from villages in the vicinity of a cement factory in Kayin State (also known as Karen State). Residents from 30 nearby villages had complained about negative environmental impacts of the

factory, alleging contamination in surrounding ponds, rivers and lakes. As an employee and member of several environmental civil society networks, Saw Tha Phoe had been helping villagers to document and raise awareness of the environmental and social impacts of the factory. As a result of the charges, he went into hiding.

Land use remains a contentious issue, and this is particularly acute in ethnic minority areas. As a result of new areas coming under ceasefire agreements, land has been and continues to be seized for infrastructure projects. These projects are often carried out without comprehensive environmental or human rights impact assessments. Corruption and a lack of transparency, and the ongoing stranglehold the military and its subsidiaries have on business contracts mean there are often few benefits to infrastructure projects for minority communities.

The 2018 Vacant, Fallow and Virgin Lands Management Law came into effect in 2019 and has many shortcomings. The law does not recognise customary tenure, and paves the way for dispossession and risks forced eviction. As such, it is of particular concern to ethnic minority groups and doubly so for those in conflict and displacement settings. The law requires occupants of land to apply for 30-year land-use permits or face eviction and up to two years in jail. When taken in the context of Rakhine State, where entire swathes of previously-occupied land have been razed, this law opens up the possibility of massive arbitrary land expropriation by the state.

Human rights protection is inextricably linked with a healthy environment, and Amnesty International encourages the next government to chart a path forward that champions both sustainability and human dignity.

Amnesty International's recommendations to the new government:

- Promote equitable and sustainable development informed by indigenous land management practices and traditional knowledge;
- Amend the Vacant, Fallow and Virgin Lands Management Law to recognise customary tenure in a process of genuine consultation with people who will be affected;
- Cease harassment of environmental human rights defenders, and push for repealing and amending laws commonly used to persecute activists, defenders and media, including Section 66(d) of the Telecommunications Law, and Sections 505(a) and 505(b) of the Penal Code;
- Cease persecution of victims of arbitrary forced evictions and offer remedy;
- Push for transparency and access to information regarding infrastructure and development projects, as well as land use and acquisition channels;
- Ensure that major infrastructure development undertakings are subject to thorough environmental and human rights impact assessments, with maximum transparency afforded, and that all affected people can genuinely participate in the decision-making process, including respecting the rights to free, prior and informed consent; and
- Ensure that government-led initiatives and projects, including climate mitigation efforts, are inclusive, and do not discriminate against, or infringe upon the rights of, ethnic and religious minority groups.

11. ABOLISH THE DEATH PENALTY

Amnesty International opposes the death penalty unconditionally, for all crimes, and calls for its total abolition worldwide. The organization considers the death penalty a violation of the right to life and the ultimate cruel, inhuman or degrading punishment.

By the end of 2019, 106 countries had completely abolished the death penalty for all crimes. A further 142 had abolished it in law or in practice. While Myanmar has not carried out a judicial execution since the late 1980s and is widely considered a de facto abolitionist state, the possibility is still allowed for under the current legal framework and the death penalty is still handed down with some regularity. This is due, in part, to mandatory sentences provided for in criminal law.

At present, convicted individuals can appeal through the court system, and as a last-ditch effort make a bid for clemency. Under the administration of U Thein Sein (2011-2016), death penalty verdicts were categorically commuted to life imprisonment. In early 2020, a New Year presidential amnesty saw death penalty sentences commuted to life imprisonment. Local media reports have suggested that the death penalty has also been issued in non-state trials and tribunals in non-government controlled areas and self-administered regions.

In 2017, the Myanmar National Human Rights Commission and 33 representatives from across government ministries, defence services, the judicial system and civil society convened to work toward a moratorium on death penalty sentences. However, the momentum for a moratorium has stalled.

By abolishing the death penalty, Myanmar would take a concrete step toward improving the integrity and credibility of its own criminal justice system, help forge a path toward the end of the death penalty in the Asia-Pacific region and, importantly, show the country's commitment to respecting the sanctity of life and of human dignity.

Amnesty International's recommendations to the new government:

- Commute all death sentences to prison terms;
- Immediately and officially establish a moratorium on all executions, with a view to abolishing the death penalty for all crimes;
- Take an abolition-focused approach to reform of all existing criminal laws;
- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; and
- Abolish the death penalty for all crimes.

**AMNESTY INTERNATIONAL
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TO ONE PERSON, IT
MATTERS TO US ALL.**

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“MYANMAR: ELEVEN-POINT HUMAN RIGHTS AGENDA”

MYANMAR’S NEW GOVERNMENT MUST CHAMPION HUMAN RIGHTS

As Myanmar’s new government takes office, following the general election of November 2020, it is imperative that the urgent human rights situation in the country is made a top priority.

From arbitrary arrests, prosecutions, and imprisonment of activists to atrocity crimes and legally-sanctioned discrimination against minority groups, there is a pressing need for human rights reforms. The new government must, as a matter of urgency, repeal or amend all repressive and discriminatory laws and ensure humanitarian access to at-risk populations and justice and accountability for crimes under international law in ethnic minority areas.

As the new government is formed and newly elected Members of Parliament prepare to take their places in the hluttaws, Amnesty International urges all MPs to respect, protect, fulfil and promote human rights for all, and to publicly commit to meeting Myanmar’s international human rights obligations. The next government can and must champion human rights.