



# Human Rights Situation in Burma/Myanmar

A briefing paper by:



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## Introduction

This paper evaluates how the Burma/Myanmar Government has fared in the past year in addressing human rights issues in the context of recommendations by the United Nations. One year ago, the 31<sup>st</sup> session of the UN Human Rights Council (HRC) came at a crucial juncture in the country's history as the newly elected National League for Democracy (NLD)-led government was about to take charge. The session saw the country's UPR adoption, a report by the UN Special Rapporteur on Myanmar Yanghee Lee, and Council resolution 31/24 on the country. Later in the year, at the 32<sup>nd</sup> HRC session, the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, released a report on Rohingya and minorities, which was followed by an updated report and set of recommendations by the Special Rapporteur to the 71<sup>st</sup> session of the General Assembly. Moving into the 34<sup>th</sup> session of the Council, how much has changed?

After ten months in office, the NLD has struggled to usher in a more comprehensive peace agreement between the Burma/Myanmar Army (Tatmadaw) and the country's numerous ethnic armed organizations (EAOs). The first of the now biannual 21<sup>st</sup> Century Panglong Conference was held in August 2016, though it was much more symbolic than substantive. 2016 also saw intensified conflict in several ethnic areas, resulting in disproportionate security lockdowns and human rights violations by the Burma/Myanmar Army, all of which have also served to undermine the trust-building that is central to national reconciliation and peace. Most notably, as the 34<sup>th</sup> session of the Council opens, Burma/Myanmar finds itself mired in serious and grave allegations of possible crimes against humanity committed by security forces in northern Rakhine against the Rohingya minority.

The overall human rights situation across the country continues to be precarious with democratic space and rule of law still severely curtailed. In the Special Rapporteur's words, the government's response to the country's human rights problems continues to be "to defend, dismiss, and deny."<sup>1</sup> While some progress has been made, such as with the repeal of several laws previously used to repress political dissidents, legislative and policy inconsistency with international standards remains pervasive. Furthermore, the implementation of ostensibly progressive laws and policies is continually beset by a discriminatory culture toward ethnic and religious minorities and the government's ambitious targets for development, while military impunity continues to be entrenched under the still-unchanged, military-drafted 2008 Constitution.

This paper is divided broadly into two parts, the first dealing with international humanitarian law and human rights law violations in the context of conflict, and the second with fundamental freedoms.

## Conflict-Related Human Rights Violations

In recent months, intensified conflict in the northern Rakhine, Shan and Kachin States has left little room for optimism for the future of national reconciliation and peace. Most notably, attacks on border police posts in northern Rakhine State in October and November 2016, reportedly by Rohingya militants, led to a disproportionate security lockdown and military retaliation that has displaced tens of thousands of innocent civilians and obstructed humanitarian access to areas already in critical condition. Intensified clashes between the Burma/Myanmar Army and the EAOs, especially in the Kachin and Shan States, have also led to widespread displacement and resource blockages. In December 2016, a Burma/Myanmar Army offensive to capture a Kachin Independence Army (KIA) outpost in Kachin State’s Waingmaw Township evicted thousands of internally displaced persons (IDPs). With conflict as the backdrop, members of the Burma/Myanmar Army have committed rape, forced labor, looting, extrajudicial killings and torture, among other crimes. The persistence and exacerbation of unchecked, systematic, state-sanctioned human rights violations, committed by the Burma/Myanmar Army in ethnic regions over the course of several years reveal that these violations very likely constitute crimes against humanity and war crimes.

### Violations by the Burma/Myanmar Army in northern Rakhine, northern Shan, and Kachin States

Human Rights Concern/Issue	Government Response	UN Recommendations
<p><i>Northern Rakhine State</i></p> <p>The human rights situation of residents of the Rakhine State, particularly that of the Rohingya, deteriorated significantly after the attack on border police outposts in Maungdaw Township by suspected Rohingya militants on 9 October 2016. A flash report released in February 2017 by the Office of the High Commissioner for Human Rights (OHCHR) details subsequent mass gang-rape, killings, including of young children and babies, by the Burma/Myanmar Army.<sup>2</sup> The report, based on interviews with Rohingyas who have fled to Bangladesh following the attacks, reveals the systematic nature of the crimes committed by the Burma/Myanmar Army.<sup>3</sup> Since 9 October, at least 20 clashes have occurred between security forces and suspected Rohingya militant attackers in northern Rakhine,<sup>4</sup> including one in November 2016 that led to over 30 deaths.<sup>5</sup> According to UN officials, the death toll in the aftermath of the security response “likely exceeded 1,000,” a</p>	<p>The government, while “deeply concerned” by the allegations made by the UN and civil society,<sup>8</sup> has denied that security forces had carried out such violations and has requested more evidence from the UN regarding its allegations.<sup>9</sup> The interim report released in January 2017 by the Investigation Commission of Maungdaw—formed in December 2016 in response to the attacks—denied the existence of religious persecution and the “sufficient evidence” for the widespread rape reported by the media.<sup>10</sup> Following the release of the OHCHR flash report in February 2017, the government announced that it would investigate the allegations via the same Commission.<sup>11</sup> The credibility of the Commission is belied by its membership, which includes former Army General and notorious hardliner, Myint Swe, as well as members of the security force.</p>	<p><b>High Commissioner/Relevant Special Advisors</b>            In response to the OHCHR flash report, the High Commissioner for Human Rights called for “at least” a commission of inquiry and possible referral to the International Criminal Court.<sup>14</sup> Adama Dieng, the UN Special Advisor on the Prevention of Genocide, urged for an investigation to be conducted by a truly independent and impartial body that includes international observers.<sup>15</sup></p> <p><b>Special Rapporteur</b>            Broadly, the Special Rapporteur calls for “prompt, independent and impartial investigations” into alleged human rights violations in conflict areas, and the punishment and prosecution of all perpetrators.<sup>16</sup></p> <p>She specifically urges for a UN-mandated Commission of Inquiry to investigate “the systematic, structural, and institutional discrimination in policy, law and practice” against the Rohingya and other minorities in Rakhine State, focusing on incidents of violence from 2012 and 2014 in addition to October 2016.<sup>17</sup></p>

number that dwarves the government estimation of “fewer than 100.”<sup>6</sup>

The indiscriminate nature and scale of the security response unfairly punished the entire Rohingya population in northern Rakhine for the actions of a few, and the deplorable and systematic conduct of the security forces in northern Rakhine may have amounted to crimes against humanity.

The recent events described above must be couched in the context of widespread violations of the rights to life, liberty and security of the Rohingya by the Burma/Myanmar Army that have been well-documented since the outbreak of violence in the state in 2012. In his report to the HRC in June 2016, the High Commissioner highlights “consistent allegations of torture and ill-treatment, including cases of severe beating, burning by cigarettes, burning of beards, forced labor, sexual humiliation and abuse, the denial of medical treatment, degrading conditions of detention and deaths in custody.”<sup>7</sup>

With the intent to comprehensively address “root causes” to the situation in Rakhine, the government established the Central Committee on Implementation of Peace, Stability and Development of Rakhine State in May 2016 with State Counsellor Daw Aung San Suu Kyi herself at the helm. In August the same year the government established the Advisory Committee on Rakhine State chaired by former UN Secretary General Kofi Annan.<sup>12</sup> The Advisory Committee plans to release its first report before August 2017,<sup>13</sup> but it must be noted that the Committee does not have any Rohingya members and its mandate does not include investigating human rights abuses.

While the Special Rapporteur notes the political sensitivity of constitutional reform at this point of Burma/Myanmar’s transition, she reiterates that the robust operation of rule of law, necessary to hold the armed forces accountable to alleged crimes, depends on reform of the 2008 Constitution.<sup>18</sup> She urges the government to initiate a process of consultation with all stakeholders on the review and amendment of the Constitution by March 2018.<sup>19</sup>

#### **UPR**

The need to combat military impunity is emphasized by several states, including the United Kingdom of Great Britain and Northern Ireland and Saudi Arabia, who are both current HRC members.<sup>20</sup>

Per the “accepted” UPR recommendation proposed by Greece,<sup>21</sup> Burma/Myanmar should also restructure its local police forces, as it has thus far failed to play the role of the impartial arbiter in conflicts involving the Burma/Myanmar Army.

## *Kachin and Northern Shan States*

The Shan Human Rights Foundation (SHRF), a local organization that documents human rights violations, details looting, extrajudicial killings, arbitrary arrest, torture, forced labor by the Burma/Myanmar Army in Shan State.<sup>22</sup> More than half of the human rights violations recorded in 2016 by the Network for Human Rights Documentation-Burma (ND-Burma), a network of local organizations working on attaining government redress for victims of human rights violations, were found in Shan State, with most being committed by the Burma/Myanmar Army.<sup>23</sup> Though the number of human rights violations recorded in Kachin State is lower, this number very likely does not reflect the true number of violations as military blockades have made documentation difficult. Reports from local aid organizations have listed frequent arbitrary arrests and torture of villagers, especially those suspected of contact with the Kachin Independence Army (KIA).<sup>24</sup> From November 2015 to October 2016, the Kachin Women's Association of Thailand (KWAT) documented 21 cases of torture in six townships in Kachin and northern Shan States by the Burma/Myanmar Army that described "villagers tied up, blindfolded, kicked, hit with guns, had bamboo rolled on their shins, and...stabbed with knives."<sup>25</sup>

During the Special Rapporteur's most recent fact-finding mission to the country in January 2017, she was denied access by the government to Laiza, the center of the KIA-controlled territory, and Hpakant, the core of Kachin State's jade mining enterprise due to "security concerns."<sup>26</sup>

In July 2016, seven Burma/Myanmar Army soldiers were sentenced for killing civilians in Shan State.<sup>27</sup> Later in the year, a soldier was sentenced to two years' imprisonment for killing a Kachin student.<sup>28</sup> However, it must be noted that these cases are rare and exceptional and neither resolution was ideal—both cases were tried in military courts, and legal experts say that the sentence period for the soldier in the latter case is too low.<sup>29</sup>

In January 2017, the Burma/Myanmar Army finally confirmed the detention of two ethnic Kachin pastors suspected of helping journalists report on military abuses in northern Shan State, after they were forcibly disappeared in December 2016.<sup>30</sup> It must be noted however that actions were taken only after enormous international pressure, and both men are still in detention and facing health concerns.<sup>31</sup>

### ***Special Rapporteur***

The Special Rapporteur calls for the cases of military members who perpetrate serious crimes against civilians to be systematically transferred to civilian courts by March 2018.<sup>32</sup>

Most notably, she calls for an "urgent discussion" at the HRC to address the human rights violations occurring in escalating conflict areas in Kachin and northern Shan States.<sup>33</sup>

## *Sexual and Gender-Based Violence*

Sexual violence is rampant across the country but is particularly so in conflict areas or areas of increased militarization, with underreporting prevalent due to concerns of social stigmatization.<sup>34</sup> Of the 101 female Rohingya refugees in Bangladesh interviewed by the OHCHR, 52% reported having survived sexual violence, including rape. Most of the women raped suffered gang rape from up to eight officers, and several detailed the physical consequences that arose from the rape, including prolonged vaginal bleeding, insomnia, depression, and fainting.<sup>35</sup> A February 2017 report by the Kaladan Press, a Rohingya news agency founded by Rohingya exiles in Bangladesh, brings this number up to “at least 70.”<sup>36</sup>

A report by the Women’s League of Burma, a group of thirteen women’s organizations representing different ethnic areas in Burma/Myanmar, details over 90 cases of state-sponsored sexual violence over the past six years, almost all committed by Burma/Myanmar Army in areas of ongoing armed conflict in Kachin and Shan States. Only five of these cases were tried in civilian courts, showing that security forces continue to escape accountability.<sup>37</sup> From 2005 to 2016, there has been at least 33 separate reports on violence against women committed by the Burma/Myanmar Army published by 11 women’s organizations.<sup>38</sup>

The government continues to deny allegations of rape or other forms of sexual violence. Daw Aung San Suu Kyi, who in 2011 called rape in Burma/Myanmar as a weapon of war, has failed to explicitly condemn the Burma/Myanmar Army for their alleged abuses, pledging only insofar as taking action “where there is clear evidence of abuses and violations.”<sup>39</sup> Worryingly, recent statements from the government-mandated Investigation Commission of Maungdaw in mid-February 2017 say that so far it hasn’t found enough evidence to corroborate the harrowing OHCHR flash report.<sup>40</sup>

While fresh crimes are being committed, there has been no progress in the seeking justice for cases of sexual violence, including those committed under the previous government. The 2015 case of the two Kachin teachers who suffered brutal rape and murder by the Burma/Myanmar Army in northern Shan State remain unresolved.<sup>41</sup> The Kaladan Press reveals the continued official cover-up of atrocities, with villagers forced by the Burma/Myanmar Army troops to proclaim on camera that it was Rohingya militants who had committed abuses against them.<sup>42</sup>

### ***Special Rapporteur***

Broadly, the Special Rapporteur urges that the government takes more effective measures to prevent and respond to all forms of sexual and gender-based violence, including in conflict. By March 2018, the government should take concrete steps to develop a program of comprehensive support for victims of sexual and gender-based violence in conflict, including access to justice, health and psychological care, and socioeconomic support. Also by March 2018, the government should take concrete steps to create a system for the collection of disaggregated data of all forms of gender-based violence.<sup>43</sup>

### ***UPR***

Albania, a current HRC member, urges Burma/Myanmar to undertake appropriate measures to combat and prevent sexual violence committed by military personnel and police officers against young girls.<sup>44</sup> The United Kingdom of Great Britain and Northern Ireland, also a current HRC members, urges the country to include sexual violence in conflict in the Prevention and Protection of Violence Against Women Bill.<sup>45</sup>

## Displacement and Humanitarian Access in Conflict Areas

Human Rights Concern/Issue	Government Response	UN Recommendations
<p><i>Northern Rakhine State</i></p> <p>Displacement in northern Rakhine has been driven by an escalation in hostilities close to displacement camps and in civilian areas, often involving aerial bombardments.</p> <p>This displacement has been caused by terror induced by “clearance operations” by the Burma/Myanmar Army in response to the October 2016 attacks.<sup>46</sup> Based on the most recent available data from the UN Office for the Coordination of Humanitarian Affairs (OCHA) at least 92,000 people, largely Rohingyas, fled their homes in northern Rakhine since the attacks, with approximately 69,000 fleeing to Bangladesh. An estimated 23,000 people remain internally displaced, although most of the ethnic Rakhine and Mro people displaced have returned to their villages.<sup>47</sup></p>	<p>The process for aid convoys to reach conflict areas has become more burdensome under the new government. As the Special Rapporteur noted in her report to the General Assembly in August 2016, while previous requests for access to conflict areas were sent to the National Defense and Security Council, such request were now evaluated by the Ministry of Home Affairs, requiring final clearance from the Commander-in-Chief himself.<sup>48</sup></p> <p>In northern Rakhine, after a three-month interruption in most UN and related aid deliveries, the government has allowed an incremental resumption of some activities, including distribution of food and other relief items, but with national staff only. Health services, such as those provided by NGO clinics, remain patchy and humanitarian staff report low patient attendance. As of late January 2017, international staff still face severe restrictions to movement, and humanitarian organizations have not yet been allowed to resume protection activities.<sup>49</sup></p> <p>While Burma/Myanmar’s newly appointed National Security Advisor claims that the clearance operations have ceased, a military spokesperson denied such claims, saying that “We will not stop clearance operations. There will be regular security operations.”<sup>50</sup></p>	<p><b>Special Rapporteur</b></p> <p>The government should ensure “regular, independent and predictable access” to all those needing humanitarian assistance. Substantively, this would require relaxing travel restrictions. Free flow of information should also be allowed, as only then can a comprehensive assessment of the needs on the ground be made. The Special Rapporteur had originally called for this to be achieved by March 2017.<sup>51</sup></p> <p>In her most recent report to the HRC, she emphasizes the need for “immediate” access in the Rakhine State and calls for the government to undertake a needs assessment for the situation in the State. By October 2017, the government should lift the curfew order and restrictions on freedom of movement in the Rakhine State,<sup>52</sup> a call she had originally urged to be completed by March 2017.<sup>53</sup></p> <p><b>UPR</b></p> <p>Per the United Kingdom of Britain and Northern Island and Saudi Arabia, both current HRC members, the Burma/Myanmar government must allow access to humanitarian aid to all groups that need it, including those internally displaced in Rakhine State.<sup>54</sup></p> <p>As suggested by Turkey, the government should also strive to ensure the safe and voluntary return of IDPs to their place of origin.<sup>55</sup></p>

## *Kachin and Northern Shan States*

The intensified assaults by the Burma/Myanmar Army in the Shan and Kachin States are likely efforts to pressure non-signatory EAOs into signing the nationwide ceasefire agreement (NCA) ahead of the next round of peace talks in March 2017. Since armed conflict between the KIA and the Burma/Myanmar Army in Kachin State intensified in December 2016, nearly 7,000 people have fled the area,<sup>56</sup> including 4,000 who attempted to cross the border to China after the Burma/Myanmar Army launched an offensive to capture KIA outposts in January 2017.<sup>57</sup> As of 26 January 2017, fighting between the Burma/Myanmar Army and EAOs in northern Shan State displaced a further 4,000.<sup>58</sup> With ever-fluid frontlines, civilians on the move across Kachin and northern Shan States face an increased risk posed by landmines and other remnant explosives.<sup>59</sup>

Security lockdowns and ongoing armed conflict have led to widespread health, food, education and assistance suspensions. Overall, humanitarian access to conflict areas in Burma/Myanmar continue to be politicized and limited, and according to an UN OCHA spokesperson, it is currently worse than at any point in the past few years.<sup>60</sup>

Government-controlled areas in Shan and Kachin states have usually relied heavily on local- and community-based humanitarian aid organizations to deliver assistance but even they are now reporting obstacles in operations. Furthermore, despite the increase in fighting, the government persists with its policy that displaced people should cross active front lines to receive aid at designated points in government-controlled territory, putting them at greater risk of harm from land mines and remnant explosives.<sup>61</sup>

Daw Aung San Suu Kyi waited until February 2017 to directly acknowledge the deteriorating security environment in Kachin State, with her Office donating 300 million kyats (\$222,000 USD) in cash assistance to those displaced.<sup>62</sup> Even then, the state media refrained from assigning blame for the situation, stating that IDPs had been forced to flee due to “security reasons in Kachin State.”<sup>63</sup> Prior to this, the government had simply denied the existence of some IDP camps and IDPs. As the Special Rapporteur highlighted in her end-of-mission statement on 20 January, 2017, the state government outright dismissed her when she brought up Kachin State’s Zai Awng Camp.<sup>64</sup> Overall, the government’s aid response is opaque, lagging and insufficient.

### ***Special Rapporteur***

By March 2018, the government should develop a strategy and timeline for comprehensive mine mapping and removal, as well as systematic mine risk and education activities for communities in affected areas.<sup>65</sup>

## Fundamental Freedoms and Democratic Space

While some repressive laws and provisions have been repealed or amended by the NLD-led government, fundamental freedoms of expression, assembly and association continue to be curtailed and the state has often allowed economic interests to prevail over protection of its citizenry. Discrimination against ethnic and religious minorities persists, often serving as an obstacle to meaningful implementation or adoption of progressive legislation. Furthermore, the current legislative and policymaking process in Burma/Myanmar remains opaque, without a systematic process for public consultation on draft laws, amendments, or policies.

### Freedom of Expression, Assembly and Association

Human Rights Concern/Issue	Government Response	UN Recommendations
<p>While there has not been the same scale and frequency of arrests, problematic provisions in the Peaceful Procession and Peaceful Assembly Law, the Penal Code, the Electronic Transactions Law, the Unlawful Associations Law, and the Telecommunications Law continue to be used to silence civil society actors, journalists, ethnic minorities and human rights defenders. As of 20 January 2017, over 40 people were facing prosecution for defamation under 66(d) of the Telecommunications Law.<sup>66</sup></p> <p>The existence and visible practice of using these laws to suppress dissent has led to widespread self-censorship among media and civil society across the country. In November 2016, long-time Myanmar Times reporter Fiona MacGregor was fired,<sup>67</sup> likely for her coverage of victims of ethnic conflicts and women’s issues.<sup>68</sup></p> <p>The practice of bringing multiple charges across different townships for the same offence, or of bringing charges for offences allegedly committed in the past, continues. The Special Rapporteur has also expressed concern over the monitoring and surveillance of civil society actors and human rights defenders, as well as their placement on government “blacklists”.<sup>69</sup></p> <p>The January 2017 assassination of constitutional legal expert U Ko Ni, who had referred to the 2008 military-drafted constitution as undemocratic and was</p>	<p>The government repealed the 1975 State Protection Act and the 1950 Emergency Provisions Act, both tools primarily used to suppress political dissidents and activists, in May and October 2016 respectively.<sup>71</sup> Improvements to the Peaceful Assembly and Peaceful Procession Law of 2011 include the removal of the requirement for prior permission before organizing a public demonstration, requiring instead that notification be given 48 hours in advance. Shortcomings remain, however, including the retention of criminal penalties, such as for failure to provide advance notification, and the lack of recognition for spontaneous assemblies.<sup>72</sup></p> <p>The government is also in the process of reviewing certain repressive laws, and drafting others, including a right to information bill.<sup>73</sup> However, because the legal process is opaque and devoid of adequate engagement with civil society it is difficult to assess or ascertain the progress on these reviews and drafts.</p>	<p><b>Special Rapporteur</b></p> <p>The Special Rapporteur reiterates previous calls for the government to cease immediately the arbitrary arrest and prosecution of those exercising fundamental freedoms including that of assembly, association and expression. She also made a broad call to stop, investigate and redress systematically any threats, acts of intimidation or harassment against media and civil society actors,<sup>74</sup> which she had called to be completed by March 2017.<sup>75</sup> The Special Rapporteur specifically called for an independent investigation with international assistance into the killing of U Ko Ni.<sup>76</sup></p> <p>Regarding the Peaceful Procession and Assembly Law, the Special Rapporteur recommends the removal of “unduly burdensome” provisions, including the requirement that information about speakers, the agenda and slogans used, be provided in advance.<sup>77</sup> She recommends that the government amend or repeal by October 2017, section 18 of the Peaceful Assembly and Peaceful Procession Law and section 505(b) of the Penal Code, and drop all charges currently being brought against individuals under these provisions. She also recommends that the government ensure that multiple charges are not brought against individuals for the same offence. She specifically urges the prompt promulgation of a right to information bill.<sup>78</sup></p>

advising Daw Aung San Suu Kyi on constitutional amendments, is a particularly stark reminder of the limitations on democratic space in the country.<sup>70</sup>

In her visits to the Burma/Myanmar, the Special Rapporteur has asked the government to ensure that the people that she speaks with does not face reprisals.<sup>79</sup>

Broadly, on all fundamental freedoms, the Special Rapporteur recommends that the government undertake a comprehensive review of legislation and legal provisions that limit such freedoms and contravene international standards, with clear targets for the conclusion of the review.

**UPR**

Italy calls on the government to “ensure that those who legitimately exercise their rights to freedom of expression and peaceful assembly be not subject to reprisals.”<sup>80</sup>

Political Prisoners and Human Rights Defenders

Human Rights Concern/Issue	Government Response	UN Recommendations
<p>As mentioned in the previous section, the Unlawful Association Law and the Telecommunications Law continue to be used as tools to arrest and detain political activists and human rights defenders.</p> <p>The release of all political prisoners was highlighted by the Special Rapporteur as a recommendation to achieve within the NLD’s first 100 days. As of January 2017, according to the Assistance Association for Political Prisoners, a local organization that supports and documents political prisoners, there are 86 political prisoners serving prison sentences, and 164 awaiting trial.<sup>81</sup></p> <p>The Special Rapporteur noted the inadequate prison conditions in the country in her end-of-mission report in January 2017. As she reported, prisons are not equipped with an independent complainant system, and</p>	<p>Ever since taking power, Aung San Suu Kyi has pledged to prioritize the release of political prisoners. By 17 April 2016, 196 prisoners were released, including 69 students arrested for protesting the National Education Law in March 2015. A presidential order from 16 April, 2016 stated that the releases were intended to bring about national reconciliation.<sup>86</sup></p> <p>The scrapping of the Emergency Provisions Act, as described the above section, is a positive move. Parliament has also approved to abolish the requirement to report overnight guests in the 2012 Ward and Village Tract Administration Law, which was notorious for its misuse by the former military regime to keep tabs on dissidents.<sup>87</sup></p> <p>The current Parliament includes over 100 former political prisoners and human</p>	<p><b>Special Rapporteur</b></p> <p>Before October 2017, the Special Rapporteur calls for the release of all political prisoners and the provision of adequate compensation and support for them, including psychological support and employment training after release. She had originally set a benchmark for March 2017.<sup>91</sup> She also calls for a comprehensive review of all cases, and for the formal definition of the term “political prisoner”, based on broad and public consultation with all relevant stakeholders, including the Ministry of Home Affairs and the Myanmar National Human Rights Commission (MHHRC).<sup>92</sup> By October 2017, she calls for the government to undertake a comprehensive review of all cases, based on broad and public consultations with all relevant stakeholders in view of the discrepancies in the number of remaining political prisoners.</p>

shackles are used as additional forms of punishment at some hard labor camps.<sup>82</sup>

While the NLD-led Government has released at least 200 political prisoners, government support and compensation for these prisoners remains non-existent.<sup>83</sup> Many of the released are also classified as “ex-criminals,” impeding their acquisition of legal documents like passports and professional licenses. Furthermore, most of the political prisoners released received a presidential commutation of their sentences under section 401 of the Criminal Procedure Code, which gives the President broad power to return individuals to prison if a condition of their release is not satisfied.<sup>84</sup>

Among the many pending politically-motivated cases of human rights defenders is the case of Khin Khin Kyaw, a member of the Union Lawyers’ & Paralegals’ Association (formerly the Myanmar Lawyers Network) who is facing charges under section 228 of the Penal Code for filing a legal motion to hold high-ranking officials responsible for their use of excessive force on students protesting the National Education Law in central Myanmar’s Bago Region in March 2015.<sup>85</sup> Her case can be concluded in 2017 if further delays do not occur. Her case highlights the continuing lack of judicial independence and undue delays that contravene international fair trial standards.

rights defenders.<sup>88</sup> In December 2016, the Myanmar National Human Rights Commission (MNHRC) and the Prisons Department jointly initiated a program to provide human rights training to prison officials.<sup>89</sup> But fundamental problems persist. In June 2016, the Ministry of Home Affairs denied an attempt by a group of former political prisoners to define “political prisoner,” arguing that doing so would violate the constitution.<sup>90</sup>

Also by March 2018, she calls for an overarching prison law in line with international standards, particularly in relation to the minimum standards of accommodation and access to health facilities.

She calls for the government to ratify the International Covenant on Civil and Political Rights (ICCPR) by March 2018.

**UPR**

The Burma/Myanmar Government should also ratify the International Convention for the Protection of All Persons from Enforced Disappearance, the ICCPR, and the Convention against Torture, per its accepted recommendations from the most recent UPR cycle.<sup>93</sup>

Women, Peace and Security

Human Rights Concern/Issue	Government Response	UN Recommendations
<p>Burma/Myanmar does not have a specific law protecting women’s rights, and currently practices the outdated Penal Code, which describes offenses and penalties against women in generic terms.<sup>94</sup> The country ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1997.</p> <p>CEDAW Action Myanmar, representing 16 local women’s groups, released a statement to CEDAW on 4 July 2016 describing “deeply</p>	<p>In December 2016, the government reformed the Myanmar National Committee for Women’s Affairs (MNCWA), and since 2013 has been in the process of drafting a 19-chapter Prevention of Violence Against Women Law in consultation with women’s organizations, the UN, and civil society groups. Civil society groups were however not aware of any organizational reform of the MNCWA, and consultations for the new law were not</p>	<p><b>Special Rapporteur</b></p> <p>Regarding the draft Prevention of Violence against Women Law, the Special Rapporteur, in her August 2016 report, calls for the retention of specific provisions to increase compliance with CEDAW, including a comprehensive definition of rape, and provisions against rape and other forms of sexual violence committed by the military, police and uniformed personnel in times of conflict. The Law should also address all forms of gender-based violence,</p>

rooted discrimination” and “entrenched patriarchy” in the country. In addition, the organization highlighted the lack of accountability for women seeking reparations for violations and discrimination, along with their consistent exclusion from political life, including the current peace process.<sup>95</sup>

broad and inclusive, with women from ethnic and religious minorities excluded. The law, which seeks to criminalize domestic and economic violence, and psychological, sexual and physical abuse in line with international standards,<sup>96</sup> was the subject of a parliamentary discussion in late January 2017. One prevailing obstacle is from Ma Ba Tha,<sup>97</sup> who opposes the amendments to the four Race and Religion Protection Laws that are necessary to ensure harmony with the proposed legislation on the prevention of violence against women.

In July 2016, despite the overwhelming evidence from civil society organizations that highlights discrimination against women in Burma, the government delegation to CEDAW, led by U Maung Wai, stated, “Due to non-discriminatory traditions, women do not face social barriers in education, jobs and career advancement.”<sup>98</sup> U Maung Wai supported his statement by declaring that the participation of women in parliament has increased to 13.5 percent from 4.4 percent in 2012.<sup>99</sup>

including domestic violence and marital rape, and provide for adequate criminal penalties, including those against the military.

By October 2017, the government should enact a law on the prevention of violence against women that is compliant with international law and in line with the government’s responsibilities as a party of CEDAW.

#### **UPR**

Numerous countries, including Austria, Sweden and the United Kingdom, urge Burma/Myanmar to adopt a legal definition of discrimination along with a legal framework that fully protects against gender-based discrimination and violence.<sup>100</sup>

#### **Conventions/Resolutions**

Per one of UN CEDAW’s 56 recommendations from 2016, Burma/Myanmar must remove or amend discriminatory laws, including the interfaith laws.

### *Peace Process*

Since 2012, women have been under-represented in the country’s peace efforts, and on most peace process committees and government bodies, women have been excluded.

The participation of women in the peace process still appears to be severely limited. The newly created National Reconciliation and Peace Center, despite being chaired by Daw Aung San Suu Kyi herself, only one of the 11 members is female.<sup>101</sup> Only 8 of the 75 members of the Working Committees under the Union Peace Dialogue Joint Committee (UPDJC) are female.<sup>102</sup>

#### **Special Rapporteur**

The Burma/Myanmar Government should include at least a 30 percent representation of women at all levels, including in delegations, and particularly in leadership roles. She also calls for a broad gendered perspective to be integrated into political dialogues.<sup>103</sup> The Special Rapporteur had originally called for this to be achieved by March 2017.<sup>104</sup>

#### **Conventions/Resolutions**

As a UN member state, Burma/Myanmar must also ensure that it is implementing and monitoring progress on UN Security Council Resolution 1325 by developing a National Action Plan. Under this resolution, Burma/Myanmar is required to maintain “increased representation of women at all

decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict.”<sup>105</sup>

## Freedom of Religion

Human Rights Concern/Issue	Government Response	UN Recommendations
<p>The Association for the Protection of Race and Religion, also known as Ma Ba Tha, continues to fuel religious tensions by promoting hate speech, and maintains significant political leverage, in part due to its ties to the former government. The group is particularly vocal about rejecting reform to the Protection of Race and Religion Laws (2015), which discriminates against non-Buddhists.</p>	<p>While numerous leaders, including Daw Aung San Suu Kyi, the Minister for Religious Affairs and Culture, as well as the Commander-in-Chief have spoken against religious extremism, the Burma/Myanmar Government, has not yet announced how it will review the Protection of Race and Religion laws.<sup>109</sup></p>	<p><b>Special Rapporteur</b> The Special Rapporteur specifically named the four Protection of Race and Religion Laws, which promote unequal rights for non-Buddhists, as a piece of discriminatory legislation that the government should repeal before October 2017.<sup>112</sup> Originally, she had suggested a deadline of March 2017.<sup>113</sup></p>
<p>Religious tension fueled by Ma Ba Tha occasionally results in acts of communal violence. For instance, in June 2016, a Buddhist mob from Bago Region attacked a Muslim man and destroyed his house.<sup>106</sup> In a separate incident shortly after, a Buddhist mob in Kachin State torched a Muslim prayer hall.<sup>107</sup></p>	<p>The State Sangha Maha Nayaka Committee (also known as Ma Ha Na), a national body of senior monks overseeing matters of the Buddhist faith, has declared the Ma Ba Tha as a “not lawful” organization, thereby reducing its legitimacy.<sup>110</sup></p>	<p>To cultivate a culture that promotes interfaith and intercommunal dialogue, the Special Rapporteur recommends educational campaigns that deconstruct discriminatory stereotypes. She recommends that this be done March 2018.<sup>114</sup> The Special Rapporteur has urged the government to publicly condemn all acts of incitement to discrimination, hostility and violence against minorities. By October 2017, the government should take concrete steps to implement a comprehensive set of measures to combat and prevent acts of incitement to discrimination, hostility and violence against minorities, including an anti-discrimination law or policy.<sup>115</sup></p>
<p>The country’s Christian population is also subjected to persecution. In April 2016, an influential Buddhist monk, Myaing Kyee Ngu, stoked religious tensions by building pagodas near churches and mosques prompting concern from local, non-Buddhist religious communities.<sup>108</sup></p>	<p>In July 2016, the government created the Emergency Management Central Committee, tasked with preventing and mitigating interreligious violence. Rights groups, however, remain wary of the media and protest-countering teams created under the mandate of the Committee.<sup>111</sup></p>	<p><b>UPR</b> The United States of America, a current HRC member state, and numerous other countries echo the Special Rapporteur in the UPR, urging Burma/Myanmar to repeal discriminatory legislation.<sup>116</sup></p>
		<p>Burma/Myanmar should criminalize serious and extreme instances of incitement to hatred, and increase its efforts to counter hate speech and incitement to violence, as suggested by New Zealand.<sup>117</sup></p>

Human Rights Concern/Issue	Government Response	UN Recommendations
<p><i>Land Rights</i></p> <p>Land disputes remain a major national problem, with rising discontent over displacement for plantation agriculture, resource extraction and infrastructure projects, often without proper and meaningful consultation, due diligence, or adequate compensation for affected communities. Economic liberalization, combined with the signing of bilateral ceasefire agreements with some ethnic armed organizations, has opened access to areas previously beyond the reach of Burma/Myanmar Army forces, military cronies, the government and foreign investors. This has the added effect of contributing to increased tensions, particularly in conflict zones, in which natural resources play a role in autonomy and control.<sup>118</sup></p> <p>A report released in January 2017 by the Thanlwin Citizen Empowerment Program concludes that current legislation in Burma/Myanmar legalizes unfair land confiscations, penalizes small-scale farmers and discriminates against women owning, selling or inheriting land.<sup>119</sup> The group advocates for review and amendment of three main laws and policies overseeing the sector—the Farmland Law, the Vacant, Fallow and Virgin Lands Management Law, and the National Land Use Policy.<sup>120</sup></p> <p>The National Land Use Policy, adopted in 2016 is intended to serve as the basis for the development and enactment of a national land law that would harmonize and improve upon existing land laws.<sup>121</sup> While generally well received by civil society,<sup>122</sup> it is ravaged by vague language and noteworthy gaps like silence on the ongoing problem of land concentration.<sup>123</sup></p>	<p>In May 2016, the Burma/Myanmar Government formed the Central Review Committee on Confiscated Farmlands and Other Lands, tasked with monitoring handling of land disputes by state and divisional governments and enabling the return of land to dispossessed farmers.<sup>124</sup> While the committee originally vowed to settle all land grabbing cases within six months,<sup>125</sup> dispute cases are still ongoing. As of November 2016, only 33 of the 2,056 cases submitted have been resolved.<sup>126</sup> Concerns remain over the credibility of the body, as several individuals working for township- and region-level committees were involved in forced land seizures under previous governments, thus suggesting a possible conflict of interest.<sup>127</sup></p> <p>Proposed amendments to the two main land laws were announced to be underway in February 2017, although specific details were not provided.<sup>128</sup> In a similar vein, the parliamentary commission charged with targeting legislation for reform has identified the National Land Use Policy as one in line for redress.<sup>129</sup></p>	<p><b>Special Rapporteur</b></p> <p>Before March 2018, the Special Rapporteur recommends that the government draft an overarching land law that complies with international standards, and by October 2017 streamline the complaints procedure for addressing land disputes.<sup>130</sup> The government should ensure that environmental impact assessment procedures are consistently implemented and enforced.</p> <p>By October 2017, the Special Rapporteur urges the government to ratify the International Covenant on Economic, Social and Cultural Rights (ICESCR).</p> <p><b>UPR</b></p> <p>As suggested by Germany and the Czech Republic, Burma/Myanmar must continue offering redress for those who have had their land illegally or arbitrarily seized under past governments, including adequate compensation.<sup>131</sup></p> <p>Many countries, including Egypt, Switzerland, Portugal, Brazil, Ghana, and Germany, also call on the Burma/Myanmar Government to immediately ratify the ICESCR, which it signed in July 2015.<sup>132</sup></p>

## Natural Resources

Extractive industries in Burma/Myanmar also pose health and environmental risks. Protests are ongoing over the Letpadaung Copper Mine in Sagaing Region, with the most recent occurring in February 2017.<sup>133</sup> A 2017 Amnesty International Report highlights the lack of environmental risk assessment performed by the mine operator, as well as their lack of consultation with the affected communities, and calls for a suspension of the mine until all environmental and human rights concerns are adequately investigated and safeguards are put in place to prevent further abuse.<sup>134</sup>

In February 2017, another nine people were killed by a collapsing slag heap at Kachin State's notorious Hpakant jade mines,<sup>135</sup> the same site in which over 100 workers were killed due to unsafe working conditions in November 2015. Accidents like this often occur due to the lack of environmental safeguards put into place by site operators.

Additional environmental and displacement concerns have arisen over six proposed hydropower projects<sup>136</sup> on the Salween River spanning the Shan, Kayah, and Karen States, and over the planned Special Economic Zones (SEZs), Dawei, Thilawa, and Kyauk Phyu.<sup>137</sup> A report released February 2017 by the International Commission of Jurists concludes that Burma/Myanmar's legal framework for SEZs does not conform to the country's obligations to international law, and calls for a moratorium on SEZ development until such a framework is adopted.<sup>138</sup>

The Burma/Myanmar Government's response to extractive land projects is mixed and patchy. It continues to defer on the decision to proceed with the highly controversial Myitsone Dam, pending further research by the Ayeyarwady River Commission.<sup>139</sup> But in October 2016, the Ministry of Industry renewed the operating license of the Moe Gyo acid factory which processes copper for the Letpadaung and Sabetaung and Kyisintaung (S&K) mines, despite a decision by the Salyingyi municipality not to renew the factory's license pending an environment and health impact assessment.<sup>140</sup>

Burma/Myanmar is now facing possible suspension from the Extractive Industries Transparency Initiative Board (EITI), given that the current government has yet to reform the multi-stakeholder group necessary to submit its second country report by the March 2017 deadline.<sup>141</sup>

### **Special Rapporteur**

By October 2017, the government should also ensure participatory, inclusive, and meaningful consultation on all development projects, and consider all comments received.<sup>142</sup> It should also consider a moratorium on all larger-scale projects until this is achieved.<sup>143</sup> The Special Rapporteur also encourages that all negotiations on investment projects between Burma/Myanmar and foreign business investors apply the Principles for Responsible Contracts, and all parties involved abide by the UN Guiding Principles on Business and Human Rights.<sup>144</sup>

The government should take concrete steps to review, by March 2018, legislation, regulations and agreements governing extractive industries and major development projects to ensure they include transparency requirements and environmental, social and human rights protection. In addition, it should ensure that by October 2017, all environmental impact assessment procedures are consistently implemented and enforced, and that all information regarding such are accessible.<sup>145</sup>

## Access to Education/Health

Access to adequate healthcare and education continues to be an issue across the country, especially for those in rural and conflict-affected areas, and for the internally displaced.<sup>146</sup> In Rakhine State, access to emergency medical treatment requires an onerous referral process, and often several hours' travel and a police escort. Rakhine also has one of the lowest literacy rates in the country.<sup>147</sup>

The government has increased the budget of the Ministries of Education and of Social Welfare, Resettlement and Relief, a move that the Special Rapporteur welcomed in her most recent report to the HRC.<sup>148</sup> However it is unclear whether the funds will be sufficiently allocated to the communities most in need. In December 2016 and February 2017 respectively the government adopted

### **Special Rapporteur**

By October 2017, the government should ensure access to adequate health, education and other basic services for all, particularly in Rakhine State, a priority that the Special Rapporteur had recommended be done before March 2017. The Special Rapporteur urges that government incrementally increase the age of compulsory education from 10 to at least 14 years.<sup>151</sup>

the National Health Plan with the ultimate goal of achieving universal coverage by 2030,<sup>149</sup> and released the country's first national education plan.<sup>150</sup>

**UPR**

Per an accepted recommendation proposed by Nigeria, a current member of the HRC, the government should “promote and protect the enjoyment of fundamental freedoms and rights of its citizens in the areas of education and health...without discrimination.”<sup>152</sup>

Myanmar National Human Rights Commission (MNHRC)

Human Rights Issue/Concern	Government Response	UN Recommendations
<p>As of August 2016, the Global Alliance of National Human Rights Institutions (GANHRI) has given the MNHRC a status of “B”, which denotes “not fully in compliance with the Paris Principles.”<sup>153</sup> In her August 2016 report to the General Assembly, the Special Rapporteur recognized the commission’s continued promotional and awareness-raising activities, including a workshop on minority rights co-organized with the OHCHR in June 2016. However, concerns remain about the Commission’s selection and appointment process, financial independence, and lack of female representation.<sup>154</sup></p> <p>The Subcommittee on Accreditation of GANHRI has urged the Commission to “interpret its mandate in a broad, liberal and purposive manner,” and to “protect the human rights of all, including the rights of Rohingya and other minority groups.”<sup>155</sup></p> <p>The Commission continues to suffer from a severe lack of public confidence. In June 2016, a coalition of 40 NGOs wrote to the President calling for greater transparency and cooperation with NGOs, and suggesting that some members of the Commission be elected and nominated by the public.<sup>156</sup> In September 2016, following revelations that members of the MNHRC mishandled an underage domestic worker torture case, 142 civil society organizations signed an open letter to the President calling for reform of the body in accordance with the Paris Principles.<sup>157</sup></p>	<p>The Commission has continued its prison visits and recently addressed issues related to labor rights, forced evictions of squatters, and the alleged murder of two individuals by a military officer in Mon State and the alleged rape and murder of two Kachin teachers by Burma/Myanmar Army members in northern Shan State. Despite these positive developments, the Commission remains selective and inadequate in its uptake of cases, failing, for instance, to intervene in the situation in the northern Rakhine State.</p> <p>On 6 October 2016, four members of the MNHRC resigned after public backlash over their mishandling of underage domestic worker torture case, a case that highlights the sluggishness and bias that mires the body.<sup>158</sup> While members of the body have noted the MNHRC law in limiting their abilities to adequately investigate human rights abuses, the government has been opaque in their reform of the law.</p>	<p><b>Special Rapporteur</b></p> <p>The Special Rapporteur encourages the full implementation of the recommendations made by the GANHRI, urging the Commission to “act as an independent and objective human rights advocate and not to shy away from issues deemed sensitive to the Government.”<sup>159</sup></p> <p><b>UPR</b></p> <p>Per the accepted recommendations by several countries, including current HRC member Egypt, Burma/Myanmar should continue to strengthen its national human rights institutions in line with the Paris Principles, which means granting the MNHRC autonomy and independence.<sup>160</sup></p>

## Recommendations

### To the government of Burma/Myanmar

The Burma/Myanmar Government has clearly failed to adequately implement the key recommendations proposed by the Special Rapporteur as priorities to be addressed by March 2017. In her latest report the Special Rapporteur lays out clear recommendations and detailed benchmarks with timelines. We support these, and in addition to the UN recommendations provided above, further emphasize that the Burma/Myanmar government should:

- Support independent international investigation into alleged human rights violations in all areas of escalating conflict and increasing militarization, including northern Rakhine State. In this regard, the government should urgently support the call made by the Special Rapporteur and the High Commissioner for Human Rights for an establishment of a UN-mandated commission of inquiry or a similar body;
- Support the establishment of a fully mandated OHCHR country office;
- Implement the benchmarks set out by the Special Rapporteur in her most recent report to the Council (A/HRC/34/67), previous resolutions on Myanmar passed by the Council, and all UPR recommendations, at minimum those that have been accepted by the Burma/Myanmar Government.

### To the UN Human Rights Council

The Council should pass a resolution under agenda **item 4 renewing the mandate of the Special Rapporteur**. The resolution should also as in past years call for **the establishment of a fully mandated country office** of OHCHR inside the country. The resolution should further include the following elements:

#### *Conflict and gross human rights violations:*

**Humanitarian access:** The Council should urge the government to ensure that security operations are halted in all conflict areas, including the lifting of the curfew order in northern Rakhine State.

**Independent International Investigation:** Both the UN High Commissioner for Human Rights and the UN Special Rapporteur have called for the creation of a commission of inquiry to look into grave allegations of gross human rights abuses. Council members should urgently support the establishment of a UN-mandated commission of inquiry or a similar body to investigate such allegations in all areas of escalating conflict and increasing militarization, including the northern Rakhine State. OHCHR and the High Commissioner for Human Rights have found indications of the very likely commission of crimes against humanity. This should be reflected and the Council should be explicit in referring to crimes against humanity in its calls for investigations.

**Women Peace and Security:** The Council should refer in specific to the General Assembly resolution 13/25 in its resolution on the country.

#### *Institutionalized discrimination:*

**Race and religion laws:** The Council resolution should name the four race and religion laws as pieces of legislation to repeal or amend, as their amendment is crucial for the drafting and promulgation of other laws aimed at tackling discrimination, including the draft prevention of violence against women bill.

#### *Rule of law and fundamental freedoms:*

**Constitutional reform:** The Council's resolution should emphasize on the need for constitutional reform and to this end a process of consultation with all relevant stakeholders on amending the 2008 Constitution. The Constitution in its current form is the primary impediment to the failure of rule of law in the country.

**Repeal or amendment of restrictive laws:** In addition to the Unlawful Assemblies Act and the Citizenship Act the resolution should also call for the reforming of Peaceful Procession and Peaceful Assembly Law, the Electronic Transactions Law, the Unlawful Associations Law, and the Telecommunications Law, the Penal Code, and the four race and religion laws.

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<sup>2</sup> *Interviews With Rohingyas Fleeing From Myanmar Since 9 October 2016*. 2017. United Nations Human Rights Office of the High Commissioner. <http://www.ohchr.org/Documents/Countries/MM/FlashReport3Feb2017.pdf>.

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