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Human rights situation that require the attention of the Council

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

Note by the Secretariat

Summary

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

* The annexes to the present report are circulated as received.

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

I. Introduction

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

2. Despite the Government of Myanmar having withdrawn cooperation with the Special Rapporteur, she continues to seek to engage and assist it with addressing human rights issues. In this spirit, she requested a visit to the country in January 2019 however this was denied,¹ with the Government saying that her visits were counter-productive to the people of Myanmar. Continuing nevertheless to find opportunities for dialogue with the Government, she sent a list of questions to which she has not received a response.²

3. By reason of her denial of entry to Myanmar, the Special Rapporteur conducted visits to Thailand from 14 to 19 January and Bangladesh from 19 to 25 January. She expresses thanks to the Governments of both countries for facilitating the visits. In Thailand, she met with the Government, United Nations and civil society organisations working on human rights issues in Myanmar. In Bangladesh, she met with Government officials in Dhaka and Cox's Bazar. She visited the refugee camps in Cox's Bazar where she met refugees, civil society organisations and United Nations agencies and organisations who are part of the Inter Sector Coordination Group. She visited the island of Bhashan Char where the Bangladesh Government plans to relocate refugees from Cox's Bazar. She met with the United Nations Resident Coordinators for Myanmar and Bangladesh and had a teleconference with the United Nations Country Team for Myanmar and a briefing with the United Nations Country Team for Bangladesh.

II. Situation of Human Rights

A. Resource extraction and infrastructure development

1. Logging and mining

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

5. Recent abuse in relation to increased logging activity in Kayah State has been reported. Logging operations around the country have been linked to the destruction of livelihoods due to severe forest degradation and increased militarisation to secure logging sites. The Special Rapporteur is troubled by the reported decision in September 2018 of the National Reconciliation and Peace Centre (NRPC) to endorse a trade agreement relating to 5,000 tons of hardwood from areas under the control of Tatmadaw-aligned Border Guard Force (BGF), the Karenni National People's Liberation Front.³ The Special Rapporteur questions whether the NRPC has the mandate to endorse these decisions. The extraction and trade of natural resources from militarised areas, whether under ceasefire or actively contested, is extremely challenging to regulate and is often a source of further conflict, which

¹ See Annex 1.

² See Annex 2.

³ See Annex 3, map showing militarization and resource extraction in Kayah State.

in turn exacerbates the impact on human rights. The Government should continue to enforce restrictions in the timber, jade and gemstone sectors, and natural resource management and benefit sharing must be meaningfully addressed in the peace process.

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

2. Transparency, accountability and military commercial interests

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

8. The role of Myanmar’s natural resource extraction state-owned economic enterprises (SEEs)⁴ is also problematic, and much of their leadership is comprised of military and ex-military officials. Creating a substantial conflict of interest, they oversee regulation of their respective sectors, collect revenues, allocate revenues, award licenses to private companies and operate commercial joint ventures. Between them, they either contribute to or regulate two thirds of the entire State revenue, but are not subject to appropriate checks and balances. The monopoly of Myanmar Timber Enterprise has allegedly seen it assume a central role in enabling large profits to be syphoned from systematically under-graded teak sold illegally into international markets, leaving Myanmar’s forests decimated.⁵ The SEEs are authorised to retain vast profits in ‘Other Accounts’ (OA), which are outside of the State budget and spent in an undisclosed manner. SEE OAs are a vacuum of transparency and accountability, and the Special Rapporteur urges the Government to rectify this.

9. The unaccounted profits and loss of revenues from resource extraction, and the commercial interests of military-owned and military-affiliated entities is a concern for human rights in Myanmar. These economic structures sustain the power and influence of an institution that obstructs democracy and commits egregious crimes with impunity. Policies intended to advance democracy and accountability in Myanmar must address the serious governance challenges in the sector. Furthermore, under ICESCR, the Government has agreed to take steps to progressively realise the rights contained within the Covenant to the maximum of its available resources. Effective financial management ensuring that revenues generated by resource extraction are accessible to Union, Regional and State Governments would significantly increase capacity to progressively realise these rights. Guaranteeing transparency in how revenues are used would greatly assist the Government in meeting its international obligations under ICESCR and responding effectively to the needs of the Myanmar people.

⁴ Myanmar Oil and Gas Enterprise, Myanmar Pearl Enterprise, Myanmar Gems Enterprise, No.1 Mining Enterprise, No.2 Mining Enterprise and Myanmar Timber Enterprise.

⁵ Environmental Investigation Agency ‘State of Corruption: The top-level conspiracy behind the global trade in Myanmar’s stolen teak’ (2019).

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

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

3. Infrastructure development

12. The Special Rapporteur recognises the Government's need to pursue the development of power generation capabilities as well as transport, communication and industrial infrastructure to improve livelihoods and achieve broad economic development. Foreign investment will play a role in this process. However, she remains concerned over the impacts of several large-scale hydropower projects on the rights of people and communities, and the implications for conflict and the peace process.

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

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

4. Responsible investment and business and human rights

15. For major projects in Myanmar to benefit the broader public and avoid serious human rights harm and exacerbating conflict, agreement on tangible, comprehensive and inclusive policy and legislative frameworks that address core questions must be achieved. Having ratified ICESCR, the Government should refrain from entering into trade and investment treaties where there is a conflict between the Government's obligations under those treaties and ICESCR. For example, where the Government's actions in relation to fulfilling an investment agreement would lead to forced relocation and inadequate resettlement.

16. The Special Rapporteur encourages the Government to explicitly refer to its human rights obligations and its expectations of human rights-related conduct of companies in future investment treaty provisions. It should ensure that mechanisms for the settlement of investor-state disputes take human rights into account. The Special Rapporteur repeats her previous

⁶ See Annex 4, map of Myanmar's hydropower projects and evaluation of conflict risk.

call for the Government and private companies to follow the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (Guiding Principles). Home countries of multinational companies investing and operating in Myanmar should work to ensure they act in line with the Guiding Principles. It is paramount that international financial institutions, development agencies, States and private investors consider conformity with these standards at all levels prior to implementing projects.

B. Land rights

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

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

20. The majority of land designated as vacant, fallow or virgin is located in ethnic States.⁷ By reinforcing Government control over land use in these States, the VFV Law contradicts the Nationwide Ceasefire Agreement (NCA), which requires the Government to coordinate with signatory EAOs on land management. Additionally, it contradicts the National Land Use Policy, which aims to legally recognise and protect legitimate land tenure rights, as recognised by the local community.

21. By denying people access to lands essential for their livelihood and culture and potentially making people landless, the amended VFV Law likely contravenes Myanmar’s obligations under ICESCR. This includes its duties to respect and protect the rights to an adequate standard of living; to work; to take part in cultural life and freely pursue economic, social and cultural development; adequate housing; and the prohibition of forced evictions. The Special Rapporteur urges the Government to immediately halt implementation of the amended VFV Law and restates her support for the establishment of an overarching national land law drafted in line with the National Land Use Policy and Myanmar’s international obligations. She notes the National Land Use Forum held in October 2018 in relation to preparing such a law and urges the National Land Use Council to be transparent about the drafting process, hold further and more inclusive dialogues, and to move forward on the basis of those consultations.

C. Economic, social and cultural rights

22. The Special Rapporteur once again welcomes the steps being taken by the Government to realise the 2030 Agenda on Sustainable Development and acknowledges the Myanmar Sustainable Development Plan 2018-2030. Under ICESCR, the Government has committed to take immediate steps towards the progressive realisation of rights to adequate housing, livelihood, food, health and education, without discrimination, and to the maximum of its available resources. With the Government estimating around 23 per cent of people in rural Myanmar living in poverty, it is vitally important to bring the revenue from resource extraction within Government regulation so it may be used with Parliamentary oversight to improve this situation.

23. While the rights contained within ICESCR are subject to progressive realisation, there are obligations on the Government that apply with immediate effect. Under minimum core

⁷ See Annex 5, map showing VFV land distribution.

obligations, significant numbers of people must not be deprived of essential food, primary healthcare or basic shelter, which is undermined by blocking humanitarian assistance. The Government is obliged not to deliberately enact any retrogressive measures; laws such as the VJV Law undermine existing access to livelihoods, housing and culture, breaching this obligation. Finally, the obligation of non-discrimination is effective upon ratification. However, ethnic minorities disproportionately suffer displacement, loss of livelihood and lack of access to healthcare and education as a result of conflicts, while the Government denies recognition and support to EAO administered services, such as the Karen National Union (KNU) administered land-use permits and New Mon State Party-supported schools. The Government must do more to fulfil this obligation.

24. Reportedly, returnees are unable to receive accreditation for education received in refugee camps along the Thai-Myanmar border. This has implications for their ability to continue education and seek employment. In many areas affected by conflicts, EAOs and other organisations are providing education with community support. In order to receive Government funding and teachers, schools are required to accept the national curriculum, which the Special Rapporteur is concerned does not adequately include ethnic minority languages.

25. The Special Rapporteur welcomes the Ministry of Health and Sports having begun implementing a plan to address all World Health Organisation recommendations, and that Myanmar has taken strides in reducing malaria cases around the country. However, the Special Rapporteur continues to be troubled by a lack of access to adequate healthcare in Myanmar's prisons, and has received reports of a prisoner losing a leg after being prevented from being taken to hospital following an accident. The Special Rapporteur is gravely concerned about the health of Nang Pu, jailed Kachin peace activist. Nang Pu is reportedly in a cell with around 500 inmates, built for half that number, and is in very poor health. The Special Rapporteur calls for her immediate release, or to be granted immediate access to emergency healthcare. She calls for the improvement of access to healthcare and conditions in all prisons.

D. Armed conflict and violence, and the peace process

26. Myanmar continues to be plagued by armed conflicts and violence. This affects adults and children; the United Nations documented 1,166 grave violations against children, including killing and maiming, rape and sexual violence, and recruitment and use, in northern Rakhine mostly following 25 August 2017.⁸ The Tatmadaw and integrated border guard forces were listed by the Secretary-General in his 2018 annual report to the Security Council for the grave violations of killing and maiming of children and grave sexual violence against children in Myanmar. The Special Rapporteur notes that progress has been made on plans to address and prevent such violations. However, the Tatmadaw and seven EAOs remain listed as groups who recruit and use children, with the Tatmadaw having released 75 children in June 2018. The Special Rapporteur has been informed that several listed EAOs wish to delist themselves and she calls on relevant United Nations entities to assist them, whether or not they have signed the NCA.

27. The Special Rapporteur remains concerned about the progress of the peace process. She notes that in late 2018, the KNU and RCSS, signatories to the NCA, announced separately that they would suspend their participation in formal peace negotiations. On 13 December 2018, the Arakan Army (AA), Myanmar National Democratic Alliance Army (MNDAA) and Ta'ang National Liberation Army (TNLA) issued a welcome statement that they are willing to stop military actions in order to achieve peace by political means. On 21 December, the Commander-in-Chief of the Tatmadaw declared a unilateral ceasefire for four months in five Regional Commands in the north and east, in order to engage in peace negotiations. While this is also welcome, it is of concern that it is geographically and temporally limited. The Special Rapporteur again urges meaningful, open and inclusive dialogue between all stakeholders to move the country towards a genuine and lasting peace.

⁸ S/2018/956.

1. Situation in northern Myanmar

28. In late 2018 there were reports of a few clashes between the Tatmadaw and the KIA, the Tatmadaw looting a village, and shells landing in Chipwe IDP camp in Kachin. In December and January, reportedly three people were killed and three people injured by landmines in Kachin.

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

2. Situation in south-eastern Myanmar

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

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

3. Situation in western Myanmar

32. In late November and December 2018, the AA staged a number of attacks on security forces in central and northern Rakhine State and Paletwa in Chin State. After an attack on four police outposts in Buthidaung Township, Rakhine State on 4 January, which reportedly killed 13 policemen and injured nine, the President's office reportedly instructed the military to launch operations against the AA.

33. As a result of these hostilities, several civilian deaths have been reported, including of children, and deaths caused by landmines. Clashes have been taking place near villages and shelling of villages has been reported. The conflict has led to over 5,500 people displaced in Rakhine and Chin States. On 10 January, the Rakhine State Government instructed the United Nations and international humanitarian organisations to suspend all activities, except for the World Food Programme and the International Committee of the Red Cross, in the five townships in Rakhine affected by conflict (Ponnagyun, Kyauktaw, Rathedaung, Buthidaung and Maungdaw). The Special Rapporteur is seriously concerned by this violation of Myanmar's international humanitarian obligation to ensure humanitarian access; people will be deprived of lifesaving assistance and the limited access for independent observers to assess the situation has been further diminished. In early February, there were reports of 160 people fleeing Paletwa for Bangladesh.

34. The Special Rapporteur is disturbed by the deteriorating situation in Rakhine and Chin States, particularly by reports that the Government and Tatmadaw are targeting people who are suspected of supporting the AA, which a Government spokesperson labelled a terrorist organisation. Thirty village administrators resigned for fear of being prosecuted on false allegations of associating with the AA, after two were arrested in January, and 89 resigned in late February in Mrauk-U when four more were arrested. The State Government reportedly ordered the military to search houses for AA associates, and 26 people were arrested in the middle of the night in early February. Thirteen of them have been charged by the military under the Unlawful Associations Act, a problematic law that the Special Rapporteur has repeatedly called to be reviewed, and thirteen have been released.

35. Despite the Government having accepted the recommendations of the Advisory Commission on Rakhine State, and claiming to have implemented the vast majority of them,

the exact extent of implementation remains unclear. The Special Rapporteur is concerned that there is a lack of political will to implement most of the recommendations in a genuine, meaningful way. This is particularly evident regarding the citizenship regime. The campaign to impose National Verification Cards (NVCs) on Rohingya is reportedly continuing unabated. The Government has removed religion and ethnicity from the cards and said that holders have freedom of movement, however she understands that they are still required to apply for permission to leave their villages in accordance with existing rules and regulations that restrict movement for Rohingya.

36. The Special Rapporteur continues to be disturbed by details still emerging of the horrific violence that took place in northern Rakhine after 25 August 2017. Reportedly, troops from Light Infantry Division 99 were deployed to the village of Alethankyaw in Maungdaw in the days prior to 25 August 2017. On 25 August, these troops killed at least fifty men, women and children.⁹ The following day, snipers were positioned on rooftops, a Myanmar Post and Telecommunications tower and a Telenor tower, and shot villagers as they fled. Bodies were reportedly disposed of by troops in wells and under the Telenor tower. The village was then burned on 29 August, with only the Rakhine parts of the village left untouched. The alleged use of the towers by snipers highlights the paramount importance of thorough and ongoing human rights due diligence being undertaken by companies and investors. The Special Rapporteur notes the Rakhine Investment Fair held in February 2019. She cautions investors of the many risks to human rights presented by the conflict, displacement and alleged commission of international crimes in Rakhine State, and calls for rigorous human rights impact assessments and adherence to the Guiding Principles.

E. Refugees and internally displaced persons

37. The ongoing presence of armed troops, landmines, instability and land insecurity in south-eastern Myanmar are preventing return of IDPs in Myanmar and refugees living in border camps. In Thailand, the Special Rapporteur met with organisations who work with the approximately 121,000 refugees who have been living there for decades. Around 600 people returned to Myanmar in February 2019, the second group since 2016, however the United Nations High Commissioner for Refugees has said that conditions do not exist in Myanmar for voluntary repatriation to be promoted. The Special Rapporteur repeats her call for international assistance to continue for the refugees as long as required. She also met with a group of Muslim migrants in Thailand who mostly have never had Myanmar citizenship documentation. They explained that certification of nationality by Myanmar is required to apply for a Certificate of Identification from the Thai Government in order to get a work permit. They told her that when they attempt to obtain certification, they are required to fulfil overly burdensome documentation requirements, including providing their grandparents' documents. As a result of their inability to fulfil these requirements, they are unable to obtain Thai documentation and continue to face difficulties including security risks and instability.

38. The Special Rapporteur underlines the critical need for funding and humanitarian assistance for 162,000 IDPs in south-eastern Myanmar. Following the signing of the NCA, international funding for IDP camps in EAO administered territory was withdrawn. There are few alternative sources of income for those in the camps, and rates of malnutrition have increased in recent years. Furthermore, the majority of these IDPs are not living in camps, but throughout rural communities and therefore fall outside the humanitarian funding framework.¹⁰ International donors should rethink policies of providing funding solely through Government agencies, and support local organisations delivering crucial assistance these people.

39. There are over 106,000 IDPs in Kachin and Shan States, 46 per cent of whom are children and over 55,000 of whom are women. The United Nations has not been able to deliver humanitarian aid to people who live in non-government controlled areas since 2016, and though national partners continue to have access to most areas, this is unpredictable and complicated by delays and bureaucratic procedures. Nearly 20,000 IDPs live in remote areas and are in need of food, shelter, water and education.

⁹ Kaladan Press, 'The Killing Fields of Alethankyaw' (2018).

¹⁰ The Border Consortium 'Human Security in Southeastern Myanmar' 2018.

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

41. The Government has said it wishes to close IDP camps around the country, and has consulted with the United Nations, however it has not adequately consulted with IDPs or civil society. On 8 February, with little or no notice Government officers visited IDP camp committees in Myitkyina and Moegaung Townships, Kachin State, to collect information about whether people wanted to return to their original villages or remain in the camps. IDPs in Maw Hpawng Hkanan camp in Myitkyina were told that they had to return home by April 2019 and that they would not be allowed to stay where they are after that time. This has created significant fear and anxiety among the IDPs and it does not appear that the plans will lead to durable solutions for these people. So far, the Government has only demonstrated that its camp closure strategy is to upgrade housing infrastructure in the camps or nearby. This is not in accordance with the right of IDPs to return to their places of origin or choice. Additionally, the Government's strategy clearly fails to address the root causes of their displacement and does not seek to end existing restrictions, such as on freedom of movement for IDPs in Rakhine. In Rakhine, there are serious risks that implementation of these plans could lead to permanent segregation or apartheid conditions as different religious and ethnic communities will be forced to live separately from each other, and without freedom of movement, Rohingya will be confined to their allocated villages.

42. Rohingya continue to leave northern Rakhine for Bangladesh, despite widespread movement restrictions. When she was in the refugee camps in Cox's Bazar, the Special Rapporteur met with refugees newly arrived from northern Rakhine who reported recent acts of violence against them and their family members that forced them to flee to Bangladesh. The refugees in Cox's Bazar continue to live in overcrowded and unhealthy conditions, and without access to formal education and livelihoods or freedom of movement beyond the camp vicinity. The refugees that the Special Rapporteur has met on all of her visits to the camps have expressed their desire for formal education and access to meaningful livelihood opportunities. With no indications that the refugees will be returning to Myanmar in the immediate future, she urges the Bangladesh Government to start longer term planning, and to ensure access to formal education and livelihoods. Failure to do so further increases their vulnerability to human trafficking and the drug trade. It is imperative that the international community continue to support the humanitarian response through contributions to the recently launched Joint Response Plan for Rohingya Humanitarian Crisis (JRP), which seeks to ensure assistance to the refugees and host communities. The Special Rapporteur calls especially for support to elderly and disabled refugees, and refugees with particular vulnerabilities.

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

44. While the Governments of Bangladesh and Myanmar signed an agreement on repatriation in November 2017, conditions for voluntary, safe, dignified and sustainable returns do not exist. When the two Governments agreed to begin repatriation in mid-November 2018, the Special Rapporteur urged them to halt that plan. The plan caused high

levels of fear and anxiety amongst the already traumatised refugee population in Cox's Bazar, and led to refugees going into hiding or even attempt to take their own lives to avoid being forced to return to Myanmar. There was an absence of clear messaging and information about repatriation provided to refugees, which caused confusion and misinformation. The Special Rapporteur has repeatedly called for the refugees to be afforded the opportunity to participate meaningfully in any repatriation plans such that any return is truly voluntary, dignified, safe and sustainable. She is concerned about the suggestion of establishing "safe zones" in northern Rakhine for returnees. She believes that returnee safety must be guaranteed and that it would be appropriate for this to be done independently of the Government, possibly by an international security or protection presence. However, the need for "safe zones" undermines the safe, voluntary, dignified and sustainable nature of repatriation, and she fears that confining returnees to "safe zones" could result in their being more vulnerable, would further constrain their freedom of movement and would segregate them from other communities.

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

F. Shrinking democratic space

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

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

48. The trial against Swe Win under Section 66(d) of the 2013 Telecommunications Law has gone on for two years. He is forced to travel from Yangon to Mandalay for hearings, which sometimes do not go ahead due to the absence of the complainant or witnesses. The charge against him should be withdrawn, and the Telecommunications Law revised in accordance with international standards. Wa Lone and Kyaw Soe Oo, the two Reuters journalists who uncovered the Inn Din massacre, were convicted of their charges under Section 3(1) of the 1923 Official Secrets Act in September 2018. The District Court made incongruous findings including that the elements of the crime were made out despite the prosecution reportedly not presenting evidence that proved them. They were sentenced to seven years' imprisonment as punishment for conducting their duties as investigative journalists. The journalists appealed their conviction, but in January, the appeal was dismissed by the High Court. They have since appealed to the Union Supreme Court. The

Special Rapporteur calls for the journalists' immediate release and the charges against them to be withdrawn.

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

50. Zau Jat, Nang Pu and Lum Zawng, peace activists in Kachin, were convicted of defamation of the military under Section 500 of the Penal Code in December 2018. This led to a demonstration at which 5,000 people participated. Three activists were arrested and charged under Section 19 of the 2011 Right to Peaceful Assembly and Peaceful Procession Law (PAPPL) as a result of that exercise of solidarity. The Special Rapporteur is also troubled by the conviction on 13 February 2019 of seven students from Yadanapon Student Union of several offences including offending public tranquillity under the Penal Code and their sentencing to 3 months' imprisonment with hard labour. After a student was killed on campus, the students had conducted a demonstration calling for security in universities during which they burned paper coffins and portraits of officials and the head of the University.

51. In Kayah State, reportedly 55 activists were arrested in February for protesting the erection of a statue of General Aung San in the State capital. Those charges were dropped after negotiations between the activists and the State Government; this is welcome and should continue to occur in relation to the statue. There were also demonstrations in July 2018, when the statue was first proposed, during which sixteen activists were arrested. Reportedly, the activists had applied to township authorities for permission to carry out the protest under the PAPPL, but this was denied twice. There was a further protest on 12 February at which police used disproportionate force against protestors. Parliament is still considering a problematic amendment to the PAPPL which could result in further rights violations; the Special Rapporteur urges this to be reconsidered, and the PAPPL instead reformed in accordance with international standards.

G. Institutionalized hate speech

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

53. The Special Rapporteur is particularly alarmed by reports that the national elementary school curriculum includes lessons and that textbooks contain discriminatory and incendiary material. For example, there is a 4th grade lesson on 'Wunthanu Spirit', meaning nationalistic and patriotic spirit. The lesson says "we loathe those of mixed blood, for they prohibit the progression of a race". Teaching children these ideas promotes racial superiority and communal disharmony. She urges their immediate removal from the curriculum and the removal of all incendiary passages from all textbooks.

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

55. On 5 February 2019, Facebook designated the AA, MNDAA, KIA and TNLA as “dangerous groups”, meaning they are banned from Facebook and all related praise, support and representation is removed. The Special Rapporteur notes that these groups are members of the Northern Alliance and have not entered into ceasefires with the Tatmadaw. No other EAO or the Tatmadaw has been designated a “dangerous group” despite the most serious allegations against the Tatmadaw. She is concerned that contrary to achieving the stated aim of decreasing tensions, this selective banning may contribute to feelings of inequality by ethnic minorities.

H. Institution and law reform

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

57. The transfer of the General Administration Department (GAD) from the Ministry of Home Affairs to the Ministry of the Union Government marks a positive shift in demilitarizing Myanmar’s public administration and empowering the civilian government. Given the enormous role played by the GAD in administration of the entire country, from Naypyitaw down to individual village tracts, the Special Rapporteur urges the Government to seize this opportunity for reform, including decentralizing the systems that run the country. This comprises promoting local democracy and governance by further amending the 2012 Ward or Village Tract Administration Law, removing provisions for elected officials to be dismissed by appointed administrators and restricting voting to one person per household. All people over the age of 18 should have the opportunity to vote and stand for election. The proposed township administration law, currently in draft form, should uphold these provisions.

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

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

60. The proposed prevention and protection of violence against women law has still not been passed and the Special Rapporteur again urges its adoption in accordance with international standards without delay. She notes that Myanmar has signed a communique with the Secretary-General’s Special Representative on Sexual Violence in Conflict that sets out cooperation between the Government and the United Nations in several areas to prevent sexual violence. These include supporting legal reforms to strengthen the overall rule of law response to sexual violence and ensuring effective access to services for survivors of sexual violence. The Special Rapporteur calls on the Government to cooperate on all areas in the communique.

I. Accountability

61. The Special Rapporteur is extremely concerned that Myanmar security forces contribute three personnel to United Nations Peacekeeping. She notes that in February, peacekeeping training by India took place in Naypyitaw. Given the most serious allegations of commission of international crimes made against the Tatmadaw, she believes that in principle, Myanmar's contribution is highly inappropriate and must end immediately.

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

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

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

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

III. Conclusion

66. The international community must keep apprised of the situation in Myanmar, keeping it at the top of its agenda. It is only through the international community's actions that justice can be brought about in Myanmar. The people of Myanmar have endured decades

of abuse; international inaction, or delayed action, is a further injustice. Concrete action to advance human rights, accountability and the democratic transition in Myanmar must be taken by the international community immediately.

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

IV. Recommendations

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

- (a) **In relation to resource extraction and infrastructure development:**
 - 1. Develop legislation to ensure that comprehensive and inclusive environmental and social impact assessments are conducted and complied with before granting natural resource extraction concessions;**
 - 2. Consider amending the 2019 Gemstone Law to prevent companies with a track record of human rights and environmental abuse from obtaining new licenses. Adopt the Gemstone Policy and use this as the basis for further legislative reform;**
 - 3. Seek to incorporate protections for informal mine workers into extraction company licensing criteria, in line with the Guiding Principles and International Labor Organisation Recommendation 204. Ensure community services providing drug rehabilitation services to informal mine workers are provided with funding and necessary support. Ensure environmental safety standards at mine sites are enforced;**
 - 4. Cease granting concessions for natural resource extraction in conflict-affected areas where significant challenges exist in enforcing regulations. Work with stakeholders including companies, ethnic administrations and local community leaders to develop comprehensive policies to curb corruption, extortion, conflict and criminality at logging and mine sites;**
 - 5. Develop a robust policy and legislative framework that requires companies involved in natural resource extraction, including MEC and UMEHL, to comply with financial reporting requirements and disclose details of beneficial ownership;**
 - 6. Reconsider the 1989 State-owned Economic Enterprise Law and specifically the function of OAs. Ensure revenues collected from natural resource extraction are transparent and included within Union, Regional and State budgets. Require that the Ministry of Resources and Environmental Conservation disclose details of any expenditures made using OA funds;**
 - 7. Ensure that meaningful discussion on natural resource management and benefit sharing is incorporated into the peace process. Work with stakeholders to develop inclusive policies;**
 - 8. Continue to engage with the EITI;**
 - 9. Be transparent about the status of proposed hydropower projects and those currently under construction. Engage in meaningful and legitimate assessments, comply with assessments, and hold inclusive consultations with all stakeholders to reach agreements on whether and how to proceed with projects;**
 - 10. Ensure the full implementation, through policies and laws, of the Guiding Principles;**

11. Take a rights-based approach to implementing the Sustainable Development Goals, ensure all development projects are undertaken transparently in accordance with the law and international standards, including environmental, social and human rights safeguards. Work with ethnic administrations and local communities on implementing development projects.
- (b) In relation to land rights:
1. Halt the rapid implementation of the Vacant, Fallow and Virgin Lands Management Law, and harmonize it with the National Land Use Policy;
 2. Adopt a national land law that is aligned with the National Land Use Policy and relevant provisions of the NCA through a transparent and inclusive process;
 3. Immediately stop all coercive measures used to appropriate land and ensure that proper compensation and livelihoods are provided to people who are resettled as a result of such land appropriation.
- (c) In relation to economic, social and cultural rights:
1. Continue to seek international assistance and cooperation to progressively realize the rights enshrined in the ICESCR in an inclusive, non-discriminatory manner;
 2. Ensure that minimum core obligations under ICESCR are met; do not enact retrogressive measures, and consider implementing policies that work with ethnic administrations to overcome discrimination in national health and education services;
 3. Immediately remove all discriminatory material from the national elementary school curriculum and all textbooks.
- (d) Together with EAOs, in relation to armed conflict and violence, and the peace process:
1. Immediately cease hostilities;
 2. Comply with international humanitarian law and human rights law in conduct of hostilities, including protecting all civilians affected by armed conflict, including children, and cease conduct that amounts to grave violations against children;
 3. End forcible displacement of civilians from areas affected by conflict and violence;
 4. Release all children under the age of 18 years who have been recruited as combatants immediately; refrain from recruiting children and take measures to prevent underage recruitment; treat any association of children with armed groups as forced; release all children detained on spying or similar charges; ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; and complete and adhere to all elements of the Joint Action Plan;
 5. Immediately stop laying landmines; ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction; clear mines and unexploded ordnance; mark and fence mine areas; and carry out systematic mine-risk and education activities;
 6. Undertake prompt, independent, impartial and thorough investigations into all allegations of violations of human rights and international humanitarian law, and ensure perpetrators are punished;
 7. Immediately allow full and unfettered humanitarian access to people in need in areas affected by conflict and violence, as well as access to the media and human rights monitors;

8. Stop arbitrary arrests of people on suspicion of association with armed groups;
 9. Fully implement the recommendations of the Advisory Commission on Rakhine State and engage with communities in doing so in accordance with a rights-based approach;
 10. Immediately stop conflict-related violations against civilians, including members of ethnic minorities;
 11. Immediately end violence, intimidation, harassment and discrimination against the Rohingya in Rakhine State, and end curfews and restrictions on freedom of movement;
 12. Hold inclusive, participatory dialogue on all relevant issues in the peace process, including human rights issues, with all stakeholders, including women, youth and civil society. Ensure the integration of gender and ethnic perspectives in policy discussions.
- (e) In relation to refugees and IDPs:
1. Take measures to bring about conditions for the voluntary, safe, dignified and sustainable return to the country of all Myanmar refugees, including the Rohingya in Bangladesh;
 2. Create an environment in order that returning refugees may enjoy their fundamental rights, including their right to return to places of origin and to compensation for burned, damaged or looted property, such that repatriation in accordance with international standards can be carried out;
 3. Ensure transparency in infrastructure development in areas affected by conflict throughout the country, including in northern Rakhine, and cease any infrastructure, mining or military construction on land that was owned or occupied by refugees;
 4. Provide IDPs with psychological assistance and ensure they have access to essentials including health services, educations and livelihoods. Ensure they are protected from gender-based violence, human trafficking, and forced recruitment, and that their land is not appropriated. Address the fundamental causes of their displacement in consultation with them, civil society and the United Nations and ensure that any measures to close IDP camps are in accordance with international standards;
 5. End overly burdensome documentation requirements for Muslims living in Thailand who are seeking certification of their Myanmar nationality;
 6. Ensure access for humanitarian assistance to IDPs living in camps and throughout rural areas in south-eastern Myanmar.
- (f) In relation to the democratic space and rule of law:
1. Ratify all core international human rights instruments;
 2. Amend the 2008 Constitution such that it accords with truly democratic norms and human rights standards;
 3. Revise or repeal all arbitrary and discriminatory legislation, orders and policies that have been previously identified by the Special Rapporteur, including but not limited to: Section 66(d) of the 2013 Telecommunications Law, Section 17(1) of the 1908 Unlawful Associations Act, Section 19 of the 2011 PAPPL, Sections 500, 505(b) and 505(c) of the Penal Code, Section 25 of the 2014 News Media Law, and Section 3 of the 1923 Official Secrets Act. Any amendments must be in accordance with human rights norms and standards;

4. Immediately release all political prisoners and withdraw all politically motivated charges. Redress the harm caused to political prisoners, including their ongoing mental and physical health needs;
5. Stop arresting and charging people for exercising their legitimate rights;
6. Guarantee the rights to freedom of expression and freedom of peaceful assembly, including by amending laws that contravene those rights and ceasing to arrest people who are legitimately exercising those rights;
7. Restore citizenship to members of the Rohingya community and ensure they enjoy the same rights as other Myanmar citizens, and cease arbitrary and discriminatory denial or restriction of citizenship rights and documentation to members of minority religions or ethnicities. Amend or replace the 1982 Citizenship Law;
8. Cease all acts and publication of advocacy of national, racial or religious hatred that constitute incitement to discrimination, hostility or violence, including on social media, enact a law to prohibit such acts in accordance with the Rabat Plan of Action, and draft a comprehensive anti-discrimination law or policy;
9. Enact the proposed Child Rights Law, and the Protection and Prevention of Violence against Women Law, ensuring they meet international standards, without delay; and
10. Enact the Township Administration Law and amend the Ward and Village Tract Administration Law to allow all those over the age of 18 to vote and stand for local election; remove provisions for elected officials to be dismissed by appointed administrators, and that restrict voting to one person per household.

(g) Open an Office of the High Commissioner for Human Rights country office with a fully-fledged mandate.

69. The Special Rapporteur recommends that the United Nations and the international community:

- (a) Refer the situation in Myanmar to the International Criminal Court immediately. Alternatively, consider establishing an international tribunal;
- (b) Operationalise the IM as soon as possible;
- (c) Provide urgent interim relief for victims who interact with the IM, including protection, access to livelihoods, education, health, psychosocial and trauma care and legal assistance as outlined in the Special Rapporteur's concept note annexed to her report A/73/332;
- (d) In addition to criminal accountability measures, work with civil society to consider justice broadly in accordance with the other pillars of truth, reparations and guarantees of non-recurrence that would assist Myanmar to redress past abuse and bring about democratic reforms and the rule of law;
- (e) End Myanmar contributions to United Nations Peacekeeping;
- (f) Work with EAOs to delist them from the Secretary-General's list of groups who recruit and use children;
- (g) Ensure the full funding of humanitarian assistance programs that assist people from Myanmar in need inside and outside the country, including the JRP. Provide assistance to IDPs in the south-east of Myanmar in those programs;
- (h) Be united in supporting the Government of Myanmar in complying with its human rights obligations. Engage and fund programmes in Myanmar on a principled basis, making parameters and funding contingent on genuine reform efforts;
- (i) Conduct a comprehensive independent review of actions by the United Nations system transparently and ensure that any final report and recommendations

are made public. Ensure that the review includes actions taken in the lead-up to and after the reported attacks of 9 October 2016 and 25 August 2017 in Rakhine State regarding the implementation of the United Nations' humanitarian and protection mandates and within the framework of the Human Rights Up Front initiative, and an assessment of whether the United Nations and international community could have prevented or managed the situation differently and make recommendations for accountability if appropriate;

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

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

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

(m) Ensure that investments and private ventures do not support military commercial interests. Consider reinstating sanctions against UMEHL and MEC;

(n) To the Government of Bangladesh:

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

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

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

Annex 1



Permanent Representative

Permanent Mission of the Republic of the Union of Myanmar to
the United Nations Office and other International Organizations
47 avenue Blanc, 1202 Geneva, Switzerland
Tél. (+41-22) 906 9870, 906 9871 / Fax (+41-22) 732 8919
E-mail: mission@nyanmargeneva.org

No. 599 / 1-27 / 91

26 December 2018

Madame Special Rapporteur,

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

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

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

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

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

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

(Kyaw Moe Tun)

Ambassador and Permanent Representative

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

Annex 2



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

REFERENCE:

5 February 2019

Excellency,

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

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

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

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

A handwritten signature in black ink that reads "Yanghee Lee". The signature is fluid and cursive.

Yanghee Lee

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

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

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

Previous recommendations

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

Law and judicial reform

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

Administration of justice

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

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

Democratic space

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

Education

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

Citizenship

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

Business and human rights and natural resources

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

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

Peace process and conflict

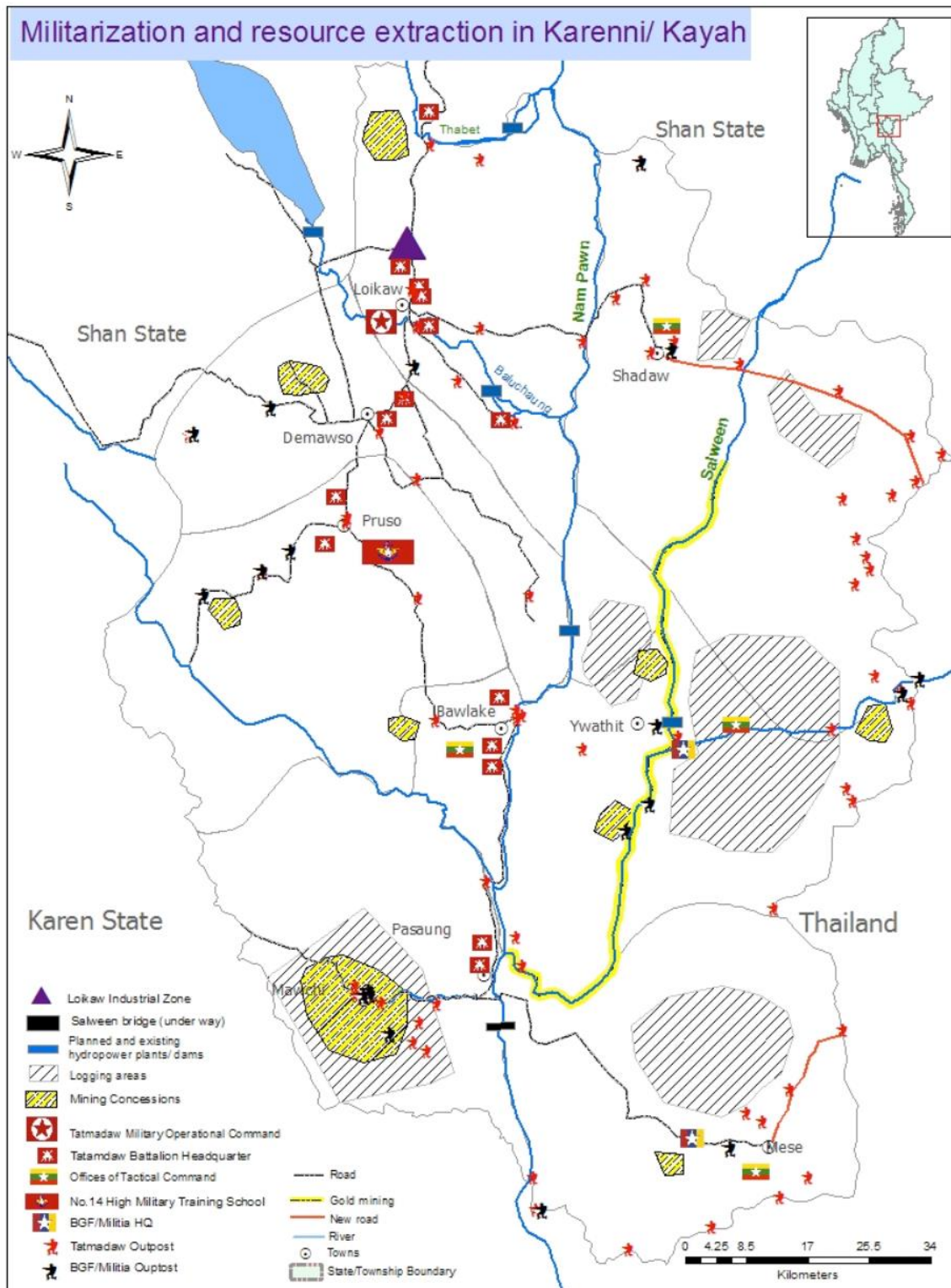
28. Do you propose to take any further international assistance or increase international involvement in the peace process?
29. What steps will be taken in response to the suspended participation in formal peace negotiations of the Karen National Union and Restoration Council of Shan State?
30. How will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

Rakhine State

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

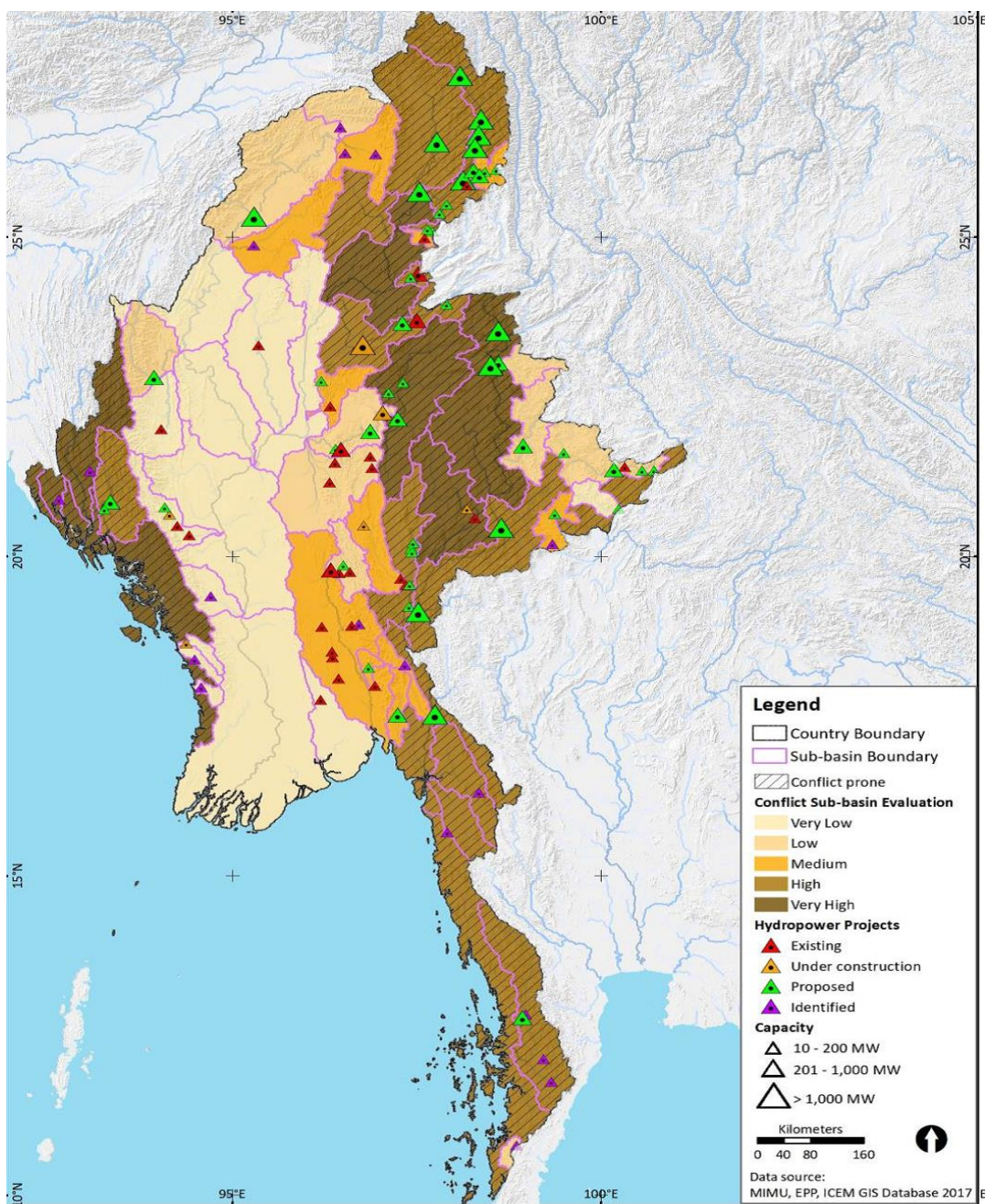
43. Access for humanitarian assistance agencies is severely restricted in Rakhine State. Furthermore, I refer to the Rakhine State government directive instructing UN and international agencies, with the exception of the World Food Program and the International Committee of the Red Cross, to suspend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

Annex 3



Credit: Karenni Civil Society Network 2018

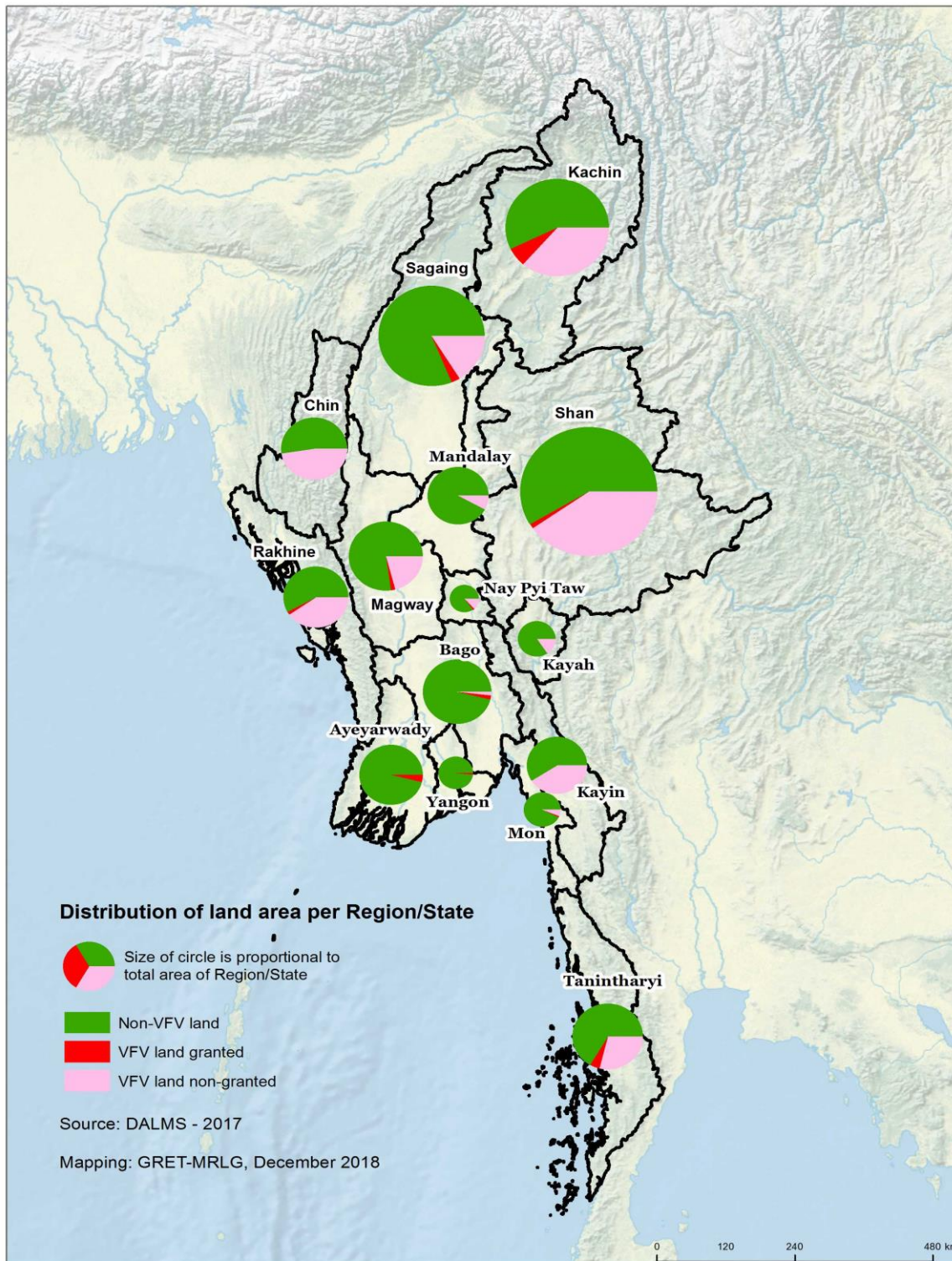
Annex 4



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

Credit: International Finance Corporation 2018

Annex 5



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