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Human rights situations that require the Council's attention

### **Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana\* \*\***

#### *Summary*

This report looks at the impact of ongoing reforms on the human rights situation in Myanmar, assessing positive developments, shortcomings, areas that remain unaddressed and gaps in implementation.

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\* The annex to the present report is circulated as received, in the language of submission only.

\*\* Late submission.

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## **I. Introduction**

1. The mandate of the Special Rapporteur on the situation of human rights in Myanmar was established pursuant to Commission on Human Rights resolution 1992/58, and was recently extended by Human Rights Council resolution 19/21. The present report is submitted pursuant to Council resolution 19/21 and General Assembly resolution 67/233, and covers human rights developments in Myanmar since the Special Rapporteur's report to the Council (A/HRC/19/67) in March 2012 and to the Assembly (A/67/383) in October 2012.

2. From 11 to 16 February 2013, the Special Rapporteur conducted his seventh mission to Myanmar and met, in Naypyitaw, the Minister for Home Affairs, the Minister for Social Welfare, Relief and Resettlement, the Attorney General, the Deputy Minister of Foreign Affairs, the Deputy Minister for Border Affairs, the Deputy Chief Justice and other justices of the Supreme Court, as well as several members of parliament and parliamentary committees. In Yangon, he met Daw Aung San Suu Kyi, members of the Myanmar National Human Rights Commission, civil society, prisoners of conscience held in Insein prison, former detainees from Buthidaung Prison, the United Nations country team and the diplomatic community. He also visited Yangon University and met with the Dean and students, and visited the offices of the Myanmar Times.

3. He visited Rakhine State, where he met state authorities and community leaders. He visited camps for displaced persons for both Buddhist and Muslim communities in Sittwe, Myebon and Pauk Taw and visited Sittwe Prison. He also visited Kachin State, where he met state authorities and civil society, visited camps for displaced persons in Myitkyina and Waingmaw and visited Myitkyina Prison. He expresses thanks to the Government of Myanmar for its cooperation during the visit.

4. He visited Japan from 7 to 10 February and met with representatives of the Japan International Cooperation Agency, the Ministry of Foreign Affairs, the Ministry of Economy, Trade and Industry, the Parliamentary Senior Vice-Minister for Foreign Affairs, and civil society organisations. He also visited Thailand from 17 to 18 February and met with representatives from the Ministry of Foreign Affairs, civil society, United Nations regional and national offices and the diplomatic community. He is grateful to the Governments of Japan and Thailand for their cooperation.

5. The Special Rapporteur expresses thanks to the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Geneva, Bangkok and New York, for assisting him in discharging his mandate.

## **II. Human rights situation**

### **A. Prisoners of conscience**

6. Since the formation of the new Government, eight amnesties have been granted and 800 prisoners of conscience released. The most recent amnesty, announced by the President on 16 November 2012, resulted in the release of more than 50 prisoners of conscience and was granted in accordance with article 204 (a) of the Constitution and article 401 (1) of the Code of Criminal Procedure.

7. The Special Rapporteur publicly welcomed the releases, while noting that article 401 (1), (3), (4) of the Code of Criminal Procedure enables the attachment of conditions, such as the imposition of the remaining sentence if a condition on which the sentence was

suspended or remitted is judged by the President not to have been fulfilled. He reiterates that the release of prisoners of conscience must be without any conditions. Credible sources indicate that over 250 prisoners of conscience remain behind bars. In this regard, he welcomes the announcement on 6 February of the formation of a committee to identify the remaining prisoners of conscience to be released, which follows the Government's earlier commitment made on 18 November 2012 to set up such a mechanism. According to the President's Office, the Committee is to be chaired by Union Minister in the President's Office, Soe Thane, and made up of representatives from government ministries, civil society organizations and some political parties.

8. The Special Rapporteur hopes that this will lead to the speedy release of all remaining prisoners of conscience. Those who have already been identified should be released without delay. Furthermore, in view of allegations that persons continue to be arrested for political reasons, he recommends that the Committee is established as a permanent body.

9. During his latest visit, the Special Rapporteur visited Insein Prison and met with five prisoners of conscience: Aung Naing, Saw Francis, Tun Oo, Win Myint and Zaw Moe, as well as Sittwe Prison where he met with Tun Aung. The Special Rapporteur discussed these cases, along with the four international non-governmental organisation (INGO) workers who remain in Buthidaung prison, with the Home Affairs Minister in Naypyitaw. The Minister acknowledged the importance of this issue and requested that the Special Rapporteur send him the list of persons mentioned during the discussion.

10. In Yangon, the Special Rapporteur met with recently released prisoners of conscience, including Gambira and Khaymar Sara, whom he had previously visited in Insein Prison. While overjoyed to be speaking to them in freedom, he was concerned to hear of the difficulties they faced in rebuilding their lives and that some had faced repeated detention since their initial release. He reiterates that it is the duty of the State to provide adequate medical and psychosocial services to those released; in particular those who suffered ill-treatment or prolonged periods of solitary confinement. Rehabilitation support should also be provided, given that many former prisoners face difficulties in finding employment or continuing their education. Furthermore, many former prisoners continue to be denied passports and cannot travel abroad, while some who are medical and legal professionals have had their licences revoked. The rights and freedoms of those released must be respected and any restrictions or conditions removed, and ways to provide just compensation need to be considered. The Special Rapporteur recommends that the Committee to identify prisoners of conscience be given a broad terms of reference, so that it can look into these issues and propose necessary legislative reforms.

## **B. Conditions of detention and treatment of prisoners**

11. The Special Rapporteur is concerned about the ongoing practice of torture in places of detention in Myanmar. During his interviews with displaced persons in camps in Myitkyina and Waingmaw and prisoners in Myitkyina prison, he received allegations of arbitrary arrest and torture during interrogation by the military of Kachin men accused of belonging to the Kachin Independence Army (KIA). In Rakhine State, he received allegations that Muslim prisoners detained in Buthidaung Prison after last June and October's violence have been tortured and beaten to death.

12. While in Yangon, the Special Rapporteur met with the sister of Myo Myint Swe, who died following torture during interrogation while in police custody. His case is consistent with other information the Special Rapporteur has continued to receive on professionalised torture techniques being used by police officers on suspects of violent crime with the aim of extracting confessions. He highlights that addressing human rights

violations through the criminal justice system is necessary to combat the culture of impunity that exists for acts of torture in police stations, prisons and in other places of detention, particularly during the interrogation of suspects. In addition, he encourages the Government to initiate human rights training programmes for police officers and prison officials, and to develop the capacity of other relevant public officials, including judges and doctors, who can intervene on suspected cases of torture.

13. The Special Rapporteur acknowledges the steps being taken by the Government to address the ongoing practice of torture in Myanmar. He commends the Government on its commitment last November to allow the International Committee of the Red Cross (ICRC) to resume prison visits in order to assess conditions and facilitate access to healthcare, and notes the subsequent successful completion of the first pilot prison visit in January. He encourages the Government to continue this good cooperation with the ICRC and reiterates his recommendation that national and other international monitoring groups be provided with access to prisons. To help systematise the process of prison visits to prevent torture, he recommends that Myanmar prioritise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol (OPCAT). Furthermore, he encourages the Government to invite the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to conduct a country visit.

14. In Yangon, the Special Rapporteur also met with the wife of Phyo Wai Aung. He was deeply saddened to learn of the passing away of the former prisoner of conscience on 4 January 2012, only five months after his release from Insein prison. Phyo Wai Aung had previously informed the Special Rapporteur that his confession had been extracted as a result of torture. His death has also highlighted the inadequate health care that prisoners are provided with in Myanmar's prisons. The Special Rapporteur recommends that urgent measures be taken to address this, including through the passing and implementation of a new Prisons Law, which he understands from the Home Affairs Minister will be considered by Parliament soon. He hopes the new law will comply with international standards, including the United Nations Standard Minimum Rules for the Treatment of Prisoners, and also address concerns over the use of solitary confinement, transfers to remote prisons and non-judicial punishment. In this regard, he encourages the authorities to take into account the comments provided on the initial draft by the United Nations Office on Drugs and Crime (UNODC) and OHCHR.

### **C. Freedom of expression**

15. The Special Rapporteur acknowledges important progress that has been made in developing a more open environment for people to express themselves, including a freer media environment. In 2012, no journalists were jailed in Myanmar and the country rose 18 places to 151 out of 179 States in the 2013 World Press Freedom Index.

16. In August 2012, in a significant step forward, pre-publication screening and censorship by the Press Scrutiny and Registration Division (PSRD) was brought to an end, and in January 2013 the PSRD was replaced with the Copyright and Registration Division (CRD). However, the press are still required to send printed copies of their publications to the CRD after publication, and the CRD can summon journalists to its headquarters and threaten newspapers with suspension. The Special Rapporteur also has concerns over the current registration process for print publications, where the threat of the revocation of licences could be used by state authorities as a tool for censorship, as well as concerns over the misuse of defamation laws to secure censorship.

17. In September, the Government established a 28-member Interim Press Council, which subsequently created four working committees to perform the tasks of resolving

disputes and complaints, drafting the code of ethics and the new media law, finance and management, and information and public relations. The Chair of the Council is a retired Supreme Court Judge Khin Maung Aye and the Deputy Chair is journalist and writer Maung Wuntha. The Special Rapporteur is encouraged to see that membership is largely made up of independent journalists, some of whom he met in Yangon during his latest visit. The Council has been proactive in carrying out its tasks, such as engaging in mediation between the government and two journals, *The Voice* and *Snapshot Journal*, for the withdrawal of government lawsuits against the publications.

18. The Special Rapporteur commends the Government's decision to pass the responsibility of drafting a new media law to the Interim Press Council, which will help to ensure meaningful consultation with relevant stakeholders and a law that meets international standards. The law, which he hopes will be passed by the end of the year, will establish a permanent Press Council and new publishing guidelines, and should help to protect the freedom of expression of reporters and editors. However, he is alarmed about a proposed Printing and Publishing Enterprise Law, which came to his attention just prior to the finalisation of this report, and calls for its urgent review by the Interim Press Council to help ensure it meets international human rights standards.

19. In conjunction with the passing of a new media law, reforms to existing legislation also need to take place (see Recommendations).

20. During his meeting with journalists in Yangon, concerns were expressed over difficulties in accessing information from local and central government officials. The Special Rapporteur recommends the passing of a right to information act to address these concerns.

21. He welcomes measures that have been taken to develop media plurality, which will enable people to receive a wide range of information and ideas. Around 350 journals and newspapers now exist in Myanmar, and from April 2013 private newspapers will be able to publish daily editions. He emphasises that the criteria for granting such licences should be reasonable and objective, clear, transparent and non-discriminatory.

22. The Special Rapporteur is concerned that reform of the broadcast media is lagging behind, and that the same commendable bottom-up approach that the Government is taking to reform the print media is not being applied to broadcast journalism. For instance, there are currently no measures in place to ensure plurality of broadcast media, such as community radio. Licensing regimes for broadcast media need to provide for an equitable allocation of frequencies between public, commercial and community broadcasters. He therefore recommends the establishment of an independent and public broadcasting licensing authority with the power to examine broadcasting applications and to grant licenses.

23. The Special Rapporteur is concerned that public broadcast news remains heavily censored. He encourages the Government to take steps to ensure that public service broadcasting operates in an independent manner with editorial freedom, including providing funding in a manner that does not undermine its independence. The Government should also prevent undue media dominance by privately-controlled media groups that may be harmful to a diversity of sources and views.

24. The Special Rapporteur welcomes the increased freedom for Internet users, with Internet café owners no longer receiving police visits and no longer required to keep logs of the computers used by customers. However, he is concerned about the decision of Parliament on 17 January to investigate the online activities of a blogger who had criticised MPs' amendments to the Constitutional Tribunal Law. He highlights that uninhibited expression is particularly important in a democratic society for the purposes of public debate on state institutions and figures in the public and political domain.

## D. Freedom of assembly and association

25. While welcoming the more open environment that people in Myanmar now enjoy to assemble and demonstrate, the Special Rapporteur has concerns over the extent to which this right is being respected. This is partly because of shortfalls in the 2011 Peaceful Assembly and Peaceful Procession Act and its associated by-law, as well as the problematic implementation and enforcement of this legislation by state officials and police officers on the ground.

26. The ongoing arrest and detention of people involved in peaceful protests reflects shortcomings in the Peaceful Assembly and Peaceful Procession Act. If a peaceful assembly or procession takes place without a permit from the authorities, article 18 of the Act provides for a punishment of up to one year imprisonment and a fine of 30,000 kyat. Furthermore, the Act is being used in conjunction with other laws, of which the Special Rapporteur recommends the concurrent amendment. Failure to gain permission to hold an assembly can result in two years imprisonment under articles 141-3, 145, 151 and 505(b) of the Criminal Code. The 1988 Law Relating to the Formation of Organisations provides sentences of up to five years for people who participate in groups that, in broad and vague terms, “attempt, instigate, incite, abet or commit acts that may in any way disrupt law and order, peace and tranquillity, or safe and secure communications; [or] affect or disrupt the regularity of state machinery”. Furthermore, the 1908 Unlawful Associations Act authorises the President to declare, at his discretion, any organisation to be unlawful. Subsequently, anyone who is a member of an association declared to be unlawful or who assists the operations of any such association can be imprisoned for between two and three years.

27. On 21 September 2013, 13 activists were arrested under the Act for leading a march in Yangon on International Peace Day to voice their opposition over the ongoing war in Kachin State, and in October, ten activists from Mandalay and Bago were charged under the Act for participating in peaceful protests against electricity shortages in May. On 23 November 2012, four gold mine workers, Ye Yint Htun, Naing Win, Nay Aung Htet and Saw Naung, were arrested for leading a march to Naypyitaw against the Government’s decision to close the Moehti Moemi gold mine in central Myanmar. They were subsequently sentenced to six months imprisonment by Pegu court on 3 January 2013 for protesting without permission under article 18 of the Law, and article 505(b) of the Criminal Code. On 26 November, eight activists, including former prisoner of conscience Naw Ohn Hla, were arrested for protesting in Yangon against the expansion of the Monywa copper mine in the Letpadaung mountain range in Sagaing region. They were charged under the Act for protesting without a permit, and article 505 (b) of the Criminal Code. The eight were subsequently released on bail on 11 December. On 13 December, four activists in Mandalay and four activists in Monywa were arrested under article 18 of the Act in connection with protests organised on 12 December to demand a halt to the project. On 18 January, the four activists in Mandalay were sentenced to one month in prison, but were released as they had already spent over 33 days in prison after their arrest.

28. The Special Rapporteur emphasises that imprisonment for participating in a peaceful assembly, procession or march is not an appropriate punishment and urges the amendment of these laws accordingly.

29. The Act states that people should apply for permission to exercise their right to peaceful assembly five days in advance. This provision is currently being used by State officials to place unnecessary and disproportionate restrictions on freedom of assembly, with permits for assemblies being granted and denied arbitrarily and on political grounds. The Special Rapporteur therefore recommends that the Act be amended to bring it into line with international standards. Rather than a requirement to gain *permission* for an assembly,

organisers should instead be required only to *notify* authorities of plans to organise an assembly so that the State is able to facilitate the exercise of the right to freedom of peaceful assembly, and ensure the protection of participants, public order, public safety and the rights and freedoms of others.

30. The Special Rapporteur also has concerns over the police handling of protests. On 29 November, police attempted to clear the main protest site near the Monywa (Letpadaung Taung) copper mine resulting in 73 people, including 67 monks, being injured, with around 30 persons suffering burn injuries. During his latest visit, the Special Rapporteur met with participants in the protests, who described how incendiary devices had been used to disperse crowds, resulting in serious injuries. In his meeting with the Home Affairs Minister, the Minister denied that any incendiary devices had been used. The Special Rapporteur welcomes the establishment by the Government on 1 December 2012 of a commission chaired by Aung San Suu Kyi to look into the Monywa copper mine protests, and hopes that the report will help to clarify whether excessive force was used and will recommend measures to bring any perpetrators to justice.

31. The Special Rapporteur also received reports that, on 23 November 2012, the four miners from Moehti Moemi gold mine in Yemathin township (referred to above) were assaulted and arrested by security forces while peacefully marching together with around 70 fellow protestors to Naypyitaw to protest the closure of their mine. Allegedly, around 100 police officers armed with sticks charged the group and beat the peaceful demonstrators before arresting the four miners.

32. To help address this issue, the Special Rapporteur recommends that the Peaceful Assembly and Peaceful Procession Act, its associated by-law, and police regulations, are amended to include provisions on the necessary and proportionate use of force in controlling public assemblies, as laid out by the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Law enforcement officials should be held liable by an independent and democratic oversight body, and by a court of law, for the unjustified or disproportionate use of force or for failing to intervene when necessary to prevent a violation of a person's rights. Furthermore, he recommends more guidance and capacity development for law enforcement officials in dealing with crowd control in accordance with international standards. In this regard, he welcomes the openness shown by the Home Affairs Minister during their meeting to engage with the international community in ensuring that law enforcement personnel are abiding by international standards.

## **E. Economic, social and cultural rights**

33. The Special Rapporteur notes progress in the Government's efforts to promote socio-economic development and economic growth. The National Economic and Social Advisory Council, established in June 2012, has drafted a framework for further socio-economic reforms, which is to be approved by the national planning commission shortly. President Thein Sein has publicly committed to halve the rate of poverty and hunger by 2015 and to use the more than six billion dollars in debt relief recently granted to Myanmar for poverty alleviation, and the construction of schools, hospitals and power generation. The Special Rapporteur highlights the importance of focussing on the right to education in the country's democratic transition, and refers to his previous analysis and recommendations on this right (A/HRC/16/59).

34. The Special Rapporteur highlights that now is the time to put in place a human rights based approach to development to ensure that the flow of investment and opening of businesses is directed towards ensuring the realisation of the human rights of the people of Myanmar. In addition to ensuring the effective implementation of core international human



rights and labour standards, the Special Rapporteur also urges the Government to implement the Guiding Principles on Business and Human Rights and use the Principles for Responsible Contracts in the development and negotiation of investment contracts with the private sector.

35. The Special Rapporteur is concerned by increasing reports and allegations of violations of land and housing rights across the country. While there are no clear data, land confiscations reportedly increased in 2012, particularly to clear areas for infrastructure projects and natural resource exploitation. He also notes allegations of the involvement or collusion of security forces, the police, local Government officials and private businesses. Notably, the majority of complaints received by the MNHRC and the Parliamentary Rule of Law Committee headed by Aung San Suu Kyi are related to land disputes and land confiscations. Farmers and civil society activists across the country have been protesting against land confiscations, including the continued demonstrations against the Letpadaung copper mine mentioned above. Farmers, often with no documentation to prove land ownership, face harassment or are arrested if they resist eviction (see A/67/383 for further analysis and recommendations). Parliament has established a commission to deal with land confiscations, and he encourages it to make public the results of its work.

### **III. Conflict and the situation of ethnic minorities**

36. The Special Rapporteur has previously highlighted concerns regarding the ongoing conflict and tensions in ethnic border areas, including the increased troop presence in various States, which have engendered human rights violations such as forced labour, portering and sexual violence.

37. The Special Rapporteur has followed closely developments in Kachin and Northern Shan States and is concerned by the allegations he continues to receive of attacks against civilian populations, extrajudicial killings, sexual and gender-based violence, arbitrary arrest and detention, as well as torture. He has also received allegations of the use of landmines, the recruitment of child soldiers, as well as forced labour and portering committed by all parties to the conflict. He notes continuing reports of arrests of ethnic Kachin men suspected to have links with the Kachin Independence Organization (KIO) or the KIA (mostly made under the Unlawful Associations Act, the Explosive Substance Act and the Emergency Provisions Act) and the torture of suspects to extract confessions. In February, the Special Rapporteur received similar allegations when he visited camps for internally displaced persons (IDPs) in Myitkyina (the two Jan Mai Kaung camps) and Waingmaw (the Thargaya and Lavo camps). In Myitkyina Prison he met with Brang Shawng and Manam Tu, both ethnic Kachin men arrested in Kachin IDP camps and detained and charged on suspicion of belonging to the KIA. He has serious concerns that both were tortured by the military during interrogation to extract false confessions.

38. The Special Rapporteur is concerned by reports that a number of civilians were killed (26 between September 2012 and February 2013) and that an estimated 2,000 persons were newly displaced (since November 2012) as a result of the recent escalation of the conflict, with the military reportedly using air power and heavy artillery to attack targets in and around Laiza.

39. Following talks in China, the Government and the KIO issued a Joint Statement on 6 February and agreed to work on an overall framework for the de-escalation of the conflict and to establish a monitoring mechanism in this respect. The Special Rapporteur joins the Secretary-General in welcoming this development and urges all parties to continue dialogue towards genuine and sustainable peace in Kachin State. He also renews his call on the

Government and all armed groups to ensure the protection of civilians during armed conflict and to respect international human rights and humanitarian law.

40. An estimated 75,000 people remain displaced to date and approximately 40,000 among them are displaced in KIA/KIO-controlled areas, which United Nations convoys have not been able to access since July 2012. While community-based and faith-based organizations continue to provide humanitarian assistance in non-Government controlled areas, the Special Rapporteur was informed that the humanitarian needs in these camps are significant and that local organizations are facing shortages in supplies. He urges the Government to ensure quick implementation of its recent commitment to allow the United Nations and international organizations access to provide humanitarian assistance to all conflict-affected areas in Kachin State.

41. The Government has continued its dialogue with other armed groups on the basis of President Thein Sein's roadmap to achieving peace. A Union Peace-making Central Committee was established in May 2012 as well as a Myanmar Peace Centre in June to streamline negotiations, address post-ceasefire needs and consolidate peacebuilding activities. Continuing dialogue since preliminary ceasefire agreements were concluded with ten ethnic armed groups last year have resulted, for example, in the opening of liaison offices in a number of ethnic border states, and the signing of a 27-point agreement with the Chin National Front (CNF) in December which, inter alia, provides for the introduction of the Chin language in primary schools, the granting of licenses for newspapers and media publications in the Chin language, the provision of basic services in Chin State and the establishment of a Chin human rights committee to report on human rights violations to the CNF, the MNHRC and the State Government.

42. The Special Rapporteur reiterates that any durable political solution must address the root causes of the conflict and should address the particular concerns of ethnic minority groups. He will closely monitor developments in ongoing political negotiations, in particular how they address issues such as the disarmament, rehabilitation and reintegration of former combatants; the verification and release of children recruited into armed groups; assistance and support to those affected by the conflict, including landmine victims; demining; poverty alleviation and socio-economic development in ethnic minority areas; natural resource management, revenue-sharing and self-governance, including through a possible review of the Constitution; the voluntary, safe and dignified return and resettlement of refugees and internally displaced persons (see A/67/383); the promotion of the rights of ethnic minorities; and a means of addressing continuing allegations of human rights violations. As political negotiations move forward, he hopes that civil society and affected communities, including women, will be fully consulted and involved in peacemaking and peacebuilding processes. In all these areas, the Government should continue to seek international assistance, including from OHCHR.

43. The Special Rapporteur is encouraged by reports that no new landmines were laid in 2012, that agreements have been signed with international non-governmental organizations for demining programmes, and that the Ministry of Social Welfare, Relief and Resettlement has established a mine risk education programme. He remains concerned, however, that injuries and casualties caused by landmines continue to be reported and have apparently even increased, and that an estimated 5.2 million people live in areas contaminated by landmines in Myanmar, which also causes severe psychological trauma. Additionally, he continues to receive allegations of civilians being used as minesweepers by the military and non-State armed groups. He welcomes steps taken by the Government to become party to the Mine Ban Treaty and hopes for enhanced cooperation with international organizations to develop a comprehensive plan to end the use of landmines, establish accurate data on their location and use, ensure their systematic removal, and rehabilitate victims. In Kachin

State, where armed conflict continues, he urges authorities to begin the process of demining in the areas where the conflict has ceased.

44. Following the signing of the Joint Action Plan in June 2012 to end the recruitment and use of child soldiers, the Government released 42 underage recruits and monitoring by the United Nations Task Force commenced. Additionally, ethnic armed groups, including the Karenni National Progressive Party and the New Mon State Party signed agreements in November with an international non-governmental organization to eliminate the use of child soldiers and to institute measures to protect children caught in conflict-affected areas. Given that underage recruitment has reportedly not ceased and continues to be practised by the military and a number of armed groups, the Special Rapporteur reiterates that the United Nations and other independent actors must be provided with access to recruitment centres and conflict areas to monitor implementation of the Joint Action Plan.

45. The Special Rapporteur has also previously highlighted systematic and endemic discrimination faced by ethnic minority groups, including policies preventing the teaching of minority languages in schools, restrictions on the freedom of religion or belief and economic deprivation. For example, he continues to receive allegations of discriminatory regulations and restrictions on the construction and renovation of Christian places of worship in Chin State, the destruction of Christian crosses and the construction of Buddhist places of worship using forced labour from Chin Christians. He also continues to receive allegations of coerced conversions to Buddhism at the Government's Border Areas National Races Youth Development Training (Na Ta La) Schools across the country. He renews his call for ethnic minorities to be granted fundamental rights, as enshrined in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities.

#### **IV. Situation in Rakhine State**

46. The Special Rapporteur believes that Rakhine State is going through a profound crisis that threatens to spread to other parts of the country and has the potential to undermine the entire reform process in Myanmar. Both Muslim and Buddhist Rakhine communities continue to suffer the consequences of violence that the Government has finally been able to control, though question marks remain over the extent to which excessive force has been used.

47. Since the Special Rapporteur's report to the General Assembly last year, a new wave of violence in October saw a further 37,000 displaced, the vast majority of whom were Rohingya but with Kaman Muslims also targeted. The current number of internally displaced persons in Rakhine State now stands at approximately 120,000.

48. The Presidential Announcement 2/ 2012 of 31 October 2012 stated that from 21 to 30 October 2012, 89 people were killed (bringing the total to nearly 200 deaths), 136 wounded and 5351 houses burnt down. There have also been ongoing allegations of harassment, arbitrary arrests, arbitrary restriction of movement, destruction of places of worship and restrictions on religious worship. The 27-member Investigation Commission set up by the President on 17 August 2012 to investigate the violence was originally due to present its report on 16 November 2012, but is now scheduled to present its report on 31 March 2013.

49. The Special Rapporteur continues to receive widely divergent information on the scale of human rights violations in Rakhine State, particularly with regard to the number of deaths, injuries and victims of sexual assault committed during the violence. He reiterates the importance of the Investigation Commission's report addressing the issue of human rights violations in Rakhine State. If, following the publication of this report, allegations of

human rights violations are not properly addressed, the Special Rapporteur offers his support to the Government to pursue further investigations and recommends that the Government consider asking OHCHR to support fact finding and monitoring in Rakhine State, in addition to supporting ongoing humanitarian efforts. He emphasises that establishing the truth of what has happened and holding those responsible to account will be integral to reconciliation and re-establishing trustful and harmonious relations between communities.

50. The Special Rapporteur visited IDP camps in Sittwe (Min Gan and Thet Kal Pyin camps), Pauk Taw (Kyine Ni Pyin camp) and Myebon (Taung Paw camp). He acknowledges the Government's efforts and collaboration with the United Nations and humanitarian organisations to improve the conditions in these camps since his visit last August, including the provision of food, shelter and access to water and sanitation.

51. He is concerned, however, about the lack of adequate health care in the larger Muslim camps, which he saw in Taung Paw camp, and urges the central and state authorities to ensure that adequate medical care is provided to all IDP camps. He notes that this is not just a matter of lack of resources, but requires the safe passage of humanitarian assistance to these camps. He learnt during his recent visit that local and international medical staff are unable to provide medical care to some of the Muslim camps due to the threats and harassment they face from local Rakhine Buddhist communities. The Special Rapporteur urges the local authorities to send a clear message through their networks that the harassment of staff is not acceptable.

52. The Special Rapporteur is concerned that, with the rainy season approaching in May and question marks over the maintenance of donor support, concerns over food and water may again resurface. He therefore urges the Government to ease restrictions on freedom of movement of persons inside the Rohingya IDP camps in order to ease dependency on aid by enabling people to fish, tend their land, and engage in trade and financial transactions. Easing restrictions on freedom of movement is also important for the mental health and human dignity of the people in these camps. This was highlighted to the Special Rapporteur during his visit to Taung Paw camp, which he described as feeling more like a prison than an IDP camp. In addition to easing restrictions on freedom of movement, the Government needs to take steps to reassure the people that it is not intending to make these camps permanent segregated settlements by consulting with them on plans for their voluntary return to their villages or relocation in Rakhine State. The coming rainy season in May, which will flood many of these camps, further increases the urgency of relocation in order to avoid a humanitarian disaster.

53. The Special Rapporteur has received reports that Muslim villagers, particularly in northern Rakhine State, have had their freedom of movement restricted by security forces, including Nasaka, to the point where they cannot access food or their livelihoods. He urges the Government to take immediate steps to ease these restrictions.

54. Throughout his mandate, the Special Rapporteur has received a large number of allegations of human rights violations committed by Nasaka. In view of the ongoing seriousness of these allegations, particularly against the Muslim community during the recent violence, he urges the Government to fundamentally reform this border security force and, in the meantime, suspend all of Nasaka's operations in Rakhine State.

55. Speaking to IDPs, community leaders and local officials during his latest visit, the Special Rapporteur is aware that feelings of fear, distrust, hatred and anger remain high between communities. To address this requires leadership from the Government to end the stigmatisation of the stateless population in Rakhine State. It also requires education, responsible local journalism, and mutually respectful dialogue between community leaders in which both sides are willing to make compromises to find solutions. During his visit to

Sittwe, the local authorities organised a discussion between Muslim and Buddhist community leaders. He urges local authorities to do more to promote such dialogue.

56. The Special Rapporteur highlights that mutually respectful dialogue cannot occur while discrimination based on grounds of ethnicity and religion remains unaddressed. As stated in previous reports, there exists in Rakhine State endemic discrimination against the estimated 800,000 members of the Rohingya Muslim community. The lack of a legal status of the Rohingya effectively gives state sanction to this discrimination, denying them access to many of their basic human rights. He reiterates his recommendation to Parliament that the 1982 Citizenship Act be amended to ensure that all persons in Myanmar have equal access to citizenship and are not discriminated against on grounds of ethnicity or religion. In the meantime, the current Act should be applied in a non-discriminatory manner to enable those with a just claim to citizenship to claim it on an equal basis with others. Immediate measures should be taken to remove other discriminatory regulations applied to Rohingyas, including with regard to marriage, freedom of movement, registration of new born children, and access to education and employment.

57. During his latest mission, the Special Rapporteur visited Sittwe Prison and met with Tun Aung as well as other Muslim and Buddhist prisoners. He believes that Tun Aung is a prisoner of conscience who must be released immediately (see Annex I), and that such a move is important to demonstrate that Myanmar has made a break from the past and no longer imprisons people for political reasons.

58. The Special Rapporteur notes reports that more than 1,100 persons have been detained in relation to the violence in June and October; the vast majority of whom he understands are Rohingya men and boys. He remains concerned about their possible arbitrary arrest and their conditions of detention and treatment; particularly those from the Rohingya community in Buthidaung Prison, who he believes are especially vulnerable to human rights violations. He is concerned over the possible torture and ill treatment of detainees, as well as the violation of due process rights, including access to legal counsel, judicial control over arrest, guarantees of habeas corpus, pre-trial detention as the exception rather than the norm, and the right to be tried without undue delay. In this context, he recommends that independent monitoring groups, both local and international, be provided with access to places of detention throughout Rakhine State, but in particular Buthidaung Prison, to verify the conditions and treatment of persons detained, as well as to courts for trial monitoring.

59. The Special Rapporteur notes that, since his previous report, all United Nations staff detained in relation to the violence in Rakhine State have been released. However, he remains concerned that the four INGO workers referred to in this same report remain in detention in Buthidaung Prison, and reiterates that the charges against them are unfounded and that their due process rights have been denied and calls for their immediate and unconditional release.

60. While acknowledging the efforts made by neighbouring countries to assist the Rohingya community, the Special Rapporteur reiterates the responsibility of states to respect and protect the human rights of all people within their borders, regardless of whether they are recognised as citizens. The responsibility of neighbouring states has again been highlighted with the taking to the sea by thousands of Rohingyas, expected to number 20,000 between October 2012 and April 2013. He has received reports of the subsequent deaths of hundreds of people through drowning, including on 4 December 2012 when a boat carrying 200 Rohingyas sunk in the Bay of Bengal, resulting in a reported 160 deaths. He has received reports of the involvement of security officials in both Myanmar and receiving countries at every stage of the journey. The fact that Rohingyas put their lives at risk to take to the seas in unseaworthy boats itself indicates the extent of their suffering in Myanmar. In this context, he draws attention to the “non-refoulement” principle under

international law, which requires states not to return anyone to a place where their life or freedom would be at risk. Furthermore, Governments should ensure that the rights of Rohingyas, including access to healthcare, are respected and that the Office of the United Nations High Commissioner for Refugees (UNHCR) is provided with unhindered access to determine whether they are seeking asylum and whether they qualify for refugee status. States should not push Rohingyas back out to sea or across land borders or arrest them. Immediate steps should also be taken by states to address allegations of trafficking and corruption. He reiterates that, in view of the regional dimensions, the Association of Southeast Asian Nations (ASEAN) should play a more proactive role in helping to identify solutions.

## **V. Democratic transition and establishing the rule of law**

61. Parliament opened its sixth regular session on 9 January 2013, and was scheduled to approve the budget for the 2013 to 2014 fiscal year. The fifth regular session of the Parliament was held from 18 October to 22 November 2012, during which a new foreign investment law was adopted. Parliamentary debates took place, *inter alia*, on the Government's response to the renewed violence in Rakhine State and the provision of humanitarian assistance to IDPs in Kachin State. On 7 November, Speaker of the Upper House, Khin Aung Myint, announced that Parliament would not consider a proposal to amend the 1982 Citizenship Law as several MPs had objected. Parliament set up independent commissions to look into the social and environmental impact of the Monywa copper mine in Sagaing Division, and to investigate land confiscations. On 15 November, the Auditor General presented his report to Parliament, which contained findings concerning the misuse of funds (including, in some instances, embezzlement) by 15 government ministries during the 2011/2012 fiscal year. Parliament began drafting an Anti-Corruption Law, with support from UNODC and UNDP, and on 20 December 2012 ratified the UN Convention against Corruption, which entered into force on 19 January 2013.

62. On 26 December 2012, the President announced the third step of the country's reform process since March 2011: administrative reform, focussing on transparency, efficiency, good governance and tackling corruption. This follows what the Government has described as the first step (political reform and national reconciliation) and the second step (economic reform) of the reform process. On 22 January, the President signed into law the Constitutional Tribunal Amendment Bill, which allows Parliament to challenge the Tribunal's decisions and requires the President to consult with the two Speakers of Parliament before appointing the Tribunal's Chair.

63. The Special Rapporteur sees no evidence that the judiciary is developing any independence from the executive branch of government. While acknowledging that this will take time, he reiterates that an independent judiciary lies at the very heart of a system of government that respects the rule of law. He urges the Government to pay more attention to this aspect in Myanmar's reform process, on which he has made previous recommendations (see A/66/365, A/67/383, A/HRC/19/67).

64. The Special Rapporteur reiterates the importance of the Government taking measures to improve the capacity of judges, including with regard to the incorporation of international human rights standards into judgements. He notes that courses are currently being run for the country's over one thousand judges by the Attorney General's Office and the Supreme Court, and recommends that modules on human rights and the United Nation's Basic Principles on the Independence of the Judiciary are fully incorporated into these trainings.

65. The Special Rapporteur encourages the Supreme Court to utilise its constitutional powers to help infuse a culture of respect for human rights within the courts system and state institutions in general. One such means is through the greater utilisation of the constitutionally granted powers to issue writs of Habeas Corpus.

66. In terms of improving people's access to justice, the Special Rapporteur notes Myanmar's constitutional provisions which guarantee the right of every citizen to equality, liberty and justice (article 21 (a)). However, he is still aware that the courts are not an accessible or viable means for people to seek justice. He therefore recommends more proactive measures to improve people's understanding of their legal rights and improve access to the courts and other relevant institutions as a means of redress, including through the setting up of a system of legal aid and the establishment of citizens advice offices. Furthermore, staff support to these offices can be supplemented through schemes which enable university students to train as advisers to gain credits toward their degree.

67. The Special Rapporteur was encouraged by Supreme Court decisions in 2012 which reinstated 11 of the 32 lawyers he had cited in his previous report as being disbarred for political reasons, and continues to follow progress on the remaining cases. However, he remains concerned about information he has received of the ongoing intimidation of lawyers by state officials, including lawyers in Rakhine State seeking to provide legal counsel to Muslim defendants, as well as the arbitrary revocation of licenses (with some sources stating that 200 lawyers remain disbarred for political reasons). He reiterates his recommendation regarding the establishment of a strong and independent bar council, which will help to increase the protection of lawyers and improve the training and education of lawyers in the application of international human rights law at the domestic level. He will follow with interest progress in amending the Bar Council Act and Legal Practitioners Act.

68. The Special Rapporteur urges the Attorney General's Office to ensure that state prosecutors play a role in protecting the rights of suspects by acting as a check on the practices of the police in their interrogation of suspects and collection of evidence.

69. The Special Rapporteur notes the important and evolving role of Myanmar's Parliamentary Committees. The Bills Committees of the Upper and Lower Houses are constitutionally mandated to vet draft legislation and report their findings to the joint session of Parliament. Both Houses also have committees that deal with the fundamental rights outlined in chapter VIII of the Constitution. He encourages one of these committees to establish itself as the focal committee for ensuring that all new legislation is vetted to ensure it is line with Myanmar's international human rights obligations.

70. Following his meeting with the Attorney General, the Special Rapporteur was encouraged to learn that relevant Ministries, the Attorney General's Office and Parliament were considering reforms to a number of laws he had previously highlighted as not being in line with international human rights standards (see A/67/383). He reiterates his recommendation that target dates be set for the conclusion of the review, and urges proper attention to ensuring the amendments successfully bring the laws into line with international human rights standards.

71. Regarding legislative reform in general, the Special Rapporteur reiterates the importance of a structured and coordinated process, in which new legislation is made public and widely disseminated to allow for meaningful consultation with relevant stakeholders, including civil society. Furthermore, sufficient time should be given to Parliament to properly consider the draft legislation.

72. During his meeting with the members of the Myanmar National Human Rights Commission (MNHRC) on 13 February 2013, the Special Rapporteur heard about the seven field investigatory trips undertaken by the Commission and the 2,868 complaints it had

received over the past year. The Commission had subsequently followed up on 830 complaints with the relevant Government Ministries and had received 51 responses (action was taken by the Ministries concerned on 33 cases). The Chair acknowledged that this response rate was not satisfactory and that the Ministries needed to be educated on the complaints mechanism and their obligations in terms of response. The Special Rapporteur encourages the MNHRC to make this information public in its Annual Report, particularly with regard to the recommendations that have been made on individual cases and the follow up that has occurred from the Government. He also encourages the Government to promptly act on complaints brought to its attention.

73. The Special Rapporteur notes that the enabling law of the MNHRC has not yet been passed, which he hopes will happen soon to bring the MNHRC into line with the Paris Principles, including with regard to the independence of commissioners, adequate and independent resources and the provision of a full mandate to promote and protect human rights.

74. Regarding the implementation of many of these recommendations, the Government would benefit from further extending engagement with relevant United Nations agencies, particularly OHCHR. The Special Rapporteur therefore welcomes the Government's invitation on 18 November 2012 to OHCHR to establish an Office in Myanmar. He notes that consultations on the host country agreement have begun, and encourages the Government to expedite the process of ensuring the establishment of an OHCHR Country Office with a full mandate.

75. During his latest visit, the Special Rapporteur discussed the need for constitutional reform with a range of stakeholders. He highlights that the current Constitution contains a number of provisions that could undermine the rule of law and fundamental human rights, which have been outlined in previous reports (see HRC/13/48, A/13/48, A/66/365). He was encouraged that there was open discussion about the importance of the Constitution reflecting the needs and aspirations of the Myanmar people, and that it could be changed if the people desired it. Ethnic minority groups have also stressed to the Special Rapporteur the need for constitutional reform to reflect their desire for more control over their own affairs, and that this will be crucial for the consolidation of ceasefire and political agreements.

76. The Special Rapporteur emphasises that, in order for the rule of law to exist, the laws of the land should be in line with international human rights standards, and these laws should be applied equally to all persons, institutions and entities, including the military. Subsequently, he reiterates the need for civilian control of the military as fundamental to any democracy that upholds the rule of law. He recommends the amendment of constitutional provisions which, *inter alia*, provide for the establishment of permanent military tribunals (article 293 (b)), separate from oversight of the civilian justice mechanisms, for which the Commander-in-Chief exercises appellate power (article 343 (b)); stipulate that no proceeding shall be brought against any member of the Government in respect of any act done in the execution of their duties (article 445), effectively providing the military with immunity for human rights violations that may have been committed; allow for military appointees to occupy 25 per cent of seats in Parliament (articles 74, 109 (b), 141 (b)), which also effectively provides the military with a veto on Constitutional amendments.

77. The Special Rapporteur highlights the important role that the Constitutional Tribunal can play in bringing the Constitution into line with international human rights standards, through its mandate to interpret the provisions of the Constitution.



## VI. Truth, justice and accountability

78. The Special Rapporteur continues to highlight that addressing grievances from decades of human rights violations and acknowledging victims' suffering will prevent future violations and will further democratic transition and national reconciliation. Measures to ensure justice and accountability, and access to truth, must therefore remain part of Myanmar's reform agenda. While there are many ways to ensure that justice is dispensed, accountability established and impunity averted, the primary responsibility rests with the Government of Myanmar.

79. During his latest visit, the Special Rapporteur continued to discuss with different stakeholders, including members of Parliament, the idea of addressing truth, justice and accountability through the creation of a truth commission at the parliamentary level.

80. There are no defined models and every truth commission is unique, responding to national needs and set in the cultural context. Truth commissions are not substitutes for more formal judicial accountability for the most serious violations and should not be afforded powers of amnesty incompatible with international law.

81. The Special Rapporteur acknowledges that this idea will take time to take hold and will be up to the people of Myanmar to develop. As a first step, there should be broad consultation with all relevant stakeholders in Myanmar, including victims of violations, in order to get their advice and views on the feasibility and desirability of a truth commission, and subsequently on how it could be shaped. Parliament, as the only multi-party and multi-ethnic public institution, can be an appropriate body to engage on this difficult but necessary task. The MNHRC should also assume a role in taking this proposal forward.

## VII. Conclusions

82. **Continuing reforms in Myanmar are resulting in ongoing improvements to the human rights situation. Important changes have taken place, such as legislative reform, but sometimes not to the point where international human rights standards are met.**

83. **There remains a large gap between reform at the top and implementation on the ground. While acknowledging that it will take time to close this gap, this should not be used as an excuse to avoid taking necessary steps, such as the capacity development of police, army, judges and lawyers.**

84. **While the process of reform is continuing in the right direction, there are significant human rights shortcomings that remain unaddressed, such as discrimination against the Rohingya in Rakhine State and the ongoing human rights violations in relation to the conflict in Kachin State. The Special Rapporteur believes that now is the time to address these shortcomings before they become further entrenched and destabilise the reform process.**

85. **The Special Rapporteur believes the continuing existence of his mandate is vital to highlight these concerns and support the Government in addressing them. It helps to remind the international community of the importance of prioritising human rights in its bilateral relations with Myanmar. And ultimately, it provides a positive contribution to improving the situation of human rights for the people in Myanmar.**

## VIII. Recommendations

86. All prisoners of conscience should be released immediately and unconditionally.

87. The Commission to grant liberty to remaining prisoners of conscience should include all relevant stakeholders, including civil society and former prisoners of conscience, and should be established as a permanent body to review future detentions and be given a broad terms of reference to help ensure the rights of released prisoners of conscience are respected.

88. To address the ongoing practice of torture in places of detention, the Government should:

(a) Prosecute allegations of torture by police and army personnel through the criminal justice system;

(b) Ensure human rights training programmes for police officers and prison officials, and develop the capacity of other relevant public officials, including judges and doctors, who can intervene on suspected cases of torture;

(c) Continue the good cooperation with the ICRC;

(d) Provide national and other international monitoring groups with access to places of detention;

(e) Prioritise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and its Optional Protocol;

(f) Invite the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to conduct a country visit;

(g) Improve healthcare in prisons;

(h) Adopt and implement a new Prisons Law to help address concerns over the use of solitary confinement, transfers to remote prisons and non-judicial punishment.

89. To continue progress in improving media freedom, the Government should:

(a) Remove the power of the Copyright and Registration Division to summon journalists for questioning and suspend publications;

(b) Reform the registration process for print publications, so that the granting and revocation of licences cannot be used as a tool for censorship;

(c) Pass a right to information act;

(d) In addition to passing a new media law, review the proposed Printing and Publishing Enterprise Law and reform the Electronic Transactions Law (2004), the Motion Picture Law (1996), the Computer Science Development Law (1996), the Television and Video Law (1985), the Printers and Publishers Registration Act (1962), the Wireless Telegraphy Act (1933), the Emergency Provisions Act (1950), and the State Protection Act (1975) to bring them into line with international human rights standards;

(e) Establish an independent and public broadcasting licensing authority with the power to examine broadcasting applications and to grant licences;

(f) Ensure public service broadcasting operates independently with editorial freedom, including through a system of funding that does not undermine independence;

(g) Prevent undue media dominance by privately controlled media groups.

90. To address shortcomings in reforms relating to the right to peaceful assembly and association, the Government should:

(a) Amend the 2011 Peaceful Assembly and Peaceful Procession Act (and the implementing rules and regulations), including article 18 which provides for a one year jail term for permit violations. Ensure provisions are added on the necessary and proportionate use of force in controlling public assemblies, as laid out by the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;

(b) Amend other problematic legislation, including articles 141-3, 145, 151 and 505 (b) of the Criminal Code, the 1988 Law Relating to the Formation of Organisations and the 1908 Unlawful Associations Act;

(c) Ensure the commission established to look into the Monywa copper mine protests establishes whether excessive force was used by the police;

(d) Ensure law enforcement officials are held liable by a court of law for the unjustified or disproportionate use of force;

(e) Instigate capacity development for law enforcement officials in facilitating public assembly and dealing with crowd control in accordance with international standards.

91. In relation to economic, social and cultural rights, the Government should:

(a) Integrate human rights in national development policies through applying a human rights based approach and implement the Guiding Principles on Business and Human Rights;

(b) Ensure the protection of land and housing rights, including through impact assessments prior to development projects, consultation with affected individuals and communities, the provision of adequate restitution and compensation, and the conferment of legal security of tenure.

92. Regarding conflict and the situation of ethnic minorities, the Special Rapporteur:

(a) Urges all parties to continue dialogue towards genuine and sustainable peace in Kachin State;

(b) Calls on the Government and all non-State armed groups to ensure the protection of civilians during armed conflict and to respect international human rights and humanitarian law;

(c) Urges the Government to investigate allegations in Kachin State of the continued arrest and torture during interrogation of ethnic Kachin men suspected of belonging to the KIA.

93. Furthermore, the Government should:

(a) Ensure quick implementation of its recent commitment to allow the United Nations and international organisations access to provide humanitarian assistance to all conflict-affect areas in Kachin State;

(b) Ensure civil society and affected communities, including women, are fully involved and empowered in peacebuilding processes that address the root causes of the conflicts, including issues of self-governance;

(c) Ratify the Mine Ban Treaty and immediately begin the process of demining;

(d) Provide the United Nations and other independent actors with access to recruitment centres and conflict areas to monitor the implementation of the Joint Action Plan to end the use of child soldiers;

(e) Ensure that the safe and dignified return of refugees, asylum seekers and internally displaced is done with the free, prior and informed consent of affected individuals;

(f) Ensure full respect for the human rights of ethnic minorities, as enshrined in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities.

94. In addition to the recommendations in report A/67/383, to address the situation in Rakhine State the Government should:

(a) Ensure the Investigation Commission addresses human rights violations that have occurred since the June 2012 violence;

(b) Ensure that the perpetrators of human rights violations are brought to justice;

(c) Suspend all operations of Nasaka in Rakhine State and introduce fundamental reforms to this border security force;

(d) Ensure adequate medical care is provided to persons in all IDP camps;

(e) Ease restrictions on freedom of movement of persons inside the IDP camps and in villages;

(f) Consult with the members of the IDP camps on, and take steps towards, their voluntary return to their villages or relocation to integrated communities within Rakhine State;

(g) Make greater efforts to ensure dialogue and reconciliation between community leaders;

(h) Amend the 1982 Citizenship Act to ensure that all persons in Myanmar have equal access to citizenship and are not discriminated against on grounds of ethnicity or religion;

(i) Ensure that the 2014 census includes all ethnic and religious minority communities in Myanmar, including the Rohingya;

(j) Remove discriminatory regulations applied to Rohingyas, including with regard to marriage, freedom of movement, registration of new born children and access to education and employment;

(k) Release Tun Aung from Sittwe Prison immediately and unconditionally;

(l) Release the four INGO workers from Buthidaung Prison immediately and unconditionally;

(m) Provide independent monitoring groups with access to places of detention in Rakhine State, and in particular to Buthidaung Prison to investigate allegations of torture, mistreatment and extra-judicial killings, as well as to courts for trial monitoring.

95. Regarding democratic transition and establishing the rule of law, the Government should:

- (a) Develop the independence of the judiciary from the executive branch of government;
- (b) Develop the capacity of judges, including through the incorporation of the United Nation's Basic Principles on the Independence of the Judiciary into training programmes;
- (c) Set up a system of legal aid and establish citizens' advice offices;
- (d) Establish a strong and independent bar council;
- (e) Designate a parliamentary committee as responsible for vetting all new legislation to ensure it is in line with Myanmar's international human rights obligations;
- (f) Set target dates for the conclusion of the review of laws that contravene international human rights standards, including those mentioned in this report;
- (g) Seek further technical cooperation from relevant United Nations agencies to support legal and judicial reform;
- (h) Expedite the establishment of an OHCHR country office with a full mandate.

96. The Supreme Court should utilise its constitutional powers to issue writs to help ensure the protection of human rights.

97. The Attorney General's Office should ensure that state prosecutors play a role in protecting the rights of suspects by acting as a check on the practices of the police in their interrogation of suspects and collection of evidence.

98. Finally, Parliament should:

- (a) Amend the Constitution to bring it into line with international human rights standards, and ensure civilian control over the armed forces;
- (b) Expedite the consideration and adoption of an enabling law for the Myanmar National Human Rights Commission to bring it into line with the Paris Principles;
- (c) Initiate a process of consultation with all relevant stakeholders on the feasibility and desirability of establishing a truth commission.

## Annex

*[English only]*

### **Communications during the reporting period**

The Special Rapporteur sent seven individual and joint communications between September and November 2012: an urgent appeal, dated 12 September 2012, regarding the detention of a United Nations official and four INGO staff in relation to the violence in Rakhine State; an urgent appeal, dated 19 September 2012, regarding the treatment and condition of the reported 858 persons detained in relation to the violence in Rakhine State; a joint urgent appeal, dated 2 October 2012, with the Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression, on the rights to freedom of peaceful assembly and of association and on the situation of human rights defenders, concerning the charges brought under section 18 of the new Law on Peaceful Assembly and Peaceful Procession against activists involved in peaceful demonstrations on International Peace Day; a joint allegation letter, dated 22 October 2012, with the Special Rapporteurs on the rights to freedom of peaceful assembly and of association, on freedom of religion or belief, on contemporary forms of racism, racial discrimination, xenophobia and related tolerance and the Independent Expert on minority issues, concerning allegations of discriminatory restrictions and systematic violations of the right to freedom of religion or belief of Chin Christians; a joint allegation letter, dated 8 November 2012, with the Special Rapporteur on violence against women, its causes and consequences, following up on a 30 December 2011 communication, regarding the alleged abduction and rape of Ms. Sumlut Roi Ja by military personnel in Kachin State; a joint urgent appeal, dated 29 November 2012, with the Chair-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteurs on torture and other cruel, inhuman or degrading treatment or punishment, on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and on the independence of judges and lawyers, regarding the alleged violation of fair trial and due process rights as well as concerns over access to medical care of Dr. Tun Aung (chair of the Islamic Religious Affairs Council in Rakhine State and a practising medical doctor) in Sittwe Prison; and a joint urgent appeal, dated 30 November 2012, with the Chair-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression, on the rights to freedom of peaceful assembly and of association and on the situation of human rights defenders, regarding the arrest and alleged excessive use of force against peaceful protestors demonstrating over the Moehti Moemi gold mine and the Monywa copper mine. By the end of January 2013, the Special Rapporteur had received one reply to the above-mentioned communications; on 26 December 2012 to the 29 November 2012 communication.

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