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

#### *Summary*

The recent wave of reforms has had a positive impact on the situation of human rights in Myanmar. The upcoming by-elections on 1 April 2012 will be a key test of how far the Government has progressed in its reform process. There is, however, a risk of backtracking on the progress achieved to date. At this crucial moment in the country's history, remaining human rights concerns and challenges should be addressed, and justice and accountability measures, as well as measures to ensure access to the truth, should be taken.

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\* Late submission.

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## I. Introduction

1. The mandate of the Special Rapporteur on the situation of human rights in Myanmar, established pursuant to Commission on Human Rights resolution 1992/58, was most recently extended by the Human Rights Council in its resolution 16/24. The present report is submitted pursuant to Council resolution 16/24 and General Assembly resolution 65/241, and covers human rights developments in Myanmar since the report of the Special Rapporteur submitted to the Council (A/HRC/16/59) and the Assembly (A/66/365).

2. During the period under review, the Parliament of Myanmar held its third regular session, by-elections were scheduled for 1 April 2012, prisoners of conscience were released following several amnesties, reforms in policies and legislation gained momentum, agreements with armed ethnic groups were signed and the national human rights commission commenced work. The Government also acceded to the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

3. From 31 January to 5 February 2012, the Special Rapporteur conducted his fifth mission to Myanmar and met with the Minister for Home Affairs, the Minister for Defence, the Minister for Border Affairs, the Attorney-General, the Chief Justice of the Supreme Court, the Union Election Commission, the Deputy Minister for Foreign Affairs, the Deputy Minister for Information, the Deputy Minister for Education, the Deputy Minister for Labour, the Speaker and several members of the *Pyithu Hluttaw* (lower house), as well as various peacemaking groups, including the Minister for Rail Transportation and other officials. In addition, he met with Daw Aung San Suu Kyi, members of the national human rights commission, three prisoners of conscience in Insein prison, released prisoners of conscience, representatives of civil society organizations and ethnic parties, the United Nations country team and the diplomatic community. He also travelled to Kayin and Mon States and met with the respective Chief Ministers and representatives of the State Government, as well as ethnic parties in State parliaments.

4. The Special Rapporteur thanks the Government of Myanmar for its invitation and the cooperation shown during his visit. He has also engaged with the Government through meetings with its ambassadors in Geneva and New York.

5. The Special Rapporteur also sent several individual and joint communications during the reporting period. These include a joint urgent action letter with the Special Rapporteurs on torture and freedom of opinion and expression regarding a hunger strike by seven female political prisoners in Insein prison on 1 June 2011; a letter to the Government, dated 30 June 2011, requesting an update on the status of the prisoners of conscience mentioned in the previous reports of the Special Rapporteur; a joint urgent action letter, dated 26 July 2011, with the Working Group on Arbitrary Detention and the special rapporteurs on freedom of opinion and expression, human rights defenders, torture and violence against women on the case of Hnin May Aung serving an 11-year sentence in Monywa Prison; a joint allegation letter, dated 16 September 2011, with the Special Rapporteur on freedom of religion or belief and the Independent Expert on minority issues regarding attempts to destroy a 150-year-old Muslim cemetery; and a joint urgent action letter, dated 28 November 2011, regarding the conditions of detention for Ashin Gambira (see also paragraph 27 below).

6. The Special Rapporteur would like to thank the Office of the United Nations High Commissioner for Human Rights (OHCHR), in particular at Headquarters, Bangkok and New York, for assisting him in discharging his mandate.

## II. Assessing the transition to democracy

7. Since its formation on 1 April 2011, the new Government has undertaken reforms resulting in the adoption of new policies and legislation and the creation of new national institutions and bodies.

8. The Special Rapporteur is encouraged that the national legislature continues to exercise its powers within the framework of the Constitution. Important issues relevant to human rights were discussed during its first and second regular sessions. During its third session, the national budget was discussed for the first time. Significant legislative reforms undertaken by Parliament include the adoption of the Labour Organizations Law and the Peaceful Demonstration and Gathering Law, as well as the amendment to the Political Party Registration Law.

9. The Special Rapporteur is also encouraged that new laws are currently under preparation, including a revised Prisons Act, a media law and a social security law, among others. He notes concerns, however, regarding some provisions of these new laws (see paragraphs 22 – 58 below), as well as the lack of adequate consultation with relevant stakeholders, including civil society. There have also been delays in the establishment of the necessary implementing regulations and procedures, and a lack of corresponding capacity of institutions to implement the new laws.

10. Moreover, there is lack of progress on the review and reform of the laws previously identified as not in full compliance with international human rights standards, such as the State Protection Act (1975), the Unlawful Association Act (1908), sections 143, 145, 152, 505, 505 (b) and 295 (A) of the penal code, the Television and Video Law (1985), the Motion Picture Law (1996), the Computer Science and Development Law (1996), and the Printers and Publishers Registration Act (1962). These laws have been systematically applied against prisoners and those opposed to the Government. The Government has, since February 2010, said that it is in the process of reviewing legislation to bring relevant laws into line with the Constitution, and ostensibly with international human rights standards. During his mission, the Special Rapporteur was again given assurances by the Attorney-General that the Government was taking serious and gradual steps to reform these laws. The Special Rapporteur reiterates that such efforts should be accelerated and clear time-bound target dates for the conclusion of the review should be established. Priority legislation for urgent review should be identified, including those provisions previously identified by the Special Rapporteur.

11. While Myanmar has sought assistance with regard to some draft laws, no comprehensive strategy for legislative reform has been designed, resulting in a somewhat ad hoc and uncoordinated process. The Special Rapporteur therefore recommends that Myanmar consider lessons learned and good practices from countries that have experienced accelerated transition periods, including the establishment of a law reform commission, which would review existing laws to bring them into full compliance with relevant international human rights standards.

12. Regardless of the efforts made to reform legislation, under the current Constitution, Myanmar lacks an independent, impartial and effective judiciary, which is not only essential for its transition to democracy but also necessary to uphold the rule of law, ensure checks and balances on the executive and the legislative, and safeguard human rights and fundamental freedoms in Myanmar. In his meeting with the Chief Justice and other justices of the Supreme Court, the Special Rapporteur noted limited acknowledgement of challenges and gaps in capacity or functioning, and a lack of willingness to address his previous recommendations. He therefore calls on the judiciary to implement his previous recommendations and to take a proactive approach to apply laws in a way that would

safeguard and guarantee human rights and fundamental freedoms in accordance with the Constitution and international human rights standards. He also urges that technical assistance be sought from the international community, particularly OHCHR and other organizations.

13. One concern relating to the functioning of the judiciary is access to counsel. The Special Rapporteur was informed of the arbitrary revocation of licences of lawyers who defend prisoners of conscience. He received allegations of lawyers subject to intimidation and monitoring by police, as well as lawyers denied meetings with clients and prohibited from making oral arguments in court. He took note of reports that the Union Supreme Court revoked the licence of Tin Tin Aung, a member of the National League for Democracy (NLD), in September 2011, and that a letter reportedly carrying the signatures of some 25 disbarred lawyers had been sent to President Thein Sein in November 2011, although a response has not been provided to date. The Special Rapporteur urges the Government to reconsider these revocations and to allow lawyers to practise their profession freely.

14. The Special Rapporteur stated previously that the upcoming by-elections would be a key test of how far the Government has progressed in its process of reform. It is therefore essential that they be truly free, fair, inclusive and transparent. The Special Rapporteur was informed by the Union Election Commission that the use of international observers was under consideration. He was also informed that, on 27 July 2011, the Commission had convened a meeting, with representatives of all officially registered political parties, to review the strengths and weaknesses in the conduct of the 2010 general elections. At the meeting, it was reportedly highlighted that the flaws in the conduct of the elections were a result of a lack of awareness of and strict compliance with relevant laws, rules and procedures, as well as of the inexperience of officials and the general public. He notes that the Commission intends to draw lessons from the elections, consider the suggestions of all political parties and provide training to officials of electoral subcommissions and polling stations.

15. While such developments as the easing of media restrictions and the revision of the Political Party Registration Law, resulting in the re-registration of several political parties and the decision of some to contest the by-elections, may allow for the organization of more credible elections, the Special Rapporteur is concerned at continuing allegations of campaign irregularities and attempts to limit campaign activities. In this regard, he notes that the Union Election Commission met with 17 political parties standing for election on 14 February 2011 and laid out plans to tackle voting irregularities. Concerns relating to the use of advance votes were also addressed. The political parties reportedly requested lists of advance votes to be provided prior to election day, and were told that representatives of Parliament would receive the list free of charge, while others could request a copy for a fee of 200 kyat.

16. The Special Rapporteur stresses that the credibility of the elections will not be determined solely on the day of the vote, but on the basis of the entire process leading up to and following election day. It is therefore important that the Union Election Commission seriously address reports of campaign irregularities and restrictions on the ability of political parties to carry out campaign activities, problems such as the use of advance votes, and the procedures and costs for filing a complaint. Respect for the freedoms of expression, assembly and association should be ensured.

17. On 5 September 2011, the national human rights commission was established by Presidential Decree (Government notification No. 34/2011) with a mandate to promote and safeguard the fundamental rights of citizens described in the Constitution. On 7 October, the commission issued a notification that it could receive complaints from citizens, although matters that had been brought before or were under court proceedings or had been decided by a court would not fall within its competence.

18. During his mission, the Special Rapporteur had the opportunity to engage with members of the commission. He was informed of some of the actions undertaken, including prison visits, visits to internally displaced persons in Kachin State, and the receipt and review of complaints from citizens. He was also informed that the commission had called for the release of prisoners on several occasions, including “prisoners of conscience”. He was also encouraged to learn that the resources and staff available to the commission might be increased significantly.

19. Despite such developments, many questions remain about the composition, role and functioning of the commission and, to date, there are no indications that it is fully independent and compliant with the Paris Principles. While the President appointed commissioners representing different ethnic minority groups, the vast majority are retired Government civil servants. Some informed the Special Rapporteur that they had been neither consulted nor informed in advance of their appointment. Additionally, he was informed that the commission’s draft rules of procedure were being examined by the judiciary and were awaiting approval by the Council of Ministers. This would seem to indicate that it is not fully independent of the Government. Moreover, presidential authorization is reportedly required for prison visits, and interviews with prisoners were reportedly conducted in the presence of prison officials. The Special Rapporteur therefore reiterates his view that the commission should be made fully compliant with Paris Principles in terms of independence and effectiveness. The Government should also initiate measures to codify its establishment either by a constitutional provision or by a law of Parliament.

20. There is also a clear need to enhance the technical and substantive capacity of the commissioners and staff on human rights issues. The Special Rapporteur hopes that training and assistance will be sought from OHCHR and the international community as soon as possible.

21. Also of importance to democratic transition is the need to establish complete civilian control over the military. While there have been positive developments, such as changes within its leadership and the abolition of supra-ministerial policy committees, the Special Rapporteur notes the role of the military in the legislature (military appointees occupy 25 per cent of all seats) and that of the new Commander-in-Chief, who independently administers and adjudicates all matters pertaining to the armed forces and must be consulted by the President on key appointments. Additionally, the Constitution establishes permanent military tribunals separate from oversight of the civilian justice mechanism, for which the Commander-in-Chief exercises appellate power. In the light of the continuing reports of human rights violations committed by the military, investigations and prosecutions of perpetrators remain a priority. During the mission, the Minister for Defence stated that action had been taken against military personnel for alleged criminal and other administrative offences, although no further details were provided. While welcoming such action, the Special Rapporteur encourages the adoption by the military of the measures previously proposed, which could help to address the above concerns. If the military continues to exercise unchecked powers and occupy centre stage, civilian rule and the overall democratic reform process will be undermined.

### **III. Situation of human rights**

22. Respect for human rights is central to any democratic transition. The Special Rapporteur previously noted that the Government had made important commitments and taken steps that had the potential to improve the human rights situation and to deepen the country’s transition to democracy. Following his mission, he believes that a positive impact

has in fact been made, although ongoing and serious human rights concerns remain and need to be addressed.

## A. Prisoners of conscience

23. The Special Rapporteur has consistently called for the immediate and systematic release of prisoners of conscience. Since the formation of the new Government, four amnesties have been granted, resulting in the release of a significant number of prisoners of conscience, including prominent figures and other individuals whose cases had been previously addressed by the Special Rapporteur, or whom he had visited in jail.

24. On 16 May 2011, the President announced an amnesty that commuted death sentences to life imprisonment and reduced all prisoners' sentences by one year. The measure resulted in the release of an estimated 100 prisoners of conscience, including 23 members of the NLD. On 12 October, more than 200 prisoners of conscience, including labour rights activist Su Su Nway, comedian Zarganar and General Sao Hso Ten of the Shan State Army – North, were released in another general amnesty granted by the President. On 2 January 2012, the President announced another amnesty that commuted death sentences to life imprisonment, and reduced sentences of more than 30 years to 30 years, sentences of between 20 to 30 years to 20 years and sentences of less than 20 years by one quarter. Only an estimated 32 prisoners of conscience were released, however. On 12 January, the President granted another amnesty to 651 prisoners. While estimates vary, a significant number of those released were prisoners of conscience, including former Prime Minister Khin Nyunt and the Chairperson of the Shan Nationalities League for Democracy, Khun Htun Oo, members of the 88 Generation Students Group, including Min Ko Naing, monks jailed for their role in the 2007 demonstrations, and activists and journalists.

25. While commending these releases, the Special Rapporteur notes that, under section 401 (1) of the Code of Criminal Procedure, conditions were reportedly attached to some of the releases, such as the imposition of the remaining sentence if a crime were to be committed in the future. He therefore reiterates his view that the release of prisoners of conscience must be without any conditions.

26. During his mission, the Special Rapporteur again conveyed his firm belief that the release of prisoners of conscience was a central and necessary step towards national reconciliation and would bring more benefit to Myanmar in its path towards democracy. He also welcomed the call made by the national human rights commission for the release of prisoners, its enquiries with relevant ministries on the number of prisoners of conscience, and its request that consideration be given to the transfer of prisoners who could not be released to prisons with easy access for family members.

27. The Special Rapporteur also met with released prisoners of conscience and received a clear sign of their intention to engage constructively in the political process and their commitment to further democratic transition. He is concerned by information received, however, that some of those released were being monitored or followed. He also notes that Ashin Gambira, a monk who had previously been imprisoned for his role in the 2007 demonstrations and released as part of the 12 January 2012 amnesty, had again been detained on 10 February, although released the same day. It is reported that he had been wanted for "questioning in relation to incidents that happened after his release". The Special Rapporteur urges the Government to take all necessary measures to ensure that the rights and freedoms of those released are respected. Any restrictions on their exercise and full enjoyment of human rights should be removed. In this critical period, and in the lead-up to the by-elections, it is fundamental for all in Myanmar, including those released from prison, to be allowed to play an active and constructive role in political and public life.

28. The Special Rapporteur is also concerned that prisoners of conscience remain in detention. During his mission, he met with three prisoners of conscience in Insein prison (Aung Naing, Naing Yekha and Phyo Wai Aung), one of whom (Phyo Wai Aung) he had previously met during his fourth mission (21 to 25 August 2011).<sup>1</sup> He received information on prisoners held in Insein prison and in other prisons throughout the country, including the Director of the Human Rights Defenders and Promoters Organization, U Myint Aye. He therefore reiterates his view that the Government should release all remaining prisoners of conscience without conditions or delay.

29. The Special Rapporteur acknowledges that there are constant discrepancies in different sources of the number of prisoners of conscience remaining, such as the Government, the NLD, various civil society organizations and Member States. He was previously informed that the Ministry of Home Affairs was investigating the status of prisoners in lists provided by various sources, and was subsequently presented with a list of some 526 prisoners in detention. In his meeting with the Minister for Home Affairs, the Special Rapporteur was informed that a final list of prisoners had been compiled on the basis of information provided by various Government departments and domestic political organizations. Many on that list were reportedly released as a result of the various amnesties granted; however, those “convicted with irrefutable evidence” – some 128 individuals – had not.

30. The Special Rapporteur believes that a comprehensive and thorough investigation is needed to clarify records and determine accurate numbers. As a starting point, such an investigation could be based on the definition he has consistently put forward of a prisoner of conscience, that is, of a person who (a) has been charged or convicted for the infringement of national legislation impeding reasonable enjoyment of freedom of expression, opinion, peaceful assembly or association; and (b) does not have access to a court or is being tried by courts that lack independence and impartiality, and/or for whom due process of law is denied. The Government should initiate broad and public consultations with all relevant stakeholders, such as political and civil society organizations, as well as released prisoners themselves, to collect and bring together information on remaining prisoners of conscience. He encourages the Government to consider this issue urgently, including with the assistance of the international community as necessary.

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

31. Conditions of detention and the treatment of prisoners remain of concern. The Special Rapporteur continued to receive allegations of torture and ill-treatment during interrogation, the use of prisoners as porters or “human shields” for the military and the transfer of prisoners to facilities in remote areas where they are unable to receive family visits or packages of essential medicine and supplemental food.

32. On 1 June 2011, the Special Rapporteur sent an urgent appeal jointly with the special rapporteurs on freedom of opinion and expression and on torture on the situation of seven female political prisoners in Insein prison, who had reportedly begun a hunger strike on 17 May to express their discontent with the amnesty announced by the President that month. The appeal also addressed the situation of 17 male political prisoners who joined the hunger strike on 22 May to protest against the denial of their rights and five other political prisoners who began a sit-in strike in their prison ward.

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<sup>1</sup> See A/66/365, para. 6.



33. According to information received, some of the prisoners were placed in solitary punishment cells while others were told to prepare their belongings for transfer to another prison. Following a meeting with the Director-General of the Prisons Department on 25 May, some of the prisoners reportedly ended their hunger strike and protest, and 13 prisoners who had been in solitary confinement were returned to their cells. On 27 May, however, following a meeting with officers from the Special Investigation Department at which anti-Government slogans had been shouted, it was reported that a number of the prisoners were again put in solitary confinement and that all demands had been rejected. In its response to the above-mentioned appeal, dated 2 August 2011, the Government rejected the allegations that seven female prisoners had participated in the hunger strike.

34. According to media reports from around the same period, prisoners in Kale prison had also commenced a hunger strike to protest against the Government's lack of response to a letter sent on prison conditions. On 26 October 2011, 15 political prisoners in Insein prison reportedly began another hunger strike to protest against the denial of the right to sentence reductions, a right apparently provided for in the Myanmar jail manual. The prisoners were denied drinking water for several days and some were confined to cells normally used for prison dogs as punishment. Family visits were also reportedly denied. The prisoners' demand was rejected and the hunger strike ended on 7 November. On 10 November, another hunger strike was started by six political prisoners in the prison hospital calling for improved medical care and the right to sentence reductions.

35. Members of the national human rights commission conducted visits to Myitkina prison on 9 December, Insein prison on 27 December, and Hlay-Hlaw-Inn Yebet labour camp on 28 December. They interviewed three prisoners and concluded that reports of prisoners being denied water and being held in "dog cells" as punishment were "untrue". The commission did, however, observe that the number of prisoners held in Insein prison far exceeded its maximum holding capacity and that the issue of prison congestion was "an important source of grievances that should be addressed in a timely fashion".

36. During his meeting with prisoners of conscience at Insein prison, the Special Rapporteur was also informed that conditions had generally improved. He received information, however, about continuing ill-treatment by prison officials and the continuous transfers of prisoners to facilities in remote areas, often without their prior notification and without proper notification of family members.

37. The Special Rapporteur notes that the Ministry of Home Affairs is preparing a revised Prisons Act to reform prison laws dating back to 1894. A draft was being submitted to the Attorney-General in sections, and the International Labour Organization (ILO) was consulted. The Government should ensure that the revised Prisons Act complies with international standards, particularly the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules). He also urges the Government to consult with relevant international organizations such as OHCHR and the International Committee of the Red Cross (ICRC), and to allow the latter full access to prisons and to resume visits to prisoners according to its global standard procedures.

### **C. Other issues relating to civil and political rights**

38. The freedoms of opinion and expression, assembly and association are essential for the functioning of democracies and are enshrined in the Universal Declaration of Human Rights and in international human rights treaties to which Myanmar is a party. The 2008 Constitution also provides for freedom of expression, opinion and assembly. On 11 October 2011, the new Labour Organization Law was promulgated, allowing for the formation of

unions and providing the right to strike. ILO provided assistance in drafting the Law. While welcoming this development, the Special Rapporteur notes that, under section 38 of the Law, workers in the public sector must provide notice to strike (including date, place, number of participants, manner and time) 14 days in advance; under section 39 of the Law, workers in the private sector must provide notice three days in advance. Section 50 of the Law prohibits demonstrations within 500 yards of hospitals, schools, religious buildings, airports, railways, bus terminals, ports or diplomatic missions and military or police installations. He also notes reports that applications to form unions were recently rejected by the Ministry of Labour on the grounds that the President had yet to sign a notification required for the Law to enter into force and a Chief Registrar had not been appointed. The Special Rapporteur was informed by the Deputy Minister for Labour that the necessary implementing regulations and procedures had been sent to the Cabinet. These required approval by Parliament and the President before the Law entered into force. He was also informed that training workshops were being organized on the Law and on freedom of association more generally. The Special Rapporteur encourages the Government to seek training and other technical assistance from the international community, in particular ILO, to ensure that implementation of the law is consistent with the right to freedom of association and international labour standards.

39. On 2 December, the President formally approved the Peaceful Demonstration and Gathering Law, which would allow peaceful protests subject to certain conditions. While considering the Law a generally positive development, the Special Rapporteur notes that such conditions may result in disproportionate restrictions; for instance, the Law requires information on the time, place and reason for the demonstration to be provided to the authorities in advance, as well as details about speakers and the slogans that will be used. The Law also prohibits protests at factories, hospitals and Government offices, and provides for a penalty of a year of imprisonment if a protest is staged without permission. It remains unclear how this Law will be applied in the future.

40. The right to freedom of opinion and expression is linked to the role of the media. The 10-point reform agenda outlined by the President to Parliament included amending some journalism laws in accordance with the Constitution. Measures have been introduced to lift or relax restrictions on the media and the Internet. Censorship rules for a number of publications and journals have been eased. There has also been greater access for foreign journalists. In September 2011, the Government lifted a ban on some foreign news websites. In October, the Director of the Press Scrutiny and Registration Division, the Government censorship body, publicly stated that media censorship was not consistent with democratic values and should be abolished “in the near future”. The Special Rapporteur believes that these positive developments should not be based on the mere discretion of the authorities but rather on a democratic institutional approach that allows transparency, predictability and continuity to the reforms.

41. At the same time, the Special Rapporteur continues to receive reports of restrictions on the media; for example, some statements made by Daw Aung San Suu Kyi, and reports of protests by monks in Mandalay and farmers protesting in Yangon were blocked from publication. Also, there are reports that news editors were prevented from publishing issues deemed sensitive to the stability of the State, including reports of campaign irregularities by the Union Solidarity and Development Party and allegations of abuse committed by the military in ethnic conflict areas.

42. The Special Rapporteur also notes that restrictions remain under such legislation as the Television and Video Law (1985), the Motion Picture Law (1996), the Computer Science and Development Law (1996) and the Printers and Publishers Registration Act (1962), as well as under notifications, such as No. 46, prohibiting the publication and distribution of material that is contrary to the Three National Causes (non-disintegration

of the Union, non-disintegration of national solidarity and perpetuation of national sovereignty), the Constitution and the Official Secrets Act, among others.

43. The Special Rapporteur was informed of two categories of censorship for newspapers, magazines and journals. Those covering, inter alia, sports, health, arts, children's literature, technology and business did not need to submit articles to the Press Scrutiny and Registration Division for approval prior to publication; copies were only required to be submitted after publication. Those covering news, religion, education and public affairs, however, still require prior approval before publication.

44. The Special Rapporteur was also informed that a new media law was being drafted covering the rights and responsibilities of media professionals, guidelines on publications, the establishment of a new committee for press freedom and press ethics, the registration of printers and publishers and legal penalties, among other issues. The new draft press and publications law would reportedly abolish censorship and reorient the Press Scrutiny and Registration Division into a regulatory body that could accept complaints from the public. The draft law was discussed with journalists and other media professionals in a recent workshop organized by the Myanmar Writers and Journalists Association and the Asia Media Information and Communication Centre. The Government is also consulting the United Nations Educational, Scientific and Cultural Organization, and a ministerial-level workshop is planned for March 2011. Although the Special Rapporteur was not provided with a copy of the draft law, he received information that certain provisions may continue to restrict press freedoms, including the requirement that news publications submit articles for review post-publication. He also noted concerns expressed by some interlocutors that violation of the new law would carry a high penalty, thus resulting in self-censorship by media professionals.

45. On 4 November 2011, the President formally approved amendments to the Political Party Registration Law, entailing the substitution of the clause requiring a commitment to "preserve" the Constitution with one requiring "respect"; the deletion of a clause prohibiting individuals convicted by a court of law from membership in a political party; and the inclusion of a clause allowing a political party to gain recognition by contesting at least three constituencies. Consequently, a number of political parties have re-registered, including the NLD and some ethnic parties. Some parties, such as the NLD, have decided to contest the by-elections for some 48 parliamentary seats. In January 2012, it was announced that Daw Aung San Suu Kyi would stand for election for a parliamentary seat.

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

46. In his inaugural speeches, the President made commitments in the area of economic, social and cultural rights, while his 10-point reform agenda includes the safeguarding of farmers' and labour rights, the creation of jobs, the overhauling of public health care and social security, raising education and health standards and the promotion of environmental conservation.

47. In addition to the above-mentioned commitments, the Special Rapporteur notes the adoption of the National Rural Development and Poverty Reduction Plan (2011 – 2015), which is intended to reduce the poverty rate from 26 to 16 per cent by 2015, and various economic reforms designed to lay the foundations for a market economy, promote growth and encourage foreign investment.

48. The Special Rapporteur noted previously that the failure to address systematic discrimination and inequities in the enjoyment of economic, social and cultural rights would undermine efforts to build a better future for the people of Myanmar. During his mission, many interlocutors underscored the extent of deprivation of these rights

throughout the country, but particularly in ethnic border areas. Concerns regarding the availability and accessibility of education and health care were specifically highlighted, as was the need for the teaching of ethnic minority languages in schools in minority areas.

49. The 2011 Human Development Report ranked Myanmar 149th out of 187 countries, down from 132nd in 2010. An analysis of the development situation in Myanmar prepared by the United Nations country team shows that poverty and food insecurity remain two of the most pressing challenges. A recent survey conducted by the United Nations Development Programme, in cooperation with the Ministry of Planning and Economic Development, the United Nations Children's Fund and the Swedish International Development Agency, found that Chin State remains the poorest, with 73.3 per cent of the people below the poverty line; Rakhine State, with a rate of 43.5 per cent, was second. The nationwide Integrated Household Living Conditions Assessment of 2010 indicated that Chin, Shan, Kachin, Kayah and Rakhine States suffered from a relatively high incidence of food poverty. The food security situation in Chin State is of particular concern owing to crop failures and a significant reduction in yield in 2011. The situation in the southern areas is deteriorating and available data indicate that malnutrition levels are above emergency thresholds.

50. There has been some recent progress in the area of health, as shown by, for example an increase in life expectancy and reductions in the infant and maternal mortality rates. The Government has also taken measures such as the adoption of the National Child Health Strategic Plan (2010 – 2014) and the National Reproductive Health Strategic Plan (2009 – 2013). Nonetheless, there are significant disparities between regions and groups in access to and quality of health services, particularly affecting ethnic minorities and communities in border areas. While the Special Rapporteur notes the Government's intention to increase spending in the health sector over the coming fiscal year, including increased health personnel numbers and medical supplies and improved disease prevention measures, the proposed increase would only amount to two per cent of the overall Government budget.

51. There has also been some progress in the area of education, including improvements in the initial enrolment rate in primary school and gender parity in enrolment in primary and secondary schools. The Special Rapporteur also notes that the Government is proposing to increase spending in education from the current two to four per cent of the overall budget. He was informed by the Deputy Minister for Education that the Government is making efforts to upgrade the quality of education, increase access (including in border areas) and improve the social status of teachers (including through increased salaries). Human rights education was introduced to secondary education in 2004. The teaching of ethnic minority languages would be encouraged, in particular as part of extra-curricular activities.

52. In its concluding observations on the third and fourth periodic reports submitted by Myanmar,<sup>2</sup> the Committee on the Rights of the Child expressed concerns relating to, *inter alia*, the allocation of only 0.9 per cent of GDP to education; the limited length of compulsory education (which ends at fifth grade); the low primary school enrolment, the high repetition and drop-out rates at a very early stage and the disparity in access to education among different states and divisions; the payment by families of indirect costs and the low salary of teachers; the shortage of teachers and schools, especially in rural areas and regions affected by armed conflict; and the absence of teaching in languages other than Myanmar. The Special Rapporteur encourages the Government to pay special attention to the implementation of these recommendations.

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<sup>2</sup> CRC/MMR/CO/3-4.

53. The Special Rapporteur continues to receive reports alleging violations of land and housing rights, particularly with regard to the impact of infrastructure projects; natural resource exploitation; land confiscation and land grabbing, including by the military; and the granting of economic concessions for development, energy or infrastructure projects, often without meaningful consultation of affected communities, any or adequate compensation and adequate environmental assessments. Violations of land and housing rights result in not only poverty, displacement and ruined livelihoods, but also the destruction of cultures and traditional knowledge. Revenues from these projects should also be recorded appropriately and be used to benefit the people of Myanmar for the realization of their economic, social and cultural rights.

54. While Myanmar is not party to the international human rights covenants, the right to adequate housing is recognized in the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

55. In this context, the Special Rapporteur reminds the Government of the right of victims to restitution, a principle of restorative justice providing every refugee and displaced person with the right to return to their former homes and lands, with repairs for any damage or the rebuilding of destroyed property. He notes that restitution rights are not limited to people with land titles, but also extend to renters and other legal occupiers of land. If return to the old home or land is not possible, displaced persons have a right to compensation for their loss and/or a new house and/or land. The Government should adopt relevant rules and policies in this regard, and ensure an independent and impartial process.

56. There have been a number of protests against various energy and infrastructure projects in recent months, as well as protests against land confiscation. Tensions that led to the current armed conflict in Kachin State appear to have been exacerbated by the Government's approval of the construction of several major hydroelectric projects on Kachin lands. Protests and campaigns against the Myitsone dam project, which had long raised a number of human rights, environmental and other concerns, resulted in the President's decision, in September 2011, to suspend construction in that it was contrary to the "will of the people". In October 2011, farmers staged a protest in Yangon against the confiscation of their land; similar protests were also reported in other parts of the country. Protests were also held against the construction of a coal power plant in Dawei (part of a larger development project that includes a deep-sea port and industrial estates), which was suspended in January 2012.

57. Given the wave of privatizations in 2011 and the expected increase in foreign investment, together with the new Government's plans to accelerate economic development, the Special Rapporteur fears an increase in land confiscations, development-induced displacement and other violations of economic, social and cultural rights. The private companies involved also have a responsibility not to be complicit in human rights abuses. In this regard, the Special Rapporteur notes the absence of a legislative framework regulating the prevention, protection against and reparation of the adverse impact of activities by private and State-owned companies, mainly in the extractive and large-scale energy-related sectors. Such a framework should be established as a matter of priority, in accordance with international standards on corporate social and environmental responsibility.

## **E. Civil society**

58. During his recent missions, the Special Rapporteur met with representatives of civil society organizations and discussed a range of human rights issues. Such organizations have played an active role in the promotion and protection of human rights, as well as in

helping or delivering key social services in the areas of education, health, social welfare and environmental protection. In the light of the important role played by independent civil society organizations in democratic societies, the Special Rapporteur encourages the Government to create a favourable environment for their development, in which their activities may be conducted without fear of reprisal and where the rights to freedom of association and freedom of opinion and expression are ensured.

#### **IV. Situation of ethnic minorities**

59. In previous reports, the Special Rapporteur highlighted his concerns with regard to the ongoing conflict and tensions in ethnic border areas, particularly in Kachin, Shan and Kayin States, which have engendered serious human rights violations, including attacks against civilian populations, extrajudicial killings, sexual violence, arbitrary arrest and detention, internal displacement, land confiscation, the recruitment of child soldiers, forced labour and portering. The Special Rapporteur also highlighted his concerns regarding the use of landmines by both the Government and non-State armed groups, and the consequent casualties caused throughout the country. He takes note of the statements made by the Chairperson of the national human rights commission that the national reconciliation process is essentially political; that investigations into conflict zones were not appropriate at the present time; and that, with the establishment of peace, “other problems, such as human rights violations and atrocities allegedly committed against ethnic groups, will also recede into the background”. The Special Rapporteur encourages the commission to take a more proactive role in investigating allegations of violations in conflict areas.

60. The Special Rapporteur continues to receive allegations of violations committed by both the military and non-State armed groups. In Kachin State, where armed clashes with elements of the Kachin Independence Army erupted in June 2011, the Special Rapporteur has continued to receive reports of attacks against civilian populations, extrajudicial killings, internal displacement, the use of human shields and forced labour, and the confiscation and destruction of property. He has also received reports of gang rapes by army soldiers, although the numbers provided by different sources vary. In the report of the Secretary-General on conflict-related sexual violence,<sup>3</sup> it was noted that as many as 32 women and girls throughout Kachin State were allegedly raped by the military between June and August 2011. According to the Government, there was one case in Kachin State in 2011 (and four cases of rape in Shan State), and punitive action was taken against the perpetrators.

61. The Special Rapporteur has drawn the Government’s attention to information he received on Sumlut Roi Ja, who was allegedly abducted and gang-raped by military personnel in Kachin State in October 2011. On 26 January 2012, it was reported that that Sumlut Roi Ja’s husband submitted a formal complaint to the Supreme Court asking for an investigation into his wife’s disappearance. A hearing was apparently scheduled for late February 2012. The Special Rapporteur hopes that a thorough investigation will be undertaken into the case and, if the above allegations prove to be correct, the accountability of any person responsible will be assured.

62. As a result of the conflict, the number of internally displaced persons in Kachin and in northern Shan State as at January 2012 was estimated at over 55,000. In September 2011, the Government invited the United Nations to carry out a needs assessment in Myitkina, Waingmaw, Bhamo, Mansi, Momauk and Shwego. Following discussions between the Government and the Kachin Independence Organization (KIO), a United Nations

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<sup>3</sup> A/66/657-S/2012/33.

humanitarian team undertook a mission to the Myanmar-China border in December 2011. This was the first delivery of United Nations relief supplies to displaced persons in areas previously not covered by United Nations assistance. The materials provided were, however, not sufficient to cover the basic needs of the population. The materials provided by the Government were not accepted by the KIO.

63. From 8 to 10 December 2011, members of the national human rights commission undertook a mission to Kachin State. In its statement of 13 December, the commission acknowledged the effective role of the Kachin State Government in providing humanitarian supplies and basic health facilities to more than 14,000 displaced persons, including victims of landmines. It urged that the peace negotiations be carried out to its full conclusion. It also noted the President's order of 10 December and urged the Kachin Independence Army to reciprocate in the same manner.

64. The Special Rapporteur emphasizes that the needs of those displaced and affected by the conflict must be addressed as a matter of priority. The United Nations and its humanitarian partners should have regular, independent and predictable access to all in need of humanitarian assistance, regardless of whether they are in areas controlled by the Government. The Government and the KIO must allow humanitarian relief to reach civilian populations; the delivery of humanitarian assistance under the United Nations umbrella cannot be made conditional in the context of ongoing negotiations between the Government and armed groups.

65. The Special Rapporteur reiterates his call for the Government and all armed groups to ensure the protection of civilians, in particular children and women, during armed conflict, in accordance with international humanitarian law. He also reiterates his view that the Government should sign and ratify immediately the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, and work with international organizations to develop a comprehensive plan to end the use of landmines and ensure their systematic removal, and the rehabilitation of victims.

66. The Special Rapporteur welcomes the several invitations made by the President in recent months for armed groups to engage in peace talks. Additionally, he welcomes the establishment by Parliament of the Committee for Eternal Stability and Peace, which aims to mediate between the Government and ethnic armed groups, and the establishment by the President of two peace negotiating teams composed of ministers, members of Parliament and military officers.

67. The Special Rapporteur was informed of a "roadmap" set out by the President comprising three steps: the conclusion of a ceasefire agreement; political negotiations and dialogue; and, eventually, discussion in Parliament where all agreements would be formalized and outstanding issues settled. Progress has been made on concluding initial agreements with a number of armed ethnic groups, such as the United Wa State Army and the National Democratic Alliance Army (Mongla Group), in September 2011; the Shan State Army-South, in November 2011; the Klo Htoo Baw, a breakaway group of the Democratic Karen Buddhist Army, in December 2011; the Chin National Front, the Shan State Army-North and the Karen National Union, in January 2012; and the New Mon State Party, in February 2012. He was also informed of continuing discussions with other groups, such as the Kayah Nationalities Progressive Party. Confidence was expressed that ceasefire agreements would be reached with all armed ethnic groups within several months.

68. The Special Rapporteur calls for accelerated efforts towards finding a durable political resolution to the ongoing conflict, which is essential for broader national reconciliation. He notes that the initial agreements reached with some armed ethnic groups have included such points as cooperation on socio-economic development, ensuring human

rights, halting forced labour, settling land rights issues and the opening of liaison offices. Additionally, he notes reports that the Government intends to issue all members and associates of armed ethnic groups that have reached peace agreements with National Registration Cards, as full citizens under the 1982 Myanmar Citizenship Act.

69. The Special Rapporteur intends to monitor closely how these political negotiations will proceed, in particular how they address such issues as the disarmament, rehabilitation and reintegration of former combatants; the verification and release of children recruited into armed groups; assistance and support for those affected by the conflict, including landmine victims; demining; and means of addressing the continuing allegations of violations committed by parties to the conflict. In all these areas, he encourages the Government to seek the assistance of relevant international organizations.

70. The Special Rapporteur believes that any durable political solution must address the root causes of the conflict. In this regard, he previously highlighted systematic and endemic discrimination faced by ethnic and religious minority groups. Such concerns included policies preventing the teaching of minority languages in schools, restrictions on the freedom of religion or belief, and economic deprivation. The Special Rapporteur continues to receive reports of discrimination and attacks against ethnic minority groups.

71. The Special Rapporteur remains concerned about the situation of the Rohingya community and notes the continuing denial of citizenship, restrictions on their freedom of movement, marriage restrictions and other discriminatory policies. He received information that the border security force, the Nasaka, has not issued marriage permissions since August 2011; 412 applications are reportedly pending. He also notes that tens of thousands of children remain unregistered, a concern also expressed by the Committee on the Rights of the Child.<sup>4</sup> In this respect, he welcomes the initiative undertaken by the Government to register some 6,000 to 7,000 such children across Northern Rakhine State.

72. In his statement made at the intergovernmental event marking the sixtieth anniversary of the Convention relating to the Status of Refugees and the fiftieth anniversary of the Convention on the Reduction of Statelessness, held in Geneva in December 2011, the Minister for Immigration and Population noted the possibility for holders of temporary identity certificates to apply for naturalized citizenship. The Special Rapporteur hopes that steps to address the legal status of the Rohingya community will be taken without delay.

## **V. Truth, justice and accountability**

73. The Special Rapporteur has previously highlighted the importance of establishing truth, justice and accountability measures for gross and systematic human rights violations, past and present.

74. The primary responsibility rests with the Government of Myanmar. Investigating and prosecuting those responsible for serious violations of international human rights law and international humanitarian law is not only an obligation; it would deter future violations and provide avenues of redress for victims. Accordingly, the Special Rapporteur previously recommended that the international community should consider establishing an international commission of inquiry into gross and systematic human rights violations that could amount to crimes against humanity and/or war crimes if the Government of Myanmar fails or is unable to assume this obligation. At the same time, he made clear that the international commission of inquiry is only one option for ensuring that justice is dispensed, accountability is established and impunity is averted.

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<sup>4</sup> CRC/C/MMR/CO/3-4, para.43.



75. During his mission, the Special Rapporteur made a careful assessment of whether the national human rights commission could play a role in establishing truth, justice and accountability measures. Considering the commission's lack of independence and its limited capacity, the Special Rapporteur deems it crucially important that the Government consult stakeholders, including victims of human rights violations, on how and when to establish truth, justice and accountability measures. He also believes that it is vitally important that Myanmar learn lessons from other countries that have experience in these processes. He also recommends that Myanmar consider engaging with the new Special Rapporteur on promotion of truth, justice, reparation and guarantees of non-recurrence with regard to serious crimes and gross violations of human rights in the future.

76. The Special Rapporteur carefully listened to many views regarding the importance of forgiveness and moving forward. He stresses, however, that moving forward or forgiveness cannot ignore or whitewash the past. He therefore believes that facing up to the country's recent history and acknowledging the violations that people have suffered will be necessary to ensure national reconciliation and to prevent future violations. The Government should therefore demonstrate its willingness and commitment to address the issue of truth, justice and accountability and take the necessary measures for the investigation of human rights violations, conducted in an independent, impartial and credible manner.

## **VI. International cooperation**

77. The Special Adviser to the Secretary-General for Myanmar has continued the Secretary-General's good offices dialogue through his visits from 31 October to 4 November 2011 and from 12 to 17 February 2012. The Special Rapporteur remains in close contact with the Special Adviser.

78. The Special Rapporteur welcomes the increased engagement of Myanmar with international human rights mechanisms. The Government participated actively in the universal periodic review process and accepted some 74 recommendations. Myanmar acceded to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and the Convention on the Rights of Persons with Disabilities. The Committee on the Rights of the Child considered the State's third and fourth periodic report on 19 January.

79. A conference on the theme "Development policy options with special reference to education and health in Myanmar" was held from 13 to 15 February 2012. Organized jointly by the Government and the United Nations country team, in collaboration with the Myanmar Development Resource Institute and with the support of the European Union, the conference produced specific policy suggestions for accelerating growth, promoting inclusive human development and improving health and education.

80. ILO continues to work with the Government on issues of forced labour, including underage recruitment into the military and forced or bonded child labour. This is done in context of the supplementary understanding complaints mechanism agreed between the Government and ILO under which complaints continue to be received. Agreement in principle was recently reached on the development of a full joint strategy for the elimination of all forms of forced labour by 2015.

81. The Special Rapporteur was informed that the plan of action to prevent the underage recruitment of children into the armed forces was almost ready for signing and hopes this can be concluded without delay and implemented with international support. During his meeting with the Minister for Defence, the Special Rapporteur pressed for access by the task force to children associated with non-State armed groups and called for the removal of

restrictions in access to recruitment centres, military camps and training centres. The issue of underage recruitment was also addressed by the Committee on the Rights of the Child.<sup>5</sup>

82. International financial institutions are re-engaging with Myanmar. In its statement at the conclusion of an article IV mission to Myanmar (9 to 25 January 2012), the International Monetary Fund indicated that the new Government was facing a “historic opportunity to jump-start the development process and lift living standards”. The Government’s plans to reorient spending to health and education were welcomed. The World Bank is working with the Government to undertake analysis of its economic infrastructure and with civil society organizations to support their efforts to encourage social accountability, transparency and open communications in Myanmar. It will also explore ways to support the peace process in border areas through technical assistance.

83. OHCHR conducted a training workshop for Government officials and members of the national human rights Commission in Yangon on 14 and 15 November 2011 on international human rights law and mechanisms, including follow-up to universal periodic review recommendations. OHCHR has translated some human rights instruments, which will serve as an important advocacy tool for stakeholders in Myanmar on international human rights standards. The Special Rapporteur welcomes the cooperation and engagement with OHCHR on human rights issues, and encourages Myanmar to continue to seek technical assistance and cooperation from the international community on international human rights standards and mechanisms.

## VII. Conclusions

84. **The steps taken by the Government have had a positive impact on the human rights situation in Myanmar. Nonetheless, many serious human rights issues encompassing the broad range of civil, political, economic, social and cultural rights remain and should be addressed. There is also a risk of backtracking on the progress achieved to date.**

85. **At this crucial stage in the country’s history, sustained action is necessary for further change. The Government should intensify efforts to implement its commitments and fulfil its international human rights obligations. In this regard, the Government should cooperate with and seek assistance from the international community, in particular the United Nations, in order to meet the challenges and opportunities before it. Prior to its assumption of the Chairpersonship of the Association of Southeast Asian Nations in 2014, the Special Rapporteur encourages Myanmar to demonstrate more concrete progress in improving its human rights situation.**

86. **The international community must remain engaged, closely follow developments, and support and assist the Government during this important time. The Special Rapporteur reaffirms his willingness to work constructively and cooperatively with Myanmar to improve the human rights situation of its people. He hopes to return to Myanmar before he presents his next report to the General Assembly in 2012.**

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<sup>5</sup> Ibid., para. 81.

## VIII. Recommendations

87. The Special Rapporteur recalls his four core human rights elements related to the review of legislation, prisoners of conscience, the armed forces and the judiciary.<sup>6</sup>

88. He urges the Government to release all remaining prisoners of conscience immediately and unconditionally. A comprehensive and thorough investigation is needed to clarify records and determine accurate numbers. The Government should initiate broad and public consultations with all relevant stakeholders, such as political and civil society organizations, as well as with released prisoners, to collect and bring together information on remaining prisoners of conscience. The Government should consider this issue urgently, including with the assistance of the international community as necessary.

89. The Special Rapporteur urges the Government to take all necessary measures to ensure respect for the rights and freedoms of those released. Any restrictions on their exercise and full enjoyment of human rights should be removed.

90. The Special Rapporteur also recommends that the Government:

(a) Take immediate measures to improve the conditions of detention and the treatment of prisoners, in compliance with international standards; address allegations of torture and ill-treatment and the use of prisoners as porters or “human shields” for the military; and halt and remedy the transfer of prisoners to prisons in remote areas where they are unable to receive family visits or packages of essential medicine and supplemental food;

(b) Consult with relevant international organizations to ensure that any revision to the Prisons Act complies with international standards;

(c) Allow ICRC full access to prisons and to resume visits to prisoners according to its global standard procedures;

(d) Accelerate efforts for the review and reform of legislation and legal provisions that limit fundamental freedoms and contravene international standards; establish clear, time-bound target dates for the conclusion of the review; identify priority legislation for urgent review, including those provisions previously identified; and consider establishing a law reform commission to facilitate the accelerated review of existing laws and bring them into full compliance with relevant international human rights standards;

(e) Ensure adequate consultation with relevant stakeholders, including civil society, on amendments to existing legislation or on new draft legislation; and seek assistance from relevant international organizations, including United Nations entities, in the review and reform of legislation;

(f) Ensure the effective implementation of newly promulgated and reformed laws, including through the training and capacity-building of implementing institutions, members of the legal profession, law enforcement officers and the judiciary;

(g) Ensure respect for the freedoms of opinion and expression, assembly and association, and that the implementation of the new Labour Organization Law and Peaceful Demonstration and Gathering Law is consistent with international standards; and consult with relevant stakeholders, such as civil society and media

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<sup>6</sup> See A/63/341, A/64/318 and A/HRC/10/19.

professionals, on the new draft press and publications law to ensure that it is consistent with the right to freedom of opinion and expression, and international standards;

(h) Ensure budget measures and other policies enhance the realization of basic economic, social and cultural rights, with assistance from the international community. Special attention should be paid to the implementation of the Special Rapporteur's previous recommendations on the right to education,<sup>7</sup> the promotion and protection of land and housing rights, and the establishment of a regulatory framework for the activities of private and State-owned companies, in accordance with international standards on corporate social and environmental responsibility;

(i) Ratify core human rights treaties, in particular the International Covenant on Civil and Political Rights and the Optional Protocols thereto, as well as the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol thereto;

(j) Engage with and seek assistance from OHCHR and other international organizations for follow-up to and implementation of accepted universal periodic review recommendations, as well as those of the treaty bodies and special procedures;

(k) Enhance partnership with civil society organizations and ensure the establishment of a favourable environment for the development of independent civil society organizations.

91. The Special Rapporteur calls on the authorities and all armed groups to ensure the protection of civilians in conflict-affected areas and respect for international human rights law and international humanitarian law. The needs of those displaced and affected by the conflict must be addressed as a priority. The Government should ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction.

92. The Special Rapporteur reiterates his view that the Government should develop a comprehensive plan to officially engage ethnic minority groups in serious dialogue and to resolve long-standing and deep-rooted concerns.

93. The Special Rapporteur believes that justice and accountability measures, as well as measures to ensure access to the truth, are fundamental for national reconciliation and democratic transition. Investigations of gross and systematic human rights violations should be conducted in an independent, impartial and credible manner, without delay. Stakeholders, including victims of human rights violations, should be consulted on how and when to establish truth, justice and accountability measures. Lessons learned from countries that have experience in these processes should be considered. Myanmar should consider engaging with the new Special Rapporteur on promotion of truth, justice, reparation and guarantees of non-recurrence with regard to serious crimes and gross violations of human rights in the future.

94. The Special Rapporteur also recommends that:

(a) Greater attention be paid to judicial reform and the capacity-building and training of judges and lawyers to address continuing concerns regarding the independence, impartiality and effectiveness of the judiciary; and technical assistance

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<sup>7</sup> A/HRC/16/59, para. 105.

be sought from the international community, particularly from OHCHR and other organizations;

(b) The Union Election Commission exercise its powers in an independent and impartial manner to ensure that ballots are held in a more inclusive, participatory and transparent and, thus, credible manner; problems such as the use of advance votes, the procedures and costs for filing a complaint, allegations of campaign irregularities and restrictions on the ability of political parties to conduct campaign activities be addressed; and the Government seek cooperation and training assistance from the international community as relevant and necessary in this regard;

(c) The Government take the measures necessary to codify the establishment of the national human rights commission either through a constitutional provision or a law of Parliament with a view to bringing it into full compliance with the Paris Principles; and the commission and its staff seek training and technical assistance from OHCHR and the international community on the functioning of national institutions and other important substantive areas as soon as possible;

(d) The national human rights commission be equipped with the resources and capacity necessary to ensure its independence and effectiveness.

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