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## **Situation of human rights in Myanmar**

### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, in accordance with Assembly resolution [67/233](#).



## **Report of the Special Rapporteur on the situation of human rights in Myanmar**

### *Summary*

In the present report, the Special Rapporteur describes how the reforms under way in Myanmar continue to create the prospect of significant improvements in the human rights situation. Important developments during the reporting period include the continuing release of prisoners of conscience; improving respect of the right to freedom of opinion and expression; and progress towards agreement on a national ceasefire. The Special Rapporteur highlights, however, the dangers of glossing over shortcomings in the area of human rights or presuming that these shortcomings will inevitably be addressed through the momentum of current reforms. He warns that, if these shortcomings are not addressed now, they will become increasingly entrenched in areas such as accountability for human rights violations; the rights of ethnic and religious minorities; the rights to peaceful assembly and association; the representation of women in decision-making positions; land rights; and human rights and development. Furthermore, they will eventually undermine the reform process itself if they are not addressed in accordance with international human rights standards. He concludes that the challenge, which has been present since the outset of the reform process, is to achieve a transition from the military mindset that prevails within the Government to a democratic mindset that upholds human rights.

## 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 22/14. The present report, submitted pursuant to Council resolution 22/14 and General Assembly resolution 67/233, covers human rights developments in Myanmar since the previous report of the Special Rapporteur to the Council in March 2013 (A/HRC/22/58 and Add.1) and to the Assembly in October 2012 (A/67/383). The present report to the Assembly is the last by the current mandate holder before the end of his six-year term in May 2014.

2. From 11 to 21 August 2013, the Special Rapporteur conducted his eighth mission to Myanmar. He expresses his thanks to the Government for its cooperation during the visit.<sup>1</sup> He visited Thailand from 21 to 23 August 2013 and also expresses his thanks to the Government for its cooperation.

3. He also continued to engage with the Government of Myanmar through its Permanent Representatives in Geneva and New York. He sent eight joint communications between 1 December 2012 and 31 May 2013, and by the end of July 2013 had received six replies (see A/HRC/23/51 and A/HRC/24/21).<sup>2</sup>

## II. Human rights situation

### A. Prisoners of conscience

4. Since May 2011, there have been 11 presidential amnesties resulting in the release of 951 prisoners of conscience. The most recent amnesty, announced by the President on 23 July 2013, resulted in the release of 73 such prisoners.

5. The Special Rapporteur welcomes these releases, while noting that article 401 (1), (3) and (4) of the Code of Criminal Procedure allows the application of penalties, such as the imposition of the remaining sentence, if a condition of release is judged by the President to have been broken.<sup>3</sup> The Special Rapporteur reiterates that all prisoners of conscience must be released without any conditions. He also urges the Government to remove administrative obstacles that hinder former prisoners' freedom to relocate to other states and regions in Myanmar and restrict them in running for public office and with regard to their acquisition of passports and professional work licences. Furthermore, it is the duty of the State to provide adequate medical and psychological services to those released, in particular those who suffered ill-treatment or prolonged periods of solitary confinement.

<sup>1</sup> For the list of meetings held and locations visited, see the statement to the press issued by the Special Rapporteur at the end of his mission, available from [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13649&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13649&LangID=E).

<sup>2</sup> Links to the communications referred to herein are contained in the electronic versions of the communications report of special procedures mandate holders submitted to the Human Rights Council at its twenty-third (A/HRC/23/51) or twenty-fourth (A/HRC/24/21) session.

<sup>3</sup> On the rearrest and detention of a former prisoner of conscience, Ashin Gambira, see the joint urgent appeal of special procedures mandate holders dated 13 December 2012, available from [https://spdb.ohchr.org/hrdb/23rd/public\\_-\\_UA\\_Myanmar\\_13.12.12\\_\(12.2012\).pdf](https://spdb.ohchr.org/hrdb/23rd/public_-_UA_Myanmar_13.12.12_(12.2012).pdf).

6. In Yangon, the Special Rapporteur met members of the committee set up by the Government in February 2013 to identify the remaining prisoners of conscience. He encourages the committee to come to an agreement on the criteria for identifying prisoners of conscience in order to make its work more transparent and accountable.

7. He notes the difficulty in identifying the remaining prisoners of conscience, in view of the continuing arrests and convictions (which he believes are politically motivated), including of individuals involved in land rights protests and human rights defenders in Rakhine State. He recommends that the mandate of the committee be expanded to enable it to make recommendations to prevent arrests of prisoners of conscience and to monitor the treatment of those released.

8. During his latest visit, the Special Rapporteur visited Insein prison and met five prisoners of conscience: Ke E, Zaw Min Than, Saw War Lay, Min Min Tun and Htauk Swan Mon. In Rakhine State, he visited Sittwe prison and met Tun Aung and Kyaw Hla Aung, who have been arbitrarily detained since June 2012 and July 2013, respectively. He also visited Buthidaung prison and met the four international non-governmental organization workers who have been arbitrarily detained since June and July 2012. The Special Rapporteur believes that these cases, in particular the six cases in Rakhine State, are a serious blot on the country's record of reform and must be included in the President's commitment to releasing all prisoners of conscience by the end of 2013.

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

9. During his visit, the Special Rapporteur visited four prisons: Insein, Sittwe, Buthidaung and Lashio. He interviewed a number of inmates and had unrestricted access to the prison grounds. While aware of the limitations of such visits, given that they are announced to the Government well in advance, he nevertheless noted an improvement in the conditions of detention compared with his first prison visits in 2008 and hopes that these improvements will continue, in particular with regard to access to adequate food and health care.

10. In Rakhine State, following violence in June 2012, Muslim men and boys were allegedly arbitrarily detained in Buthidaung prison. They were subjected to three months of systematic torture and ill-treatment by prison guards and up to 20 prison inmates, who appear to have been brought into the prison for the specific purpose of administering beatings to Muslim prisoners. The Special Rapporteur urges the Government to investigate these allegations and ensure that any perpetrators are held to account.

11. The Special Rapporteur believes that the practice of systematic torture and ill-treatment of detainees in Buthidaung prison has now ceased, although inmates continue to experience arbitrary acts of ill-treatment, including beatings. He is concerned at allegations that he received that a large number of prisoners in Buthidaung prison, including children, older persons and the sick, were transferred from the prison to other locations in Maungdaw township just before his visit. He therefore reiterates the importance of independent monitoring mechanisms that have regular access to all places of detention, including through unannounced visits, in addition to a mandate to make recommendations to the prison authorities on improving the treatment and conditions of persons in detention.

12. The Special Rapporteur commends the Government's continuing cooperation with the International Committee of the Red Cross (ICRC), following the resumption of prison visits in January 2013. He again recommends, as a further step in combating the practice of torture in prisons in Myanmar, that the Government accord priority to ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto, a recommendation that was also made in the course of the universal periodic review of Myanmar (A/HRC/17/9, para. 104.6). He stresses that these treaties can be ratified before the necessary changes to national law and that the process of ratification can in itself act as a catalyst for implementing the necessary reforms at the national level.

13. The Special Rapporteur supports the adoption of a new prisons law as one of the measures needed to tackle the use of torture to extract confessions, to improve access to health care and to prevent prisoners being transferred to remote prisons far from their family members. While he noted in his report to the Human Rights Council that the draft prisons law had been scheduled to be considered by the parliament soon (A/HRC/22/58, para. 14), he was informed during his latest visit that it was currently being vetted by the Office of the Attorney General and would be sent back to the Prisons Department soon. He encourages the Government to speed up this process so that the parliament can consider the draft law. He is encouraged by the work of the Prison Department on the draft law with the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the United Nations Office on Drugs and Crime and encourages continued cooperation in that regard with a view to the eventual implementation of the law.

### **C. Freedom of opinion and expression**

14. The opening up of space for people to express their views and opinions remains one of the most positive developments in the continuing reform process. The Special Rapporteur highlights that upholding the right to freedom of opinion and expression is fundamental to ensuring that Myanmar successfully charts the transition to democracy. Significant challenges remain, however, and there are concerns that progress is being reversed in some areas.

15. On 1 April 2013, privately owned daily newspapers became available in Myanmar for the first time in 50 years. International news agencies have also opened bureaux in the country. The Special Rapporteur hopes that the parliament will soon adopt the media law being drafted by the Interim Press Council, which he sees as a significant piece of legislation to help to protect the right to freedom of opinion and expression of journalists and editors.

16. The Special Rapporteur is concerned about the printing and publishing enterprise bill, drafted by the Ministry of Information, which the Pyithu Hluttaw (lower house of the parliament) passed on 4 July 2013. The bill includes vague, broadly worded bans on publications that, for example, "jeopardize the tranquillity of community". Moreover, it would provide for the position of a registration officer within the Ministry with the power to grant or revoke publishing licences. This would coincide with the current requirement that publishers submit all publications to the Copyright and Registration Division for review, following publication. The 12-member Division is also situated within the Ministry of Information and

comprises representatives of the Ministry of Home Affairs, the Ministry of Military Security Affairs, the Bureau of Special Investigation and the national police. The Special Rapporteur highlights that State-controlled registration procedures, in particular in countries where the rule of law is weak, have become a means of curbing media independence and pursuing censorship. He therefore calls for a change of attitude and the replacement of registration procedures with notification procedures with a view to creating an enabling rather than a restrictive environment for publishing by, for example, ensuring that no more than one newspaper uses the same name. The outlawing of printed material such as child pornography would be covered by existing provisions of the Penal Code.

17. He is also concerned that important legislative reforms have not yet been carried out to consolidate the freer environment for the expression of views and opinions over the Internet. He highlights that laws such as the Electronic Transactions Act remain in place; that law provides for up to 15 years' imprisonment for what it terms "acts" using "electronic transactions technology" deemed detrimental to the security of the State, the maintenance of law and order, community peace and tranquillity, national solidarity, the national economy or the national culture. These broad provisions provide the Government with the potential means to arbitrarily restrict the right to freedom of opinion and expression, which also contributes to a climate of self-censorship. He therefore hopes that the recent decision by the Pyithu Hluttaw to debate this law will lead to reforms that will bring it into line with international human rights standards.

18. The Special Rapporteur recognizes that hate speech, including the advocacy of national, racial, religious or other hatred, is an issue of concern following the intercommunal violence in Rakhine State, Meiktila, Lashio and elsewhere over the past year. He recommends that the Government address the incitement of racial and religious hatred, including that disseminated through the 969 Movement, by investigating the nature and extent of the harm caused to targeted persons and groups and holding the perpetrators to account. He emphasizes that measures to combat hate speech should be pursued in accordance with international human rights standards, including general recommendation No. 35 (2013), on combating racist hate speech, of the Committee on the Elimination of Racial Discrimination.

19. He highlights the duty of journalists to develop a culture of ethical and responsible journalism. During his latest mission, his own activities and messages were intentionally distorted and misrepresented in some sections of the media, including in relation to his meetings with religious leaders, which was particularly counterproductive given the current tensions between some communities and the negative religious and ethnic stereotypes being propagated. At the same time, he was also encouraged by articles in newspapers such as the *Myanmar Times* which, in the context of his visit, discussed the importance of responsible journalism.<sup>4</sup> In this respect, the Special Rapporteur highlights the various aspects of freedom of opinion or expression: while people have the right to impart information and ideas, the public should also have access to media outlets that provide truthful and accurate reports so that they are able to develop well-informed opinions and obtain information needed to hold public officials to account. He also encourages the

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<sup>4</sup> See [www.mmmtimes.com/index.php/in-depth/7898-media-should-focus-on-the-real-issues-in-rakhine-state.html](http://www.mmmtimes.com/index.php/in-depth/7898-media-should-focus-on-the-real-issues-in-rakhine-state.html).

Government to play a proactive role in the development of responsible and ethical journalism and social media usage.

#### **D. Freedoms of peaceful assembly and association**

20. Myanmar has made significant progress with regard to the rights to freedom of peaceful assembly and association. For example, at the time of writing, 650 trade unions had been registered in the country. While not making light of this progress, the Special Rapporteur is concerned about continuing arrests and prosecutions of people exercising their rights to peaceful assembly and association, including in relation to land confiscation and environmental degradation. He understands that, in June 2013 alone, criminal charges were levelled against 149 farmers and activists.

21. A number of these cases have occurred under the Peaceful Assembly and Peaceful Procession Act, which the Special Rapporteur highlighted in his previous report to the Human Rights Council (A/HRC/22/58) as falling below international human rights standards.<sup>5</sup> On 6 June 2013, the joint secretary of the Save Letpadaung Mountain Committee, Myint Aung, was sentenced to one year's imprisonment by a court in Monywa under article 18 of the Act for organizing a protest without permission. On 12 June, Aye Thein, Win Swe Myint and Sein Aung were sentenced under article 18 of the Act and article 505 (b) of the Penal Code to imprisonment of one year and three months for organizing a peaceful protest against the relocation of Kinetan market in Mandalay on 7 August 2012.

22. Arrests and sentencing are also occurring under other laws. On 1 June 2013, a human rights activist from the Yangon People's Support Network, Aung Soe, was sentenced by Shwebo township court under article 188 of the Penal Code to 18 months' imprisonment for supporting farmers peacefully protesting against land confiscation in connection with the operations of the Letpadaung copper mine in Salingyi township, Sagaing region. On 8 July, his sentence was extended by the court to 11 1/2 years under articles 505 (b), 295, 295 (a) and 333 of the Penal Code. Two farmers who participated in the same protest, Ko Soe Thu and Maung San, were sentenced under article 188 of the Penal Code to six months' imprisonment for having ploughed their confiscated fields. On 8 July, the court extended their sentences to 2 1/2 years under articles 505 (b) and 333 of the Penal Code.<sup>6</sup>

23. The Special Rapporteur reiterates that no one should be imprisoned for participating in a peaceful assembly, procession or march and urges a review of the above-mentioned laws and their application. He reiterates that the Peaceful Assembly and Peaceful Procession Act should be amended by the parliament to bring it into line with international standards. Rather than being required to obtain permission for an assembly, organizers should instead be required, at most, to notify the authorities of plans to organize an assembly so that the State is able to facilitate the exercise of the right to freedom of peaceful assembly and ensure the protection

<sup>5</sup> See also the joint allegation letter of special procedures mandate holders dated 18 March 2013 on the decree implementing the Act, available from [https://spdb.ohchr.org/hrdb/24th/public\\_-\\_AL\\_Myanmar\\_18.03.13\\_\(1.2013\).pdf](https://spdb.ohchr.org/hrdb/24th/public_-_AL_Myanmar_18.03.13_(1.2013).pdf).

<sup>6</sup> See the joint urgent appeal of special procedures mandate holders dated 2 May 2013, available from [https://spdb.ohchr.org/hrdb/24th/public\\_-\\_UA\\_Myanmar\\_02.05.13\\_\(6.2013\).pdf](https://spdb.ohchr.org/hrdb/24th/public_-_UA_Myanmar_02.05.13_(6.2013).pdf), and the Government's reply dated 1 July, available from [https://spdb.ohchr.org/hrdb/24th/Myanmar\\_01.07.13\\_\(6.2013\)\\_Pro.pdf/](https://spdb.ohchr.org/hrdb/24th/Myanmar_01.07.13_(6.2013)_Pro.pdf/).

of participants, public order, public safety and the rights and freedoms of others. Failure to notify the authorities should not be a criminal offence (A/HRC/20/27, paras. 28, 29 and 90).

24. With regard to the right to freedom of association, the Special Rapporteur is concerned about a proposed draft association law that in its current form falls below international human rights standards. The draft law, if passed, would require non-governmental organizations to obtain official registration from a central committee, chaired by the Minister for Home Affairs, and provides for prison terms of up to three years for persons involved in groups that are not registered. The decisions of the committee are not subject to judicial review. The draft law also provides the committee with the power to cancel the registration of an organization using vague, broadly defined criteria, and requires organizations to renew their registration every five years.

25. The Special Rapporteur is of the opinion that a prior authorization procedure that requires the approval of the authorities to establish an association as a legal entity does not comply with international human rights standards. The Government should instead consider a notification procedure, whereby an association would be automatically granted legal personality as soon as the authorities were notified by the founders that it had been created. Furthermore, individuals involved in unregistered associations should be free to carry out their activities, including the right to hold and participate in peaceful assemblies, and should not be imprisoned or subject to other criminal sanctions for such activities (*ibid.*, paras. 56, 58, 63 and 96).

26. The Special Rapporteur is concerned about allegations of excessive use of force by police officers in attempting to manage crowds of protesters. On 4 July 2013, police allegedly fired live ammunition into a crowd of Rohingyas protesting in Pa Rein village, Rakhine State, reportedly causing the death of three women and injuring five others. The people were reportedly protesting against the construction of new temporary housing.<sup>7</sup> In August 2013, live ammunition was reportedly used to disperse a crowd of Muslims in Sittwe, killing two and injuring several others.<sup>8</sup> While noting the Government's response that the crowds in those incidents were violent and hostile, the Special Rapporteur refers to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, paragraph 9 of which imposes strict limits on the use of lethal force. Furthermore, law enforcement officials should be held accountable by an independent oversight body for the excessive use of force.

## **E. Human rights concerns in the context of development**

27. During his visit, the Special Rapporteur travelled to Chin State for the first time. He noted the level of underdevelopment in the state, the poorest in Myanmar, including inadequate roads, intermittent electricity supply and uneven access to

<sup>7</sup> See press release, 11 June 2013, "Fatal shooting of Rohingya women the latest product of impunity", available from [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13440&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13440&LangID=E).

<sup>8</sup> See also the joint urgent appeal of special procedures mandate holders dated 3 April 2013, available from [https://spdb.ohchr.org/hrdb/24th/public\\_-\\_UA\\_Myanmar\\_03.04.13\\_\(2.2013\).pdf](https://spdb.ohchr.org/hrdb/24th/public_-_UA_Myanmar_03.04.13_(2.2013).pdf), and the Government's reply dated 24 May, available from [https://spdb.ohchr.org/hrdb/24th/Myanmar\\_24.05.13\\_\(2.2013\)\\_Pro.pdf](https://spdb.ohchr.org/hrdb/24th/Myanmar_24.05.13_(2.2013)_Pro.pdf).



drinking water. He is aware that one of the key drivers of ethnic conflict in Myanmar has been the inequitable distribution of resources between the centre of the country and the resource-rich periphery. He emphasizes that the process of development should be embedded at the local level and be conducted in a participatory, transparent, accountable, equitable and non-discriminatory manner in order to ensure that it leads to improvements in the lives of the people.

28. He is encouraged that the Government will begin in 2013 the formal process of joining the Extractive Industries Transparency Initiative, which will require companies working in the oil, gas and mineral sectors to declare any payments to the Government and require the Government to declare its revenue from extractive industries.

29. The Special Rapporteur is concerned that the rights of land users in Myanmar are not secure. Article 37 (a) of the Constitution provides that the State is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere. Article 29 of the Farmland Law, approved by the parliament on 30 March 2012, allows the State to confiscate any land for a project in the national interest. Furthermore, the Vacant, Fallow and Virgin Land Law enables the Government to reallocate villagers' farms and forest lands to domestic and foreign investors. This legal framework, combined with the fact that the vast majority of land users have no property titles to the land that they occupy and cultivate, leaves people vulnerable to forced evictions and loss of livelihood, with limited access to effective legal remedies. Particularly vulnerable groups include farmers, internally displaced persons and returning asylum seekers. Community-managed resources, such as village forests, waterways and grazing lands, can also be confiscated under the law.

30. In an attempt to protect their rights, people have resorted to public protests, which have led to arbitrary arrests and excessive use of force by the police. The Special Rapporteur underlines that the way to deal with these protests is not to arrest and prosecute the protesters, but to listen to their concerns and grievances and develop a system that protects their human rights.

31. The Special Rapporteur encourages the Government to establish a system of individual titling and tenure rights for smallholders to protect them against land appropriation. Furthermore, a collective or communal tenure system for land, fisheries and forests should be put in place to protect the access of local communities to common goods and to ensure that the land can be converted to new uses only with their free, prior and informed consent.

32. He recommends that clauses that protect and promote the land rights of existing, displaced and returning ethnic populations be incorporated into ceasefire and peace agreements with ethnic armed groups, and that they include the restitution and recognition of land titles and tenure rights of villagers. There also needs to be greater transparency with regard to business arrangements with members of armed opposition groups that are a part of ceasefire negotiations and which affect, among others, land rights.

33. The Special Rapporteur highlights the responsibility of all investors and businesses to abide by the Guiding Principles on Business and Human Rights (A/HRC/17/31, annex) endorsed by the Human Rights Council in its resolution 17/4, including by carrying out meaningful consultations on all investment and

development projects with potentially affected groups. The Government also needs to ensure that investors and businesses carry out human rights impact assessments before the start of projects, bearing in mind the guiding principles on human rights impact assessments of trade and investment agreements (see [A/HRC/19/59/Add.5](#)).

## **F. Situation of ethnic and other minority groups**

34. Ceasefire agreements have now been signed between the Government and 13 armed ethnic groups, a major achievement. The Union Peacemaking Central Committee and the Myanmar Peace Centre, headed by the Minister in the President's Office, Aung Min, continue to lead these negotiations. The Special Rapporteur notes that sporadic fighting continues in areas in which the Ta'ang Army and the Shan State Army-North operate.

35. In his meeting with Aung Min, the Special Rapporteur welcomed the efforts of the Government to sign a national ceasefire accord by the end of October 2013 that would permit armed groups that had not yet signed a ceasefire agreement to join later. He also welcomed the commitment to proceed with political dialogues with the armed ethnic groups following the signing of the national accord.

36. The Special Rapporteur urges the Government and ethnic armed groups to ensure that political dialogue to address underlying grievances is transparent and participatory. During his visits to Chin State, Kachin State and Shan State, he was struck by the general lack of confidence in the sustainability of the ceasefire agreements and the prospect that subsequent political agreements would address their concerns and meet their aspirations. He notes that, to this point, ceasefire negotiations have involved only men at the highest levels of the decision-making apparatus on both sides, and calls for greater involvement by those at the grass-roots level, in particular women, as negotiations proceed. Furthermore, greater efforts need to be made to involve displaced populations inside and outside the country.

37. The Special Rapporteur underlines that greater attention needs to be paid to the implementation of ceasefire agreements, including with the support of the United Nations and the Special Rapporteur; this should include monitoring the human rights and humanitarian situation in ethnic border areas.

38. During the Special Rapporteur's visit to Myitkyina, in Kachin State, he met state officials and visited members of the Kachin Independence Organization at their technical liaison office. He welcomes the seven-point agreement that was signed during peace talks held in May 2013 in Myitkyina, which were attended by the Special Adviser to the Secretary-General on Myanmar, a representative of the Government of China and members of various ethnic groups. The agreement included points on troop repositioning, a monitoring and verification mechanism and the commencement of a dialogue on political issues.

39. The Special Rapporteur remains concerned about the continuing lack of access by international humanitarian agencies to the more than 50,000 internally displaced persons in areas outside government control in Kachin State, the inclusion in the seven-point agreement of a commitment to provide relief for such persons notwithstanding. He has particular concerns regarding the access of people far from Laiza to adequate food, water and sanitation, health care and education. United Nations humanitarian agencies have been provided with access to areas outside

government control only once (between July 2012 and July 2013). During his visit, the Special Rapporteur sought to visit Laiza to assess the human rights situation, which is particularly troubling given the allegations of serious and systematic human rights violations in the context of the armed conflict. The experience of the Special Rapporteur, who spent four hours in Myitkyina attempting to negotiate access to Laiza, appears to mirror the experience of United Nations humanitarian agencies endeavouring to gain access to areas outside government control in Kachin State. Neither the state nor the central government authorities explicitly denied access to the Special Rapporteur, but no one appeared able to take the decision to actually grant permission, which in effect prevented him from visiting Laiza. He urges the Government to clarify and simplify the administrative procedures, which currently have the effect of denying humanitarian agencies access to areas outside government control in Kachin State.<sup>9</sup>

40. The Special Rapporteur notes that the current environment does not provide the conditions or safeguards needed for organized returns of internally displaced persons and refugees, although plans for such returns should be drawn up. He highlights that any returns must be voluntary and be conducted in safety and with dignity. He also underlines the importance of the Office of the United Nations High Commissioner for Refugees and other groups having access to returnee areas to monitor returns.

41. While noting the recent establishment of the Myanmar Mine Action Centre under the Myanmar Peace Centre, the Special Rapporteur is concerned that no activities relating to mine survey and clearance, marking or fencing are being undertaken.

42. The Special Rapporteur welcomes the continuing implementation of the joint action plan to end the recruitment and use of child soldiers, signed by the Government and the United Nations in June 2012. On 7 August 2013, just before his visit, 68 children and young people were released from the Myanmar Armed Forces. That followed earlier releases of 42 children and young people in September 2012, 24 in February 2013 and 42 in July 2013. He encourages the Government to accelerate the identification and release of all children in the national armed forces and to ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict in order to further bolster these positive steps. Furthermore, he urges that similar joint action plans be drawn up with non-State armed groups.

43. In Mandalay, the Special Rapporteur met a group of transgender and transsexual women who had allegedly been sexually and physically abused by police after being detained on 6 and 7 July 2013. He urges the Government to investigate allegations of human rights violations against the lesbian, gay, bisexual and transgender community and to hold any perpetrators to account, in addition to recommending that the Myanmar National Human Rights Commission take up this particular case. Furthermore, he urges the parliament to amend article 377 of the Penal Code, which targets members of the lesbian, gay, bisexual and transgender community and is not in line with international human rights standards.

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<sup>9</sup> The Special Rapporteur was encouraged to note that, on 7 September 2013, just before the finalization of the present report, a humanitarian convoy was able to deliver aid to internally displaced persons living in the Woi Chyai camp in Laiza town, and hopes that this is the beginning of improved access.

44. During his latest visit, the Special Rapporteur went to Chin State to look into allegations of discrimination against Christian communities. He welcomed the open and frank discussion that he had with state government officials and township elders. He visited Baptist churches in Mindat and Kanpalet and met clergy and members of the congregations. While the Special Rapporteur appreciates that people of different faiths and beliefs generally live peacefully and harmoniously together in Chin State, he is nevertheless concerned about a degree of institutionalized discrimination against Christians in Chin State in state government structures and administrative procedures. This includes discrimination in access to jobs, especially senior positions, within the civil service. Only 14 per cent of department head positions and 25 per cent of township administrative officer positions are held by Christians, notwithstanding the fact that 87 per cent of people in Chin State are Christian (with 11 per cent Buddhist and 2 per cent animist). Other areas of concern include local planning regulations and administrative requirements that render it more difficult for Christians to secure permission to build and renovate structures for religious worship, as well as to buy property and change residence.

45. In Mindat, Chin State, the Special Rapporteur visited what is known as a “border areas national races youth development training school” (Na Ta La), where he met teachers and pupils. He notes that such schools are under the authority of the Ministry for Border Affairs, which is dominated by the military, and the Ministry of Religious Affairs, and urges the Government to ensure that the cultural and religious rights of the pupils are fully respected and protected, as specified in article 30 of the Convention on the Rights of the Child, to which Myanmar is a party.

## **G. Situation in Rakhine State**

46. The Special Rapporteur believes that Rakhine State continues to experience a profound crisis. There is little evidence that the Government has taken steps to tackle the underlying causes of the communal violence or has put in place the policies that are necessary to forge a peaceful, harmonious and prosperous future for the state. The violence, which first erupted in June 2013, has had a terrible physical and psychological impact on everyone, including Buddhists.

47. During his latest visit to Rakhine State, his fourth, the Special Rapporteur met the Chief Minister, who informed him that, since the violence began in June, a total of 1,189 people had been detained, including 260 Buddhists and 882 Rohingya Muslims. No state officials have been arrested in connection with the violence and its aftermath. In view of the consistent and credible reports of widespread and systematic human rights violations carried out by security forces that the Special Rapporteur has received, he remains concerned that the perpetrators of such violations have not been held to account. This culture of impunity is particularly troubling given the vulnerability and marginalization of the members of the Rohingya community owing to their lack of legal status in the country.

48. In April 2013, the Rakhine Investigation Commission published its report. While containing some worthwhile recommendations, the Special Rapporteur notes that the report fails to address the issue of impunity and the allegations of widespread and systematic human rights violations against the Rohingya community

in Rakhine State.<sup>10</sup> He reiterates that the State has not fulfilled its obligation to properly investigate allegations, dating from June 2012, of extrajudicial killings, rape and sexual violence; arbitrary detention and torture and ill-treatment in detention; deaths in detention; and denial of due process and fair trial rights. It also has not held those responsible to account. He calls upon the international community, including the Human Rights Council, to remain seized of this matter and to consider further steps until Myanmar has fulfilled its obligations under international human rights law.

49. The Special Rapporteur welcomes the disbanding of the Nasaka border security force in July and urges the Government to ensure that the credible allegations of widespread and systematic human rights violations committed by its members are properly investigated and the perpetrators held to account. He also calls for accountability mechanisms to be put in place to ensure that the police, who have taken over from the Nasaka, do not engage in similar violations, including systematic extortion.<sup>11</sup>

50. Some 140,000 people remain displaced throughout Rakhine State following violence in June and October 2012, with an additional 36,000 people affected by the crisis in isolated villages and host communities. The Special Rapporteur commends the state and central government authorities for working with the international community to address the urgent humanitarian needs of both Buddhist and Muslim communities. The authorities and United Nations agencies have been successful in building new temporary shelters for Rakhine internally displaced persons in time for the rainy season, which the Special Rapporteur had highlighted in his previous report as being of major concern. Food is now regularly distributed on a monthly basis to many of those in need, with 127,000 people provided with food in June. A second round of polio immunizations in April vaccinated 97 per cent of target children in Rakhine State. The Special Rapporteur welcomes the recent recognition by the Government of the importance of providing universal immunization to all children in Rakhine State and of the pilot vaccination programme in the area around Dar Pein hospital, which he urges the Government to replicate throughout Rakhine State.

51. While recognizing the continuing security issues in Rakhine State, the Special Rapporteur is concerned about the disproportionate and discriminatory restrictions on freedom of movement that remain in place for Muslim populations and that have a severe impact on their human rights, including their access to livelihoods, food, water and sanitation, health care and education. During his visit, he went to the Aung Mingalar neighbourhood in Sittwe, which accommodates some 25,000 Muslim residents who live in complete isolation.<sup>12</sup> Most of the 84,000 internally displaced children throughout Rakhine State have already lost a year of education and, unless measures are taken immediately, they risk losing another academic year. Some

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<sup>10</sup> See the press release issued by the Special Rapporteur on 1 May 2013, "Positive starting point but Government must address impunity", available from [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13280&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13280&LangID=E).

<sup>11</sup> See the press release issued by the Special Rapporteur on 16 July 2013, "UN expert greets abolition of notorious border security force in Rakhine State and calls for accountability", available from [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13542&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13542&LangID=E).

<sup>12</sup> The five wards that make up Aung Mingalar neighbourhood are Kyaung Gyi Lan, Kone Tan, Ka Thea Ywar, Maw Leik and Aung Mingalar.

96 per cent of these children are Muslim. The latest nutritional survey in rural camps in Sittwe, carried out in January 2013, revealed that 4.5 per cent of the children were suffering from severe acute malnutrition, with a 14.4 per cent rate of global acute malnutrition. In terms of health care, the Special Rapporteur urges the Government to ensure that referrals for non-Sittwe residents are accepted at township hospitals, that health and humanitarian staff have safe and secure access to Muslim villages and camps and that the Ministry of Health restores health-care systems in camps and villages.

52. Furthermore, the Special Rapporteur is concerned that the current separation and segregation of Muslim communities from other communities is becoming increasingly permanent, with the authorities consolidating camps in Sittwe, including through forced relocation. He urges the Government to take proactive steps to ensure the rebuilding of integrated communities, which includes upholding the right of people to return to their land and property in full compliance with the Guiding Principles on Internally Displaced Persons.

53. During his meeting with the Immigration Minister in Nay Pyi Taw during his latest mission, the Special Rapporteur was encouraged to learn of efforts to involve mediating third parties to help to improve communication between the Rohingya community and the Government. In Yangon, the Special Rapporteur met interfaith civil society groups working to develop communication, understanding and trust between people of various faiths and religions. He encourages the Government to expand these initiatives as a means of finding short-term, medium-term and long-term solutions to the situation in Rakhine State. He also urges the central and state government authorities to send strong, consistent and unambiguous public messages through print, broadcast and social media to counter the spread of discriminatory views of racial and religious minority groups in Myanmar, including the Rohingya Muslims. This should include messages from the highest authorities condemning discriminatory proposals such as the two-child policy for Muslims and a proposed marriage law restricting marriages between Buddhists and Muslims.

54. Local Muslim leaders in Sittwe remain under threat of arbitrary arrest, including following a recent verification exercise. A trial of seven local Muslim leaders is continuing (see also para. 8 above).

55. The Special Rapporteur believes that many Muslim men and boys have been arbitrarily detained following village “sweeps” by security personnel after the violence in June and October 2012. Defendants have subsequently been denied legal representation, tried in closed trials with no access to the public, including family members, not received adequate interpretation of court proceedings, not received clear information on the charges against them (and requested to submit witness lists even so), have been tried in mass trials of more than 70 persons and have been chained together during trial proceedings. Following his latest visit to Buthidaung, in August 2013, the Special Rapporteur was informed that, between 21 and 23 August, the court there had sentenced a total of 78 Rohingyas to prison terms ranging from seven years to life. He is seriously concerned that these detentions and convictions are arbitrary and unjust, and urges the Government to investigate and take the necessary remedial action.

56. Rakhine State is the second-poorest State in Myanmar, with 43.5 per cent of people living below the poverty line. All communities, including Buddhists, have suffered as a result. Addressing the issue of underdevelopment and poverty,

including the sharing of benefits from the state's natural resources with local inhabitants, must be considered a vital part of any solution in Rakhine State. Engaging people at the grass-roots level in the process of development by making it a transparent, participatory, accountable and equitable process will help to address the historic feelings of grievance owing to neglect on the part of the central authorities; will improve interaction, dialogue and trust between local residents; and will help to ensure that development is centred on the people. This approach should incorporate current large-scale international development projects such as the deep-sea port in Sittwe, funded by the Government of India, and the Kyaukphyu oil/gas pipeline, funded by the Government of China.

57. For more than 20 years, holders of the special procedures mandate on the situation of human rights in Myanmar have been advocating reform of the Citizenship Act of 1982. The Special Rapporteur reiterates that the Act needs reform in order to ensure equal access by all persons in Myanmar to citizenship, which is fundamental to addressing the marginalization of the Rohingya and other communities in the country. The reform of the Act, bringing it into line with international standards, should include replacing "race" as a determining factor for the granting of citizenship with objective criteria that comply with the principle of non-discrimination, such as birth in the territory and the passing on of citizenship through parents who are citizens. In the meantime, the Special Rapporteur reiterates the obligation of States to promote and protect the human rights of all persons within their territory, regardless of citizenship status.

## **H. Religious violence in Myanmar**

58. The Special Rapporteur is concerned about the spread of anti-Muslim sentiment in Myanmar, including by academics and groups such as the 969 Movement, led by a prominent Buddhist monk, and the serious implications that this has had for the rights of Muslims in Myanmar, who make up approximately 5 per cent of the population.

59. During his visit, the Special Rapporteur visited Meiktila, in the Mandalay region, which experienced anti-Muslim violence between 20 and 23 March 2013 that resulted in 43 deaths, including pupils at an Islamic boarding school and a Buddhist monk, and led to some 13,000 persons being displaced. He also visited Lashio, in Shan State, where anti-Muslim violence from 28 to 30 May 2013, sparked by the inexplicable burning of a Buddhist woman, led to one death and the burning of buildings, including two mosques, an orphanage and local shops. In Lashio, he met a senior monk, Sayadaw Baddhanta Ponnya-Nanda of the Lashio Mansu Shan Buddhist monastery, who provided shelter to more than 1,000 Muslims fleeing the violence.

60. In Meiktila, the Special Rapporteur is concerned about the incitement of hatred against the local Muslim population that occurred during the weeks before the outbreak of violence on 20 March 2013, which included sermons and the distribution of videos and leaflets. He is also concerned about the failure of the police during the first two days of the violence to intervene to control the violent mobs and protect local Muslim populations; it is alleged that their failure to act was in some instances intentional. The Special Rapporteur himself had an insight into this situation during his visit when police stood by while his car was punched and

kicked by a violent mob in Meiktila. In Lashio, he is concerned about the appearance of well-organized Buddhist mobs from outside the town and the failure of the police to intervene in the early stages to control the violent mob and protect the local populations. He is also concerned about the failure of the police and the fire service to prevent the systematic destruction of property belonging to Muslims. The Special Rapporteur urges the Government to investigate these incidents, including the police inaction, hold to account those who failed to carry out their duties and ensure that the instigators and perpetrators of the violence are held to account.

61. In both Meiktila and Lashio, the Special Rapporteur is concerned that Muslim residents and business owners are experiencing difficulties returning to their properties and land, in addition to renovating damaged property, owing to local administrative obstacles and challenges regarding land ownership. He urges the state and central government authorities to resolve these issues speedily, transparently and in accordance with the rule of law, so as to enable the people to return to their land and property and begin the process of rebuilding their lives.

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

62. During his meeting with a member of the Bills Committee of the Amyotha Hluttaw (upper house of the parliament), the Special Rapporteur was encouraged to learn that the Committee had suggested several amendments to the printing and publishing enterprise bill approved by the lower house on 4 July, including the removal of a clause that authorized the Ministry of Information to issue, suspend and revoke publishing licences and recommending that it be replaced with a clause providing for a notification procedure. He was further encouraged to learn that the Committee, following consultations with civil society, plans to review the draft association law and the Peaceful Assembly and Peaceful Procession Act with the aim of eliminating criminal sanctions for non-registration and instead permitting a voluntary notification procedure. He will follow progress with great interest, taking these indications as a positive sign that the parliament is developing an effective and democratic committee system for vetting new and existing legislation to ensure that it complies with international human rights standards.

63. The Special Rapporteur remains concerned about the lack of representation of women in political decision-making positions at the central and state levels and urges the Government to take bold steps to address this imbalance, including by introducing quota systems.

64. The Special Rapporteur continues to see no evidence that the judiciary is developing any independence from the executive branch of the Government. He reiterates that an independent judiciary lies at the heart of a system of government that upholds the rule of law. He urges the Government to pay more attention to this aspect of the reform process, concerning which he has made detailed recommendations (see [A/66/365](#), [A/67/383](#) and [A/HRC/19/67](#)).

65. In his meeting with the Chief Justice of the Supreme Court, the Special Rapporteur was encouraged to learn of plans for district and high court judges and Supreme Court justices to conduct prison visits during 2013 to help to ensure that detainees enjoy their fundamental rights and prevent undue delay in the trial of cases; these powers are contained in the Judiciary Law.



66. The Special Rapporteur reiterates his concern that the Supreme Court is not using its constitutional power to issue writs of habeas corpus, which is a key check on the practices of arbitrary detention and enforced disappearance. Furthermore, he recommends that the Constitution be amended to empower all courts to issue writs of habeas corpus, as required by international human rights standards.

67. Regarding laws that he has previously highlighted as not being in line with international human rights standards, the Legal Adviser to the President's Office, Sit Aye, informed the Special Rapporteur that the Associations Act (1988) would be replaced by an association law; the Television and Video Law (1985) by a new broadcasting law; and the Wireless Telegraphy Law (1933) by a new telecommunications law. The Special Rapporteur was informed by the Attorney General that the Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Function of the National Convention against Disturbance and Oppositions (1986) had been repealed, and that the parliament was currently reviewing the Printers and Publishers Registration Act (1962); the Law Relating to the Formation of Organizations (1988); articles 143, 145, 152, 505, 505 (b) and 295A of the Penal Code; the Code of Criminal Procedure; the Official Secrets Act (1923); the State Protection Act (1975); the Emergency Provisions Act (1950); and the Electronic Transactions Act (2004). Furthermore, he was informed that the Ministry of Information was currently scrutinizing the Motion Picture Law (1996) and the Ministry for Communication and Information Technology was scrutinizing the Computer Science Development Law (1996). While welcoming this information, the Special Rapporteur reiterates his recommendation that target dates be set for the conclusion of the review of these laws and calls for proper attention to be paid to ensuring that the amendments and new laws are in compliance with international human rights standards.

68. The Special Rapporteur is pleased to note that the parliament is now considering the enabling law for the Myanmar National Human Rights Commission. The Commission was established in September 2011 by presidential decree; however, the parliament decided in March 2012 that the decree was not in accordance with the Constitution. He hopes that this process will result in the establishment of a commission that is in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), including with regard to the selection process for its members.

69. The Special Rapporteur is encouraged by the decision of the parliament on 25 July 2013 to form a 109-member committee to review the Constitution of 2008. The committee will submit a report to the parliament on 31 December. He hopes that this will lead to the important reforms to the Constitution that are necessary for the democratic transition and national reconciliation to proceed.

70. The Special Rapporteur emphasizes that all persons and institutions, including the military, should be held accountable by independent judicial mechanisms under publicly promulgated laws. He therefore recommends the amendment of the constitutional provisions that provide for the establishment of permanent military tribunals (art. 293 (b)) with no oversight by a civilian justice mechanism and whose decisions can be appealed only to the Commander-in-Chief (art. 343 (b)); and that stipulate that no legal proceeding is to be brought against any member of the Government in respect of any act performed in the execution of his or her duties (art. 445).

71. The Special Rapporteur recommends that, in order to develop the democratic credentials of the new Government, the constitutional provisions that allow for military appointees to occupy 25 per cent of seats in the parliament (arts. 74, 109 (b) and 141 (b)), thereby providing the military with an effective veto on constitutional amendments, be amended.

72. The Special Rapporteur recommends that, in order to allow the people of Myanmar to freely choose their Government, the constitutional provisions that currently disqualify persons from standing for election as President or Vice-President, including on grounds of the nationality and birthplace of their parents (art. 59 (b)), the length of time that they have resided in Myanmar before the election (art. 59 (e)) and the nationality of their spouse, their children and the spouses of their children (art. 59 (f)), be amended.

73. The Special Rapporteur reiterates his view that the establishment of a country office by OHCHR would support the Government in implementing many of his recommendations. The office should have a mandate to carry out activities for the protection of human rights, of which freedom of movement to monitor the human rights situation is an integral part, in addition to technical assistance and capacity-building. He therefore encourages the Government to establish a timetable for the establishment of an OHCHR country office with a full mandate to perform these functions.

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

74. An encouraging development was the commemoration of the 1988 pro-democracy demonstrations that was held just before the Special Rapporteur's visit. While in Yangon, he met the parents of the 16-year-old student, Win Maw Oo, who was shot and killed during the 1988 protests and was photographed dying in the arms of two young doctors.

75. He emphasizes that a truthful account of past human rights violations, as required by international human rights law, is needed to inform continuing democratic reform and national reconciliation. He hopes that commemorative events such as those mentioned above will contribute to a comprehensive public accounting of the human rights violations that occurred under previous military Governments. He continues to encourage the parliament to take forward the initiative to establish a truth commission as a step towards ensuring truth, justice and accountability.

76. The Special Rapporteur underlines that fulfilling the rights to truth, justice and reparation will help to address the culture of impunity that continues to prevail in Myanmar. He also reaffirms that there can be no just and lasting reconciliation unless the need for justice is effectively satisfied.

## **III. Conclusions**

77. The Special Rapporteur has held the mandate on the situation of human rights in Myanmar for nearly six years, during which time he has witnessed the dramatic changes that occurred following the general election held in 2010. The transition, which has just begun, has already brought substantial human rights improvements for the people of Myanmar and holds the potential to bring much more.

78. The challenge from the outset has been to achieve a transition from the military mindset that prevails within the Government to a democratic mindset that upholds human rights. It is this change that will bring about successful national reconciliation and ensure a tolerant society that does not tackle problems through violence and upholds the rights of all ethnic and religious groups in Myanmar.

79. The Special Rapporteur, in this, his last report to the General Assembly, hopes that he has contributed to improving the lives of the people in Myanmar and assisted the Assembly in making more informed decisions.

#### **IV. Recommendations**

80. **All prisoners of conscience should be released immediately and unconditionally.**

81. **The committee charged with identifying the remaining prisoners of conscience should be established as a permanent body with a mandate to review continuing detentions that may be politically motivated and to monitor the treatment of released prisoners of conscience.**

82. **To tackle the continuing practice of torture in places of detention, the Government should:**

- (a) **Continue its good cooperation with ICRC;**
- (b) **Provide national and other international monitoring groups with access to places of detention;**
- (c) **Accord priority to ratification of the Convention against Torture and the Optional Protocol thereto;**
- (d) **Ensure that persons alleged to have committed acts of torture and ill-treatment are held accountable through the criminal justice system;**
- (e) **Ensure the speedy adoption of a new prisons law to improve the protection of prisoners' human rights.**

83. **To continue progress in relation to the right to freedom of opinion and expression, the Government should:**

- (a) **Enact the media law being drafted by the Interim Press Council;**
- (b) **Amend the draft printing and publishing enterprise law so that the proposed registration procedure, with criminal sanctions for its violation, is replaced with a voluntary notification procedure;**
- (c) **Abolish or amend the Electronic Transactions Act (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.**

84. **To address shortcomings in upholding the rights to peaceful assembly and association, the Government should:**

(a) Amend the Peaceful Assembly and Peaceful Procession Act, including article 18, to replace the permit system with a notification system that is not subject to criminal sanctions for its violation;

(b) Amend the draft association law to remove criminal sanctions and replace the registration procedure with a voluntary notification procedure;

(c) Ensure that law enforcement officials are held accountable by an independent oversight body, and by a court of law, for excessive use of force;

(d) Invite the Special Rapporteur on the right to freedom of peaceful assembly and of association to visit the country, and ratify the International Covenant on Civil and Political Rights and the Optional Protocol thereto.

85. In relation to human rights concerns in the context of development, the Government should:

(a) Ensure that the process of development is embedded at the local level and is conducted in a participatory, transparent, accountable, equitable and non-discriminatory manner;

(b) Establish a system of individual titling and tenure rights for smallholders to protect them against land appropriation, together with a collective or communal tenure system for land, fisheries and forests, in order to protect the access of local communities to common goods and to ensure that land can be converted to new uses only with their free, prior and informed consent;

(c) Cease arresting and prosecuting people involved in land rights and environmental protests, and instead listen to their concerns and grievances and develop a system that protects their human rights;

(d) Include in ceasefire and peace agreements with ethnic armed groups clauses to protect and promote the land rights of existing, displaced and returning ethnic populations, including with regard to the land titles and tenure rights of villagers;

(e) Ensure greater transparency in dealings with members of armed opposition groups that are a part of ceasefire and peace negotiations;

(f) Ensure that investors and businesses carry out human rights impact assessments before the start of projects.

86. The Special Rapporteur highlights the responsibility of all investors and businesses to abide by the Guiding Principles on Business and Human Rights.

87. Regarding armed conflict and the situation of ethnic minorities, the Special Rapporteur recommends that the Government and, where applicable, ethnic armed groups:

(a) Ensure that political dialogue is transparent and addresses underlying grievances;

(b) Ensure the greater involvement of local communities, in particular women, and displaced populations both inside and outside the country in ceasefire and political negotiations;

(c) Pay greater attention to the implementation of ceasefire agreements, including with the support of the United Nations and the Special Rapporteur; this should include monitoring the human rights and humanitarian situation in ethnic border areas;

(d) Provide regular access to international humanitarian agencies, including the United Nations, by internally displaced persons in areas outside the control of the Government in Kachin State;

(e) Ensure that any return of refugees, asylum seekers and internally displaced persons is carried out voluntarily, in safety and with dignity;

(f) Ensure that the Office of the United Nations High Commissioner for Refugees and other groups have access to returnee areas for the purpose of monitoring returns;

(g) Ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction and begin undertaking mine survey, clearance, marking and fencing activities in ethnic border areas;

(h) Accelerate the identification and release of all children in the national armed forces and ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

88. The Special Rapporteur urges non-State armed groups to draw up joint action plans with the United Nations to tackle the use of child soldiers.

89. Regarding the situation of other minority groups in Myanmar, the Special Rapporteur recommends that:

(a) The parliament amend article 377 of the Penal Code, which targets members of the lesbian, gay, bisexual and transgender community and is not in line with international human rights standards;

(b) The Government address institutionalized discrimination against Christians in Chin State, including in access to employment in the civil service.

90. In view of the failure of the State to investigate allegations of widespread and systematic human rights violations in Rakhine State, in particular those occurring after June 2012, the Special Rapporteur calls upon the international community, including the Human Rights Council, to remain seized of the matter and to consider taking further steps.

91. Also with regard to Rakhine State, the Special Rapporteur recommends that the Government:

(a) Ensure that the credible allegations of widespread and systematic human rights violations committed by members of the security forces, including the Nasaka, are investigated and the perpetrators held to account;

(b) Put in place accountability mechanisms to ensure that the police, who have taken over from the Nasaka, do not commit human rights violations;

(c) Set up a system to enable the anonymous reporting of requests for bribes and ensure that credible allegations are investigated, with remedial and

**pre-emptive action taken against members of the security force who have solicited bribes;**

**(d) Ease the disproportionate and discriminatory restrictions on the freedom of movement of Muslim populations that remain in place;**

**(e) Improve access to health care and education in camps for Muslim internally displaced persons;**

**(f) Reverse the increasingly permanent policy of separation and segregation of communities by taking positive steps to rebuild integrated communities, which includes upholding the right of people to return to their land and property;**

**(g) Release Tun Aung and Kyaw Hla Aung, who have been arbitrarily detained since June 2012 and July 2013 respectively, from Sittwe prison, immediately and without conditions;**

**(h) Release the four international non-governmental organization workers who have been arbitrarily detained since June and July 2012 from Buthidaung prison, immediately and without conditions;**

**(i) Investigate the credible and consistent allegations regarding the systematic use of torture in Buthidaung prison during the first three months following the violence that occurred in June 2012 and hold any perpetrators to account; put in place oversight mechanisms to ensure that no further torture or ill-treatment takes place;**

**(j) Ensure that no persons who cooperate with the United Nations and the Special Rapporteur suffer reprisals;**

**(k) Release all Muslim men and boys arbitrarily detained following village “sweeps” by security personnel after the violent events of June and October 2012;**

**(l) Ensure that the due process rights of all defendants in Rakhine State are respected;**

**(m) Address underdevelopment and poverty in Rakhine State using an approach based on human rights and ensure that benefits deriving from the state’s natural resources are shared with local inhabitants;**

**(n) Reform the Citizenship Act of 1982 in order to ensure equal access to citizenship by all persons in Myanmar while upholding the human rights of all persons within Myanmar, regardless of citizenship status;**

**(o) Ensure that the 2014 census includes all ethnic and religious minority communities in Myanmar and is conducted in accordance with international standards.**

**92. To address the spread of anti-Muslim sentiment and violence across Myanmar, the Special Rapporteur recommends that the Government:**

**(a) Conduct prompt, independent, thorough and impartial investigations into the communal violence that has occurred in 2013 in, among others, Meiktila and Lashio, including with regard to allegations of police inaction, and hold to account police and firefighters who failed to carry out their duties;**

(b) Ensure that the instigators and perpetrators of the violence in Meiktila and Lashio are held to account;

(c) Address the incitement of racial and religious hatred, including that perpetrated through the 969 Movement, by investigating the nature and extent of the harm caused to targeted persons and groups and holding the perpetrators to account;

(d) Take measures to combat hate speech in accordance with international human rights standards, including general recommendation No. 35 (2013), on combating racist hate speech, of the Committee on the Elimination of Racial Discrimination;

(e) Resolve, transparently and in accordance with the rule of law, local administrative obstacles and challenges regarding land ownership in both Meiktila and Lashio in order that Muslim residents and business owners can return to their properties and land.

93. Regarding the transition to democracy and establishing the rule of law, the Government should:

(a) Introduce a quota system to improve the representation of women in central and state government decision-making positions;

(b) Have a judiciary that is fully independent from the executive branch;

(c) Set target dates for the conclusion of the review of laws that contravene international human rights standards (see para. 67 above);

(d) Establish a timetable for the establishment by OHCHR of a country office with a full mandate to perform all necessary activities.

94. The Supreme Court should use its constitutional power to issue writs of habeas corpus as an institutional check against arbitrary detention and enforced disappearance.

95. The Special Rapporteur recommends that the parliament:

(a) Pass an enabling law establishing the Myanmar National Human Rights Commission in accordance with the Paris Principles, including with regard to the selection process for members of the Commission;

(b) Amend the Constitution to bring civilian control over the armed forces, in particular articles 293 (b), 343 (b), 445, 74, 109 (b) and 141 (b);

(c) Amend article 59 (b), (e) and (f) of the Constitution to allow the people of Myanmar to freely choose their Government;

(d) Amend the Constitution to empower all courts to issue writs of habeas corpus;

(e) Initiate a process of consultation with all relevant stakeholders on the feasibility and desirability of establishing a truth commission.