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**Поощрение и защита прав человека: положение  
в области прав человека и доклады специальных  
докладчиков и представителей**

### **Письмо Постоянного представителя Мьянмы при Организации Объединенных Наций от 16 октября 2019 года на имя Генерального секретаря**

Имею честь настоящим препроводить документ, озаглавленный «Меморандум о демократических преобразованиях в Мьянме: вызовы и перспективы» (см. приложение).

Буду признателен за распространение настоящего письма и приложения к нему в качестве документа Генеральной Ассамблеи по пункту 70 с) повестки дня.

Ваше Превосходительство, примите уверения в моем глубочайшем уважении.

*(Подпись)* Хау До Суан  
Постоянный представитель



**Annex to the letter dated 16 October 2019 from the Permanent Representative of Myanmar to the United Nations addressed to the Secretary-General**

**Memorandum on Myanmar's democratic transition: challenges and way forward**

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## **1. Introduction**

Since taking responsibility of the state in April 2016, the democratically elected civilian government has been working relentlessly to transform the country into a democratic federal union. The government has placed national reconciliation and peace as top priority while striving for economic prosperity, social equity and development, the prevalence of rule of law and reliable judicial system. As a sine qua non for the successful building of a democratic nation, the government has also embarked on amending the present 1982 Constitution.

The government has undertaken major legislative and institutional reforms to create a more equitable and harmonious society. Significant progress has been achieved in areas of economic development, investment, infrastructure, health and education sectors as well as in anti-corruption efforts.

Despite the challenges, Myanmar has managed to sustain its economic growth in recent years. It has experienced rapid growth with an annual growth rate of 6.5% in 2018–2019. Its GDP expanded from USD 8.9 billion in the year 2000 to over USD 71 billion in 2018. As Myanmar has opened its opportunity doors, investment and trade have grown significantly. In keeping with this trend, trade and investment policies continue to be revised in line with national and global commitments and in accordance with liberal inclusive principles.

## **2. Peace Process**

The Government of Myanmar has been engaged in a peace process to bring an end to the seven-decade long internal armed conflict by political dialogue. In a multi-ethnic country like Myanmar, making unity out of diversity is a multi-faceted challenge.

### **2.1 National Ceasefire Agreement**

In an effort to consolidate existing bilateral ceasefire agreements between the Military (Tatmadaw) and multiple Ethnic Armed Organizations (EAOs), the Nationwide Ceasefire Agreement (NCA) was signed on 15 October 2015. It is a merging equilibrium point where different forces come together to create a new political dialogue process for all ethnic groups. The NCA also includes an explicit commitment to “establish a union based on the principles of democracy and federalism”.

There are currently ten signatories to the NCA, however, the government is committed to continuing its endeavours to bring all ethnic armed organizations under the NCA umbrella and to the conference table.

The government is discussing with ethnic armed organizations which are yet to sign the Nationwide Ceasefire Agreement (NCA) to sign Bilateral Ceasefire Agreement (BCA).

In September 2019, the government and four EAOs (KIA-Kachin, TNLA-Ta’ang, Arakan Army, and MNDAA-Kokang) agreed in principle on seven points of a draft BCA and they will resume negotiation by the end of October. This is the first time the two sides have come to an agreement on the draft text of BCA.

### **2.2 Union Peace Conference**

In view of solving political differences through negotiations and narrowing the trust deficit among different institutions, ethnic groups and communities, the Union

Peace Conference – the 21st Century Panglong has been held and brought all ethnic nationalities to present their positions and views openly and freely to formulate fundamental principles for a democratic federal union.

Three sessions of the Peace Conference – 21st Century (Panglong), held so far, have adopted fifty-one fundamental principles which will become part of the Union Peace Accord. Preparation works are underway for the Fourth Panglong Conference.

Establishing a federal Union and democratic society is the ultimate goal of the current Government of Myanmar. Despite the multi-faceted challenges, the government has spared no effort in nurturing democratic norms and practices among all its citizens. These efforts include the promotion of the rule of law, good governance and protection of human rights, and fostering of vibrant civil society.

With the aim to enable all ethnic armed groups to participate in the peace process with trust and to continue the peace dialogues, the Myanmar Military or Tamadaw has announced the unilateral ceasefire in December 2018 and extended to September 2019 in five military command areas in various parts of the country.

### **3. Social and Economic Development**

In recent years, the Government of Myanmar has undertaken a number of reforms, focusing primarily on updating the regulatory and legal environment aimed at developing a market-based economy which targets inclusive economic growth. Necessary structural reforms have also been made to boost development through greater integration with the global economy.

#### **3.1 Socioeconomic reforms**

The recent socioeconomic reforms will ensure a secure livelihood and job opportunities for the citizens; improve the living standard and socioeconomic status of the general public.

Myanmar Sustainable Development Plan (2018–2030) has been developed as a key developmental policy instrument. It is intended to strengthen the linkage of nation's developmental needs and UN Sustainable Development Goals. The MSDP is structured into 3 Pillars, 5 Goals, 28 Strategies and 251 Action Plans.

The government has been focusing on rural development as a priority task in reducing the poverty of the people. Community Driven Development Projects are being implemented throughout the country which covers rural infrastructure projects; including road, bridge, wells, ponds, electricity, health and education; to promote development awareness; and to create high income opportunity to improve living standards of the people so that the rural population will be empowered to create high income and better living environment.

In order to achieve a desired socioeconomic growth, the government has gradually increased the capital budget for health and education sectors. The Ministry of Education received 6.81 per cent of total capital expenditure in 2016–2017 FY, 6.88 per cent in 2017–2018 FY, and 8.50 per cent in 2018–2019 FY. The Ministry of Health and Sports received 6.91 per cent in the 2016–2017 FY, 8.02 per cent in 2017–2018 FY, and 6.39 per cent in 2018–2019 FY and the Ministry of Social Welfare, Relief and Resettlement received 0.08 per cent in 2016–2017 FY, 0.33 per cent in 2017–2018 FY and 0.33 per cent in 2018–2019 FY respectively from the government.

The National Indicator Framework was set up to monitor and evaluate the implementation of the MSDP's action plans together with the processes to get economic stability and reduce poverty.

Major reforms include the introduction of the new Myanmar Investment Law in 2016. The new Myanmar Investment Law offers investors a more transparent, more liberal and more protected investment environment, bringing the investment-enabling-environment further in line with international and regional agreements.

In August 2018, the new Myanmar Companies Law came into effect. With new legislation in place, foreign investors are now permitted to hold up to 35 per cent of shares in a domestic company without the company losing its categorisation as a local company. Changing this legal definition allows foreign investors to undertake business activities that were previously restricted to companies fully owned by Myanmar citizens.

The new Companies Law has been designed to offer greater protection for minority investors which will contribute to a considerable improvement in Myanmar's ranking in the Ease of Doing Business Index.

The Myanmar Investment Promotion Plan (MIPP) was launched with the objectives to attract more than USD 200 billion through responsible and quality business over the next 20 years, facilitating Myanmar's transition to a middle-income country. The World Bank has forecast Myanmar economy to expand 6.4 per cent in the year 2019 and pick up to 6.8 per cent in the year 2020.

### **3.2 Anti-corruption efforts**

Myanmar enacted the Anti-Corruption Law in August 2013. In accordance with the Law, the Anti-Corruption Commission (ACC) has been established in 2014.

The ACC adopted the Anti-Corruption Strategy (2018–2021) and developed action plans to implement it.

As part of the Strategy, 32 Corruption Prevention Units at the Union level organizations and ministries have been established, to disclose corruptions, to take legal action and to perform Corruption Risk Assessment (CRA) and mitigate risks.

In 2018, the ACC published a Notification under the 2013 Anti-Corruption Law; the “Fundamental principles for businesses to develop a strong code of ethics and establish appropriate internal control measures to prevent corruption” to improve transparency and accountability of the private sector.

### **3.3 Anti-drugs efforts**

As drug problem has become one of the most serious challenges facing Myanmar, the government has given special attention on drug-related problems as a national responsibility and has been cooperating with the UN Agencies, International and Regional organizations, NGOs and CBOs in various sectors.

The Narcotic Drug and Psychotropic Substances Law (1993) was amended in line with international standard and norms and it was enacted on 14 February 2018, by the Parliament. The new Law focuses not only on the end of the drug issue but also on the support to health care and necessary treatment for drug users, a fund for a sustainable project such as civic education and creating opportunities for victims.

The government has adopted a new National Drug Control Policy on 20 February 2018, collaborating with the United Nations Office on Drugs and Crime (UNODC). The new national drug policy moves from a punitive approach to a more healthy and human-oriented approach to address illicit drug challenges.

It is the first time the government has adopted a harm reduction approach to drug use. In the past, the approach was focused on supply reduction and less on other areas, which limited its effectiveness. The government is also drafting a National

Strategic Plan which is a two-year action plan to be implemented across the country in accordance with the new policy.

#### **4. Promotion and protection of human rights**

Human rights are fundamental to peace, security and development as the three main pillars enshrined in the UN Charter. Realization of human rights is one of the top priorities of the current democratically elected civilian government, along with achieving peace and development in the country. The Government has been reforming legislation and public institutions, and also strengthening the rule of law to create a fair and just society which guarantees fundamental human rights for all people in the country.

##### **4.1 Child's rights**

Myanmar became a state party to the UN Convention on the Rights of the Child on 15 July 1991 and ratified the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography on 16 January 2012. Myanmar also ratified the Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No 182/1999) in 2013.

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC) has been ratified on 27 September 2019 to reinforce the on-going efforts of Myanmar to protect and promote child rights in line with international law.

The new Child Rights Law was enacted by the Union Parliament on July 2019 to align the national policies and regulatory frameworks with the UN Convention on the Rights of the Child.

Under the newly enacted Child Rights Law, children born in Myanmar are guaranteed to the fundamental and unconditional right to register at birth. All forms of violence against children will not be tolerated under the new Law. The new law defined a child as under the age of 18 and also sets the minimum age of marriage as 18, regardless of gender. It describes the minimum age of employment at 14 years and forbids children from doing dangerous forms of labour. It increases the age of criminal liability from 7 years to 10 years.

It also includes a chapter on the protection and assistance of child victims and witnesses who come into contact with the law.

The Law also recognizes that children affected by armed conflict need special protection by criminalizing grave violations against children and providing stronger legal protection for children in the context of armed conflict.

##### **4.2 Women's rights**

Myanmar became a state party to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on 22 July 1997, and strives to achieve gender equality and helps women to fully enjoy their rights. Myanmar adopted the National Strategic Plan for the Advancement of Women (2013–2022), aligning it with the 12 areas of the Beijing Platform for Action. The implementation process of the Strategic Plan has been effectively undertaken by four technical working groups namely Violence against Women and Girls; Women Participation; Women, Peace and Security; and Gender Mainstreaming. Moreover, training on effective prosecution responses to cases of violence against women is being conducted throughout the country in cooperation with UNODC.

Myanmar adopted a zero-tolerance policy against sexual violence and carried out domestic legal reforms for effective implementation of the protection of the rights of women and girls. In this regard, the Prevention and Protection of Violence against Women Law has been drafted and will soon be enacted by the Parliament. The new Law stipulates the need to protect women from all forms of violence, including domestic abuse, marital rape, sexual violence, harassment by stalking, harassment in the workplace and public place and violence through tradition and customary practices.

The government has regularly submitted periodic national reports to CEDAW Committee. During the 72nd Session of CEDAW, on 22 February 2019, Myanmar voluntarily submitted its Exceptional Report to the Committee.

### **4.3 Disability rights**

The Myanmar Constitution guarantees the fundamental rights and equal opportunities of the disabled citizens. Every effort has been taken by the government to improve the living conditions and livelihood of persons living with any kind of disabilities.

By taking concrete measures such as acceding to the Convention on the Rights of Persons with Disabilities (CRPD) on 7 December 2011 and Myanmar submitted its initial report to the CRPD Committee in November 2015.

In August 2019, Myanmar delegation attended the 22nd meeting of the CRPD Committee and the delegation orally reported the status of national implementation of the CRPD despite many challenges faced as a developing country such as limited resources and technical capacity. Myanmar is committed to continuing to strive to improve the lives of the people with disability in an inclusive manner with the active involvement of all stakeholders.

Myanmar enacted the Law on Protection and Promotion of the Rights of Disabilities in June 2015. This Law ensured the empowerment of the persons with disabilities in Myanmar to be able to take part in all spheres of social, economic, political and professional life.

In 2017, the National Committee on the Rights of Persons with Disabilities and the Myanmar Federation of Persons with Disability were established. Moreover, recently adopted Child Rights Law stipulates a whole chapter dedicated to the rights of children with disabilities. A national strategic master plan for people with disabilities (2020–2025) is currently being drafted, to be in line with the 2030 Agenda.

### **4.4 Ethnic rights**

Myanmar is an ethnically diverse country with 135 ethnic nationals. The government has been striving to achieve national unity through ascertaining equal rights for all ethnic peoples. Ethnic Rights Protection Law was enacted by the Union Parliament in 2015 and the Ministry of Ethnic Affairs was established in 2016 to help realize this goal. The Law aims at promoting the socioeconomic development of ethnic people by protecting ethnic rights and preserving and promoting, literature and culture that will strengthen the Union spirit.

The Myanmar Ethnic Rights Strategy 2019–2028 has also been drafted to further the rights of the ethnic people.

### **4.5 Religious rights**

The Constitution of Myanmar guarantees every citizen equal rights to freedom of conscience and to freely profess and practise the religion of their choice. Out of



Myanmar's 54 million population, 87.9 per cent are Buddhists, 6.2 per cent Christians, 4.3 per cent Muslims, 0.5 per cent Hindus, and 0.8 per cent believe in Animism.

There are 7,597 Christian Churches, 2,804 Mosques 1,013 Hindu temples across Myanmar standing side by side as a clear symbol of religious freedom.

The Holy Days of other religions such as Christmas, Deepavali and Bakra Eid have been officially recognized as gazetted holidays. All religious festivities are celebrated the whole year long.

In order to promote interfaith harmony, a total of 130 interfaith groups have already been established nationwide.

Religions for Peace (RfP) (Myanmar) was established in September 2012 to bring peace and harmony across the country. Training programmes to promote interfaith harmony and the role of women and youths have been conducted by RfP (Myanmar) since 2018.

The Ministry of Religious Affairs and Culture in cooperation with RfP successfully held 2nd Religions for Peace Advisory Forum on National Reconciliation and Peace in Myanmar on 8 May 2019. The 5th Forum of Religions for Peace Asia Interfaith Youth Network was also held in Yangon from 18 to 20 December 2018.

To promote trust, harmony and peaceful coexistence among different religions, the Ministry of Home Affairs is drafting a bill prohibiting hate speech.

#### **4.6 Right to information**

The government has implemented various reforms pertaining to media sector for the protection and promotion of the right to information. The 2014 Media Law and the Printing and Publishing Enterprise Law (PPEL) were enacted with the objectives to liberalize media sector, abolishing past prior censorship, and allowing media outlets to become editorially independent and more responsible. The Media Law is now under review and amendments will be made to make it more relevant. Workshops on media law amendments have been organized by Myanmar Press Council in 2019.

The Myanmar News Media Council was established in October 2015, to act as a media self-regulatory body. The Broadcasting Law was also adopted in 2015 enabling private, public and community media to flourish. Now more than ever, Myanmar citizens can enjoy a variety of information from different sources of media outlets both domestic and international.

In addition to the drafting of anti-hate speech law, the government is conducting training and workshops to promote responsible media and digital literacy to address the issue of hate speech.

The government also discussed with responsible persons from Facebook to advocate proper use of social media such as Facebook and to enhance awareness of norms and standards, ethics and practice of social media in newspapers, television, and radios since June 2018.

#### **4.7 Labour rights**

The government has taken concrete measures to effectively promote and protect labour rights including the elimination of forced labour. Institutional and capacity building, as well as awareness raising programmes including trainings of trainers, has been conducted to eliminate forced labour.

The Memorandum of Understanding to an Action Plan for the Elimination of all Forms of Forced Labour and the Agreement for the Extension to the Supplementary Understanding with the International Labour Organization (ILO) was signed in January 2018. The Action Plan provides operating a complaint mechanism and undertaking training and awareness-raising activities on forced labour.

With the progress made in the elimination of forced labour, Memorandum of Understanding on Decent Work Country Program (2018–2021) was signed between Myanmar and ILO on 21 September 2018. The development of Myanmar's first DWCP represents a major step for ILO's engagement in Myanmar in support of the tripartite partners.

The government is currently drafting an action plan for establishing a National Complaints Mechanism. Meanwhile, a High-Level Working Group (HLWG) with representatives from concerned ministries has been established in June 2019 as an interim complaint national mechanism for forced labour complaints.

In order to eliminate child labour, the National Action Plan on the Elimination of Child Labour has been drafted. Moreover, the National Ceasefire Agreement signed with ethnic armed groups includes commitments to prevent forced labour as well as recruitment and use of children. The government is also cooperating with SRSG on Children and Armed Conflict to prevent and address conflict-related violations on children.

#### **4.8 Myanmar National Human Rights Commission**

The government established the Myanmar National Human Rights Commission (MNHRC) in line with the Paris Principles. Myanmar Parliament enacted a Law establishing MNHRC on 28 March 2014. The Law allowed the Commission to conduct its mandates in a free and independent manner as well as on its financial management and administrations. The Law also states that the State shall provide sufficient fund for the Commission to conduct its mandates.

### **5. Cooperation with the United Nations**

#### **5.1 Cooperation with Special Representative of the Secretary-General for Children and Armed Conflict**

The Inter-Ministerial Committee for the Prevention of the Six Grave Violations during Armed Conflict was established on 7 January 2019. Consultations are now underway to develop a national action plan for prevention of killing and maiming, and sexual violence against children.

Since the signing of Joint Action Plan with the UN to address child soldiers in 2012, almost 1,000 minors had been released and reintegrated into the community. Most importantly, verified cases of new recruitment have dramatically decreased over the years to a few dozen.

The Tatmadaw has taken action against the perpetrators. From 2007 to 2018, a total of 379 military personnel including 64 officers were given prison sentence, dismissed or demoted.

In order to accelerate the implementation of the Joint Action Plan and to raise greater awareness on the prevention of grave violations, the government has conducted training workshops in cooperation with the Office of the SRSG-CAAC.

Moreover, a nation-wide public awareness campaign to end and prevent the recruitment and use of children by the Tatmadaw has been launched since 2013.

## **5.2 Cooperation with Special Representative of the Secretary-General for Sexual Violence in Conflict**

The Government of Myanmar signed the Joint Communiqué with SRSG on Sexual Violence in Conflict in December last year to prevent and address the conflict-related sexual violence.

In February 2019, the Government of Myanmar has facilitated the visit of SRSG Ms. Patten and her team to Myanmar.

In March 2019, a ministerial-level National Committee on Prevention and Response to Conflict-Related Sexual Violence was formed to implement the Joint Communiqué. The National Work Plan is being drafted with technical assistance from the United Nations.

## **5.3 Cooperation with the Special Envoy of the Secretary-General on Myanmar**

In the spirit of cooperation with the United Nations and as a demonstration of political will in addressing the issue of Rakhine State, the Government of Myanmar agreed to the appointment of Special Envoy Ms. Christine Schraner Burgener although Myanmar rejected the resolution which mandated the Secretary-General to appoint his special envoy. The government has also approved the opening of the Office of Special envoy in Nay Pyi Taw in 2018 and now it is fully functioning.

During her seventh visit to Myanmar in July 2019, she met with the Arakan National Party leadership, internally displaced persons and the Rakhine Women Association. She also travelled to the IDP camps in Myebon Township and observed the conditions of accommodation, food, education and healthcare services provided to those in the camps.

From 3 to 7 September 2019, the Special Envoy visited Myanmar again for the 8th time and exchanged views with government officials on recent developments in Myanmar's efforts in creating more conducive conditions for the returnees in cooperation with ASEAN and the UN as well as ways and means to remove obstacles hindering repatriation of displaced persons.

## **6. The Situation in Rakhine State**

The issue of Rakhine State is one of the colonial legacies. Myanmar was a British colony for over one hundred years. During this period, the colonial power transferred hundreds of thousands of civilians mostly from British India (Chittagong region of present-day Bangladesh) to then Burma (Rakhine State) to propel the rapidly expanding rice production and export. In 1927 alone, there were more than 480,000 such transfers into occupied colonial Burma. The British census of 1872 reported 58,255 Muslims in Akyab District (modern Sittwe). By 1911, the Muslim population had increased to 178,647. The waves of migration were primarily due to the requirement of cheap labour from British India to work in the paddy fields in Rakhine State. It was obvious that immigrants from Bengal, mainly from the Chittagong region had regularly moved en masse into western townships of Arakan during the British colonial period.

After Myanmar regained her independence, their number multiplied due to various reasons – refugees from 1971 Bangladesh liberation war, expansion of families, weak border enforcement and corruption that lead to illegal migration, human smuggling and trafficking along the common border of the two countries.

Peace and harmony in Rakhine State are of critical importance to Myanmar's territorial integrity and its democratic transition. Since taking office, the government

has adopted a holistic approach in addressing the problems of Rakhine State. It must be emphasized, however, that the resurgence of violence in northern Rakhine with the attacks of ARSA in August 2017, has intensified many existing problems and brought to light new challenges including the mass displacement of Muslim community to neighbouring Bangladesh.

### **6.1 The strategy and role of ARSA in the ongoing humanitarian crisis**

The Arakan Rohingya Salvation Army (ARSA) terrorist group aka Al Yaqin launched coordinated attacks on 30 Border Guard Police posts in August 2017. According to the international intelligence sources, the group has been guided and supported by foreign terrorist groups such as Al-Qaeda, ISIL, and Tehrik-e-Taliban Pakistan (TTP) who have called for Jihad against Myanmar Government. ARSA's leader Atta Ulla himself was born, raised and trained as a terrorist in foreign countries, and commanding terrorist acts from outside of Myanmar.

The ARSA's attacks were no doubt well planned and executed with the support of foreign terrorist organizations and accomplices at the international level.

Their objective was to undermine Myanmar Government's commitment and efforts to find a lasting solution through the speedy implementation of the Kofi Annan Advisory Commission's recommendations and to elicit maximum international pressure on Myanmar to achieve their political goals of seeking a separate Muslim State in Rakhine region.

Another intention of ARSA terrorists is to create social and religious tensions in the already volatile state of Rakhine. To achieve this aim, they carried out the attacks with a clear strategy which was publicly declared: Firstly, killing security and government personnel; Secondly, killing people who are believed to be collaborating with the government; Thirdly, killing non-Muslims and ethnic people such as Rakhine, Mro, Daingnet including Hindus; Fourthly, launching brutal attacks and threatening the remaining inhabitants mostly Muslims to flee to Bangladesh through intimidation and fear.

Recent findings of international research institutions and media reporting have highlighted that ARSA is still active and promoting the ultra-conservative practices among the displaced persons in the Bangladesh side. Moreover, the situation is getting clear that ARSA members are spreading in the camps and they are effectively controlling the innocent people by threatening their lives for exercising the rights of individuals especially restrictions on women in the camps.

Because of the intensification of fighting between Tatmadaw and Arakan Army in Rakhine State, internet services in eight townships in Rakhine State and one township in Chin State have been suspended temporarily in the interest of national security since 20 June 2019. However, this temporary suspension does not include voice and SMS message services. This temporary measure is not aimed at creating an information blackout, as alleged. Now, internet services have been restored to Buthitaung, Maungdaw, Rathedaung and Myebon townships of Rakhine State as well as to Paletwa Township in Chin State since 1 September 2019.

### **6.2 Accountability**

Although the international community seems to accept that the issue of the Rakhine State is a complex and deep-rooted problem, various bodies and mechanisms within the United Nations are being misused to exert pressure on Myanmar under the pretext of defending human rights.

The Government of Myanmar rejected the Independent International Fact-Finding Mission (IFFM) on Myanmar since its establishment by the Human Rights Council in March 2017. Since then, the government has also made clear that it would not accept the results of its findings, as its establishment raised genuine concerns for lack of impartiality and will be a hindrance to the government's efforts to find a sustainable solution to the issue in Rakhine State. The latest reports of the IFFM have only served to strengthen the government's concerns. Those reports are not only detrimental to social cohesion in Rakhine State but also undermine the government's efforts to bring peace, national reconciliation and development to the entire nation. They could also derail the democratization process and disintegration of national unity.

It is Myanmar's principled position that there must be accountability for human rights violations. The government is addressing the issue of accountability in Rakhine State by setting up the Independent Commission of Enquiry (ICE). The Myanmar Armed Forces have also established its own Court of Enquiry supported by a Legal Advisory Team to address the allegation of human rights violations in northern Rakhine.

Regarding the death of some detainees while in custody who were arrested for suspicions of connection to Arakan Army (AA), the Tatmadaw formed the court of inquiry in accordance with the Defence Services Rules 176 starting from 12 July 2019 to investigate the incidents of deaths.

Myanmar has put in place its national accountability mechanism and opposed any outside mechanisms that are set up without allowing for national remedies to be exhausted.

Myanmar also strongly objected the establishment of the Independent Investigative Mechanism (IIM) on Myanmar. This mechanism is an unprecedented discriminatory scrutinization on a selective country and it was set up beyond the mandate of United Nations General Assembly and Human Rights Council. Its ToR is very intrusive on a sovereign country's domestic jurisdiction and such kind of measures would only serve the political purpose of those who wish to exploit the human rights issues for their own political agenda and it will only further polarize different communities of Rakhine State and will exacerbate tensions.

Myanmar is not a party to the Rome Statute and the Court has no jurisdiction on Myanmar whatsoever. Regardless, the ICC's Prosecutor has made a Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute ("the Request") to the ICC and has requested Myanmar to submit its opinion.

Myanmar has declined to engage with the ICC by way of a formal reply due to the reasons stated in the Press Release of the Office of the State Counsellor of Myanmar dated 9 August 2018.

The actions of the Prosecutor constitute an attempt to circumvent the spirit of article 34 of the Vienna Convention. By allowing such a contrived procedure, the ICC may set a dangerous precedent whereby future popular causes and complaints against non-State Parties to the Rome Statute may be litigated at the urging of biased stakeholders and non-governmental organizations and even then, selectively based on the political current of the times.

### **6.3 Government's practical efforts to address the issue of Rakhine State**

The most urgent priority of the government in Rakhine State is to address the humanitarian issue and to implement the speedy repatriation of displaced people, based on the bilateral agreements reached with Bangladesh. The government is also

working closely with UNHCR, UNDP and ASEAN to facilitate the implementation of the bilateral agreements between Myanmar and Bangladesh on the repatriation, resettlement, and development of returnees.

The Union Enterprise for Humanitarian Assistance, Resettlement and Development in Rakhine (UEHRD) and the Independent Commission of Enquiry (ICoE) are among many national entities established to find lasting peace, harmony, and development for all communities in Rakhine.

#### **6.4 Union Enterprise for Humanitarian Assistance, Resettlement and Development in Rakhine (UEHRD)**

The Union Enterprise for Humanitarian Assistance, Resettlement and Development in Rakhine (UEHRD) was launched on 17 October 2017 to enhance humanitarian assistance, resettlement and development of the State aiming to mobilize the participation of the people, volunteers, private sectors and the interested donor countries, UN agencies and local and regional NGOs.

Activities of UEHRD are carried out by 10 Task Forces that focus on providing humanitarian assistance, resettlement, development and, raising funds and awareness for the people of Rakhine.

On 23 June 2019, the Committee for the Union Enterprise (UEHRD), held a meeting with its ten Task Forces, to implement UEHRD to provide healthcare and nutrition treatment services, construction of SME support and vocational training, etc. The meeting also discussed the current status of ongoing activities, identified current challenges, and future work plans by each Task Force.

The Committee and Task Forces will continue to coordinate and cooperate with ASEAN in areas identified by the ASEAN Preliminary Needs Assessment (PNA).

#### **6.5 Independent Commission of Enquiry (ICoE)**

Myanmar has the political will and national competence to address the issue of accountability on alleged violations. Any attempt to meddle in the internal affairs of a country by any outside or international judicial or legal body is illegal and tantamount to infringement of the sovereignty of an independent state. In this regard, the government has strongly rejected such attempts unless it is patently clear that the national remedies have been exhausted.

The Government of Myanmar is addressing the issue of accountability by setting up the Independent Commission of Enquiry (ICoE) in July 2018. The Commission is tasked to investigate allegations of human rights violations and related issues following the terrorist attacks by ARSA, with a view to seeking accountability and reconciliation. The Commission will act as a fact-finding commission with special investigative and judicial powers under the Investigative Committee Act 1950. It will then submit a report to the President of Myanmar, including its recommendations prepared on the basis of the outcomes of its investigation.

Members of the ICoE have visited Bangladesh from 17–22 August 2019 to prepare the groundwork and seek the necessary approvals for the dispatch of ICoE's Evidence Collection and Verification Team (ECVT) in Cox's Bazar to interview and collect evidence from those who are residing in the camps.

### **7. Repatriation Process**

Myanmar signed “the Arrangement on Return of Displaced Persons from Rakhine State” with Bangladesh on 23 November 2017. According to the Agreement,

Myanmar will encourage the displaced persons to return voluntarily and safely to their own households and original places of residence or to a safe and secure place nearest to it of their choice. The returnees will not be settled in temporary places for a long period of time and their freedom of movement in the Rakhine State will be allowed in conformity with the existing laws and regulations. Their access to basic services and livelihood will be further promoted. Myanmar will issue the returnees an identity card for national verification immediately on their return. Myanmar will not criminalize returnees for illegal exist and return unless there are specific cases of their involvement in terrorist or criminal activities.

Verification for return will be based on evidence of past residence in Myanmar. For the purpose of verification, the returnees must fill the agreed forms. Based on the list and information provided by Bangladesh, Myanmar will verify them. The returnees must provide documents of their residence in Myanmar, or other documents indicating their residences such as addresses, ownership documents, school attendance or any other relevant particulars and information. The two countries agreed that the process of repatriation to be commenced within two months of the signing of this agreement, which was 23 January 2018.

On 19 December 2017, Myanmar and Bangladesh signed “Terms of Reference (ToR) for the Joint Working Group (JWG) on the Repatriation of Displaced Myanmar Residents from Bangladesh”. The two countries agreed to establish JWG to implement the Agreement (the Arrangement on Return of Displaced Persons from Rakhine State) which was signed on 23 November 2017.

On 16 January 2018, the two countries signed “Physical Arrangement for Repatriation of Displaced Myanmar Residents from Bangladesh under the Arrangement on Return of Displaced Persons from Rakhine State”. The agreement highlighted that Bangladesh will provide information and data of displaced persons from Myanmar following the 9 October 2016 and 25 August 2017 attacks.

In accordance with the Agreement, Myanmar constructed two reception centres and one transit camp to facilitate the repatriation. The number of transit camps and reception centres will be increased based on the need and requirement depending on the process of repatriation. The returnees will be temporarily accommodated at the transit camp while their houses are being built.

This Agreement underlined that Myanmar has to provide relevant information including on resettlement plan, provision of livelihood assistance, access to basic services, and safety arrangements. The JWG can also organize field visits, if necessary, to ascertain whether the situation is conducive for return. Bangladesh has to share this information with the prospective returnees as part of advocacy needed for voluntary return.

According to the Agreement signed between the two countries on 23 November 2017, the repatriation should be started two months after signing of the agreement, which was on 23 January 2018. Myanmar constructed necessary infrastructures and assigned human resources in time to receive the returnees. However, no displaced person was repatriated.

During the Third Meeting of JWG which was held in October 2018, the two sides agreed to repatriate displaced persons on 15 November 2018. The repatriation did not occur on the scheduled date.

On 6 August 2019, Bangladesh informed China that the repatriation could be started on 22 August 2019. Therefore, Myanmar sought confirmation from Bangladesh on 9 August 2019. On 19 August, Bangladesh gave a confirmation that the repatriation will start on 22 August 2019. Myanmar sent high-level officials to the

reception centres and invited teams from ASEAN Secretariat and AHA Centre to observe the repatriation. The repatriation failed to occur again. Myanmar learnt that some NGOs, radical groups and ARSA's supporters inside the camps of Bangladesh have intimidated and threatened potential returnees not to express their desire to return to Myanmar.

Despite this, some 300 displaced persons from camps in Cox's Bazar have returned under their own arrangement and volition. They are now resuming their normal lives in a safe and secure environment. In September 2019, heads of mission from embassies of the nine ASEAN countries, neighbouring countries of Myanmar including Bangladesh and representatives of UNDP and UNHCR visited Rakhine State and met with the returnees. During the discussions, the returnees recounted their experiences during their stay in the camps in Bangladesh and explained how those remaining in the camps continue to face fear and intimidation of ASRA and criminals.

## **7.1 Citizenship**

The issue of citizenship is entirely the prerogative of a sovereign state as it entails both domestic political and legal issues. Myanmar applies procedures that are similar to those of other sovereign states with regard to the application of citizenship. Anyone residing in Myanmar must go through the same application and verification process for citizenship.

In Rakhine State, as long-time residents are mixed with illegal migrants, every displaced person returning to Myanmar must undergo verification without fail. This applies to everyone who was repatriated or deported from other countries.

Then, the verified returnees will receive a National Verification Card (NVC) upon their arrival at the reception centre after taking biometric data. NVC is a temporary identification card to be used as a first step before getting citizenship status. Possession of an NVC is a solid proof of residency in Myanmar. NVCs are issued throughout the country and not confined to the Rakhine State. NVC holders who meet the prescribed requirement are entitled to apply for citizenship.

The government is also taking measures to issue birth certificates to all residents of Rakhine State who were born in Myanmar.

## **7.2 MoU between Myanmar, UNDP and UNHCR**

The government has invited UNDP and UNHCR to assist the government's efforts in the bilateral repatriation process. The government signed an MoU with UNDP and UNHCR on 6 June 2018.

In September 2019, UNDP and UNHCR have completed four rounds of field assessment in Rakhine State which covered a total of over 80 villages. The government also allowed them to conduct follow-up visits to assessment areas to develop communities' development projects known as Quick Impact Projects (QIPs). After the conclusion of first and second rounds of assessment, the UNHCR made 71 QIP proposals and the government allowed them to implement. The UNHCR is currently implementing 34 QIPs. In September 2019, the government allowed the UN to implement an additional 7 QIPs and newly proposed 2 QIPs. The government also permitted the UN to conduct the fifth round of assessment that included 9 villages from September to October 2019. Travel authorization for the UN and 24 international staff and their partner's organizations were extended till 5 December 2019 in Rakhine State.

The present Tripartite MoU has been extended for another year until 6 June 2020.



In line with the provisions of the MoU signed between Myanmar and UNDP and UNHCR, the Government of Myanmar continue allowing UNHCR and UNDP to conduct independent field assessments to benefit all communities and potential returnees.

### **7.3 Cooperation with ASEAN**

Myanmar as a member of ASEAN, is working closely with other members of ASEAN. Myanmar is receiving humanitarian assistance from the Coordinating Centre for Humanitarian Assistance on Disaster Management (AHA Centre) and planning to expand its cooperation with ASEAN in resettlement and livelihood of the returnees.

Following the decision of the 33rd ASEAN Summit in 2018, ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management (AHA Centre) dispatched a needs assessment team to identify possible areas of cooperation in Rakhine State to facilitate the bilateral repatriation process. The Preliminary Needs Assessment was conducted in May 2019 by an ASEAN Emergency Response and Assessment Team (ASEAN-ERAT) comprising personnel from ASEAN Member States, the ASEAN Secretariat and the AHA Centre. ASEAN Secretary-General Mr. Dato Lim Jock Hoi visited Myanmar in December 2018 and May 2019 to coordinate and discuss the plan of the needs assessment. He also visited Rakhine State to interact with and understand the concerns of the affected communities.

After the conclusion of the initial needs assessment, ASEAN released its findings and identifies three potential areas of collaboration, namely: enhancing the capacity of reception and transit centres; strengthening information dissemination; and support to the provision of basic services. This kind of assessment was the first among other activities ASEAN's plan of supporting the safe, secure and dignified voluntary return of displaced persons to Rakhine State. Further cooperation includes a series of comprehensive needs assessments which will commence when the repatriation starts. In the interim, ASEAN and Myanmar will establish a technical working group to coordinate the implementation of the recommendations from the initial assessment.

During the 52nd ASEAN Foreign Ministers meeting in July 2019, the Ministers agreed to the proposal made by the Secretary-General of ASEAN to set up an Ad Hoc Unit to help with the implementation of the recommendations of the Preliminary Needs Assessment (PNA) Mission.

On 30 August 2019, the Technical Working Group (TWG) led by Dr. Win Myat Aye, Union Minister for Social Welfare, Relief and Resettlement, held the first meeting to implement recommendations in the Preliminary Needs Assessment (PNA) of the ASEAN-Emergency Response and Assessment Team (ASEAN-ERAT).

Together with Myanmar Delegation, the members of ASEAN-ERAT visited Cox's Bazar in Bangladesh in July 2019 to explain the situation of Rakhine State to potential returnees. They also went to Taung Pyo Letwe Reception Centre in Rakhine State on 22 August 2019 to witness the planned repatriation of displaced persons which was scheduled to take place on that day.

### **7.4 Provisions of Humanitarian Assistance in Rakhine State**

Following the violent attacks of August 2017, the humanitarian assistance has been provided to the affected people in northern Rakhine State through Myanmar Red Cross Movement comprising of International Committee of Red Cross (ICRC), Myanmar Red Cross Society (MRCS) and International Federation of Red Cross and Red Crescent Societies (IFRC) and World Food Programme (WFP).

The assistance from donor countries and organizations also goes through UEHRD or directly to the Ministries concerned and State government. The Rakhine State Government has recently suspended the travel authorizations and the activities of UN agencies and INGOs in Six affected townships namely: Ponnagyun, Kyauktaw, Rathedaung, Buthidaung, Maungdaw and Mrauk U of Rakhine State due to the clashes between Myanmar Tatmadaw and the Arakan Army (AA). However, it has been clarified that it is not about the suspension of providing humanitarian assistance but just suspension of regular activities of UN agencies and INGOs in those areas. ICRC, WFP and MRCS are allowed to continue providing humanitarian assistance in those areas. Moreover, the Rakhine State Government has informed UN agencies and INGOs that it will facilitate their deliveries if they want to deliver assistance to affected people in those areas.

### **7.5 Media access to Rakhine State**

Media access to Rakhine State has been granted to both local and international press to allow a more transparent and fair reporting of facts from the ground. The government has regularly allowed media tours to northern Rakhine State since the incidents of October 2016.

In August 2019, a team of local and foreign journalists from Courier Japon, Nishinippon Shimbun, Nippon TV, VOA, and BBC visited the Taung Pyo Letwe Reception centre and Hla Pho Khaung Transit camp, the Kainggyi village and Inndin village in Maungdaw Township of Rakhine State where they interviewed the local communities. This is the 34th visit by media persons to Rakhine State.

In September 2019, the government organized a tour comprising Heads of Missions from the Embassies of the nine ASEAN Member States, China, India and Bangladesh as well as the Representatives from UNDP and UNHCR to Rakhine State. During their visit, they met with members of the Hindu community and Muslim families who had returned on their own volition.

### **7.6 Trilateral Informal Meeting**

At the invitation of State Councillor and Foreign Minister of the People's Republic of China, Mr Wang Yi, Union Minister for Office of the State Counsellor U Kyaw Tint Swe paid a working visit to Beijing on 28 June 2018. During the visit, a trilateral informal meeting was held between the Union Minister U Kyaw Tint Swe, Foreign Minister Mr. Abul Hassan Mahmood Ali and the State Councilor and Foreign Minister Mr. Wang Yi. The trilateral informal meeting reached consensus on a three-phased solution: "cessation of violence, repatriation and development".

During the high-level week of the current (74th Session) United Nations General Assembly in New York, China organized an informal trilateral meeting. The UN Secretary-General's Special Envoy on Myanmar was also present at the meeting by invitation. The meeting was held in a friendly, candid and constructive atmosphere. Myanmar and Bangladesh appreciated China's efforts to facilitate the work of bilateral repatriation. China recognized the conditions for resolving the issue are maturing and all parties agreed to strengthen consultation and dialogue to solve the issue as soon as possible. The three parties also agreed to establish an informal working-level meeting to implement the bilateral agreements for the repatriation of the displaced persons. They also agreed to enhance cooperation for improvement of people's livelihoods and to realize stability and development of Rakhine State.

## 7.7 IDP camp closure strategy

The government is of the view that the creation of the camp closure strategy should involve consultation not only with United Nations and humanitarian actors but with IDPs and civil societies.

Even before and during the drafting process of the strategy, officials from Ministry of Social Welfare Relief and Resettlement regularly visited the IDP camps in Rakhine and Kachin States and discussed with IDPs, host communities, CSOs and other stakeholders for the possibilities of resettlement and closure of camps.

Three workshops for drafting the strategy were held on June and November 2018, and April 2019 respectively and representatives from Ministries, State governments, UN Agencies, INGOs, international development partners, Red Cross Movement (MRCS, ICRC, IFRC), local and international experts had actively participated in these workshops.

## 8. Conclusion

Myanmar is still a fledgling democracy. All the individuals and communities must abide by the existing laws, rules and regulations for the development of democracy. To establish stronger democratic practices, the differences should be solved through negotiations and dialogue which require basic foundations of tolerance, patience and trust. Trust should be developed with national reconciliation by avoiding hate speeches and by overcoming discord among various ethnic people.

The Government of Myanmar is striving for the emergence of a democratic federal union. The fundamental democratic norms and federal principles could ensure equal rights and unity among the ethnic people. Broader participation of the ethnic people is essential for effective democratization process and forging sustainable peace and building a democratic federal union.

The challenges facing Myanmar are complex and multifaceted. For a nascent democratic country, Myanmar needs time and space to overcome the complex challenges. The Government of Myanmar believes that human rights can only be upheld by the rule of law and by national reconciliation, particularly in Myanmar where there are over 130 different ethnic groups living together as a nation.

The Government of Myanmar will continue to stride with unity and strength of its people for peace, national reconciliation, rule of law and socioeconomic development of the people despite all the formidable challenges it is facing. The government is resolute to fulfil the ultimate aspiration of the people to build a democratic federal union where justice, freedom and equal opportunity for all its citizens are guaranteed.

The international community can best assist Myanmar in realizing its democratic nation-building by rendering constructive contribution towards Myanmar's endeavours based on mutual understanding and mutual respect.