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تعزيز حقوق الإنسان وحمايتها: حالات

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المقررين والممثلين الخاصين

رسالة مؤرخة 15 تشرين الأول/أكتوبر 2020 موجهة إلى الأمين العام من الممثل الدائم
لميانمار لدى الأمم المتحدة

أتشرف بأن أحيل طيه وثيقة بعنوان "مذكرة بشأن التحول الديمقراطي في ميانمار: التحديات وآفاق المستقبل" (انظر المرفق)*.

وسأكون ممتنا للغاية لو أمكن تعميم هذه الرسالة ومرفقها باعتبارهما وثيقة من وثائق الجمعية العامة، في إطار البند 72 (ج) من جدول الأعمال.

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

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1. Introduction

It has been over four years since the first elected civilian government of the National League for Democracy Party took over state responsibilities in Myanmar which marked the end of over five decades of military rule. However, this is only the beginning of a long journey towards a fully democratic nation that the people of Myanmar have for so long been aspired to and strived for. As a country undergoing democratic transition, Myanmar is still tackling numerous daunting challenges, including the continuing decades-long ethnic armed conflicts, the old and new complex issues in Rakhine State, and the recent devastating impact of COVID-19 global pandemic.

Over the past four years, the Government has made an all-out effort within the space permitted by the 2008 Constitution to fulfill the people's dream of enjoying their inherent rights to live in peace and security, with fundamental freedoms, and development. There are significant improvements in the life of the people, in the governance and nation building. The people of Myanmar have started to witness the fruit of democracy and rule of law.

2. Political Development

2.1 2020 General Elections

The year 2020 is a critical year for the people of Myanmar. On 8 November, the general elections will be held. It will be the third parliament to be elected under the 2008 Constitution. The Union Election Commission is making all necessary preparation to ensure that the elections are free, fair, and credible. Local and international election observers have also been invited.

The Election Law ensures equal participation for all citizens regardless of ethnicity, faith, political affiliation or gender. 32 Muslim candidates, including 3 from Rakhine State, are running for the upcoming general elections.

The Union Election Commission (UEC) is taking necessary measures to curb the spread of political, racial and religious based hate speech on social media leading up to the elections. The UEC is working in close cooperation with the Ministry of Information, the Facebook team for Myanmar and relevant UN Agencies in this regard.

2.2 Union Peace Conference

As a multi-ethnic country, Myanmar believes in the value and strength of unity in diversity. Therefore, the country is striving to build a democratic federal union which guarantees sustainable peace, genuine national reconciliation, and all-round development of its people.

The NLD Government aims to hold political negotiations with all ethnic nationalities to bring the seven-decade history of internal strife to a conclusion once and for all, and to achieve durable peace. Recently, Myanmar has successfully convened the fourth session of the Union Peace Conference, also known as the 21st Century Panglong. During this session, the third part of the Union Accord which includes basic guiding principles for the future Democratic Federal Union was signed.

3. Impact of COVID-19 pandemic

Myanmar is sparing no effort to prevent and fight back the scourge of the COVID-19 global pandemic. Myanmar has relied on people's power as the source to mitigate the impact of the pandemic. Therefore, it has taken a Whole-of-Nation approach. The unique

character that has clearly emerged from the pandemic response is strong voluntarism, charity, and a sharing spirit.

To ensure that no one is left behind, the State response covers all vulnerable segments, including IDPs, prisoners, persons with disability, and migrant workers returning from abroad.

3.1 Efforts to mitigate the impact of COVID-19

To contain the virus and to lessen socio-economic implications, Myanmar has emphasized the implementation of four ‘P’s, namely: Political leadership, Preventive measures, People’s participation, and Partnership.

The Central Committee for the Prevention, Control, and Treatment of COVID-19, galvanized by the State Counsellor Daw Aung San Suu Kyi, has been launching an intensive public awareness campaign and disseminating health guidelines and directives throughout the country, including the IDP camps in Rakhine, Shan and Kachin States. Moreover, State Counsellor regularly holds video conferences with representatives from public and private sectors, healthcare personnel, essential workers, and COVID-19 patients to discuss the impact of the pandemic and the challenges they are facing.

Myanmar’s COVID-19 response measures are gender-responsive, and women and girls are involved in the decision-making process. Mobile hotlines have been activated throughout the country as violence against women and children increases during the lockdowns. Mobile hotlines service also provides psycho-social counseling services in addition to the lodging of complaints and reporting. In addition to the hotlines service, One Stop Women Support Centers (OSWSC) and Help Lines are operating 24/7 even during the COVID-19 pandemic.

To relieve persons with disabilities from the impact of COVID-19, the Government has provided cash assistance to over 200,000 persons with disabilities.

3.2 COVID-19 Economic Relief Plan (CERP)

To mitigate the economic fallout of the pandemic and to stimulate the economy and employment, Myanmar has developed COVID-19 Economic Relief Plan (CERP) with a fund of 200 billion MMK. The CERP comprises a series of actions designed to cushion the financial, social and economic impacts of the pandemic and to provide loans to vulnerable sectors and small- and medium-sized businesses. Moreover, community-based job creation schemes are initiated in rural areas for the returning migrant workers and local young people.

In April and June, essential food items and cash transfers have been provided to over 5.4 million households with no regular income. The Government has made a third round of cash transfers to those families in August. Many other supports and relief packages are being planned and are under implementation.

Myanmar has been working in partnership with the ILO to conduct research on the pandemic’s impact on the labor market and organized trainings for workers.

Moreover, the Government is welcoming back thousands of Myanmar migrant workers through border check points and by relief flights.

3.3 Engagement with the Ethnic Armed Organizations-EAOs to fight COVID-19

On 9 May 2020, the military announced a nationwide ceasefire from 10 May to 31 August 2020 to help fight the COVID-19 pandemic in response to the UN Secretary-General’s appeal for a global ceasefire. It also announced that the ceasefire would be

applied to all areas except where terrorist groups, declared by the Government, have taken positions. The nationwide ceasefire has now been extended until 31 October.

To address the possible outbreak of COVID-19 in non-governmental controlled areas, the Government has formed the Committee on Coordination and Cooperation with EAOs in relation to COVID-19 Prevention, Control, and Treatment in April. The Committee has been holding meetings with EAOs, including both NCA signatories and non-signatories, to work together in combating the COVID-19 and provided medical supplies. The Committee is playing a coordinating role between EAOs and local governments in the fight against the pandemic. Many armed groups have responded positively, and the cooperation has been working well. Since May, the military has been engaging with some EAOs and provided medical supplies and foodstuffs.

4. Socio-economic reforms

Despite current challenging circumstances, Myanmar is actively striving to implement global commitments, including the Sustainable Development Agenda (2030).

Myanmar Sustainable Development Plan-MSDP (2018–2030) is formulated with regional commitments and UN Sustainable Development Goals. The strategic plan sets a national development vision across all sectors in all states and regions. The National Indicator Framework- a monitoring framework against the MSDP is being finalized.

The Project Bank was established and launched its website in February 2020 to implement the MSDP effectively. It will pave the way to access all information on major projects, including financing and appraisals. Moreover, the Project Appraisal and Monitoring Guideline were issued in June 2019 to facilitate the systematic implementation of the projects.

Myanmar is paying serious attention to the balance of business development and responsible investment. The Government is cooperating with UNDP to conduct the Business and Human Rights Initiative. It is also collaborating with OECD and the Myanmar Center for Responsible Business to promote responsible business conduct.

For the social sector, the Government has doubled healthcare and education expenditure. The National Health Plan (2017–2021) has been implemented to achieve Universal Health Coverage. Similarly, the National Education Strategic Plan-NESP (2016–2021) has been implemented to provide equitable and non-discriminatory access to quality education.

The Government has developed and implemented the Social protection policy, Youth policy, and the National Strategic Action Plan for the Advancement of Women. The social safety net programme promotes social pension for people aged over 85 years and Cash or Kind supports to vulnerable groups.

5. Promotion and protection of human rights

5.1 Child's rights

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

In July 2019, the Union Parliament enacted the new Child Rights Law to align the national policies and regulatory frameworks with the UN Convention on the Rights of the Child. The new law criminalizes grave violations against children and

provides more robust legal protection for children in the context of armed conflict. It also criminalizes sexual violence, requiring the Government, the Tatmadaw (the military), and armed groups to take necessary measures to protect children from sexual violence.

In collaboration with the ILO, the Government has established a complaint mechanism to prevent under-age recruitment for military service. In June 2020, Myanmar ratified the Minimum Age Convention 1973. In line with the JAP, the Tatmadaw recently issued two directives to reinforce the existing command orders to end and prevent recruitment and use of children in any capacity.

The Government has established the National Committee on the Prevention of Grave Violations against Children in Armed Conflict and formulated the National Action Plan for protecting children in armed conflicts from injury, death, and sexual violence. The President's Office approved the Action Plan in August this year. In line with the work plan, the military will issue necessary directives and set up a complaints mechanism, and a monitoring and evaluation committee. Myanmar is cooperating with UNICEF to conduct awareness-raising activities. In June this year, the UN delisted Myanmar's army from the list of countries that recruit child soldiers for combat purposes.

5.2 Women's rights

As domestic legal reform is essential for the effective implementation of the protection of the rights of women and girls, the "Prevention and Protection of Violence against Women Law" has been drafted and is currently under review by the Bill Committee of the Parliament. The new Law reinforces the protection of women from all forms of violence, including domestic and sexual violence.

The One Stop Women Support Centers (OSWSC) and 24hr Help Lines have been set up to provide women and girls with physical, legal, psychological, and social support. Victims of sexual violence are also provided with one-time financial support for rehabilitation. A new set of standard operating procedures (SOP) has been developed since 2019, using a survivor-centered approach to assist case management for gender-based violence. Clinical guidelines are also being developed for responding to rape.

National Strategic Plan on the Advancement of Women (2013–2022) for gender equality and women empowerment has been implemented. Moreover, reports have been regularly submitted to CEDAW Committee.

Gender perspectives are integrated into the Nationwide Ceasefire Agreement signed in 2015. During the Third Session of the Union Peace Conference-21st Century Panglong, four gender agreements are included in the political sector basic principle of Part II of the Union Accord, and women participation was increased by up to 30%.

Regarding the UNSC Resolution (1325), the Government is implementing the Women Peace and Development Action Plan for the Advancement of Women in Kayin State, Kayar State, and Mon State (2020–2022) developed in coordination with relevant women's committees and with the support of the UN Women.

5.3 Disabilities' rights

Myanmar acceded to the Convention on the Rights of Persons with Disabilities (CRPD) on 7 December 2011 and submitted its initial report to the CRPD Committee in November 2015.

The Law on Protection and Promotion of the Rights of Disabilities was enacted in June 2015. The Law ensured the empowerment of persons with disabilities in Myanmar 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, the new 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 developed to be in line with the 2030 Agenda.

Plans are now underway to review the current Law on Protection and Promotion of the Rights of Disabilities.

5.4 Labour rights

The Government has taken concrete measures to effectively promote and protect labour rights, including eliminating forced labour. Institutional and capacity building such as training of trainers programmes and awareness-raising programmes have been conducted to eradicate forced labour.

The Memorandum of Understanding on 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) were 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 eliminating forced labour, the Memorandum of Understanding on Decent Work Country Programme (2018–2021) (DWCP) was signed between Myanmar and ILO in September 2018. Myanmar's first DWCP represents a significant step for ILO's engagement in Myanmar in support of the tripartite partners.

The National Action Plan on the Elimination of Child Labour (2019–2023) was adopted to eliminate child labour. Moreover, the National Ceasefire Agreement signed with ethnic armed groups includes commitments to prevent forced labour and 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.

The Government established the National Complaint Mechanism in February 2020 with support from ILO. Recently, in June this year, Myanmar ratified the Minimum Age Convention 1973.

6. Cooperation with the United Nations

6.1 Cooperation with Special Representative of the Secretary-General (SRSG) for Children and Armed Conflict

Myanmar has undertaken many steps to preventing and ending the recruitment and use of children over the past eight years. The measures include ratification of the Optional Protocol to the CRC on the involvement of children in armed conflict (OPAC) and the enactment of a new Child Rights Law, aligning national policies and regulations with the CRC.

The Child Rights Law (2019) provides stronger legal protection to children affected by armed conflict and criminalizes Six Grave Violations against children.

The Inter-Ministerial Committee for the Prevention of the Six Grave Violations during Armed Conflict was established in January 2019. The Committee will oversee the implementation of the recently adopted National Action Plan to prevent killing, maiming, and sexual violence against children in armed conflict. As part of the Action Plan, nationwide awareness-raising activities will be launched.

The National Complaint Mechanism was established to prevent under-age recruitment for military service. In June this year, Myanmar ratified the Minimum Age Convention 1973. In line with the JAP, the Tatmadaw recently issued two directives to reinforce the existing Command Orders to prevent recruitment and use of minors in any form.

The Government is supporting and encouraging engagement between the CTFMR and Nation-wide Ceasefire Agreement (NCA) signatory ethnic armed groups to prevent recruitment and use of children. Efforts are being made to find a lasting solution to the ongoing armed conflict through political means. During the third session of the Union Peace Conference- the 21st Century Panglong, an article prohibiting the six grave violations was adopted in the Nationwide Ceasefire Agreement.

6.2 Cooperation with Special Representative of the Secretary-General (SRSG) for Sexual Violence in Conflict

Myanmar upholds the policy of zero-tolerance against any form of sexual violence, including conflict-related ones. The Government of Myanmar signed the Joint Communiqué with SRSG on Sexual Violence in Conflict in December 2018 to prevent and address conflict-related sexual violence.

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

In March 2019, the 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.

The “Prevention and Protection of Violence against Women Law” has been drafted and is currently under review by the Bill Committee of the Parliament. The new law will reinforce the protection of women from all forms of violence, including domestic and sexual violence.

6.3 Cooperation with 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 despite its rejection of the resolution which mandated her appointment. The Government has also allowed opening of her office in Nay Pyi Taw. The Special Envoy has made her 10th visit to Myanmar in January this year.

7. The Situation in Rakhine State

7.1 Humanitarian Situation

Despite the challenges posed by the internal armed conflicts in Rakhine State, Myanmar has scaled up its efforts to grant humanitarian access to International Organizations, including the World Food Programme (WFP) and the International Committee of the Red Cross (ICRC), to provide food and emergency items to affected persons in Rakhine and Chin States. The Government and the ICRC drew up an action plan to prevent and control the spread of COVID-19 in Rakhine State, including in new and old IDP camps. The WFP has resumed regular distribution of food supplies and other activities such as nutrition interventions for vulnerable communities in Rakhine State. The people have benefitted from the generous support of the UN Country Team and other development partners in these efforts.

7.2 Bilateral Repatriation Process

Bilateral cooperation is the only way that can effectively resolve the repatriation issue between Myanmar and Bangladesh. Myanmar and Bangladesh signed the “Arrangement on Return of Displaced Persons from Rakhine State” on 23 November 2017. The Terms of Reference (ToR) for the Joint Working Group on the repatriation of displaced Myanmar residents from Bangladesh was signed on 19 December 2017, and “The Physical Arrangement for Repatriation of Displaced Myanmar Residents from Bangladesh” was signed on 16 January 2018. To implement those bilateral agreements, the Joint Working Group (JWG) led by Permanent Secretary of the Ministry of Foreign Affairs of Myanmar and Foreign Secretary of Bangladesh was formed.

7.3 Voluntary returns of displaced persons through unofficial routes

There are disturbing reports that displaced persons living in the camps in Cox’s Bazar are facing death threats and attacks or intimidation by Arakan Rohingya Salvation Army (ARSA) for expressing their desire to return to Myanmar.

As a result, hundreds of displaced persons returned to Rakhine State through unofficial routes. The local authorities of Myanmar officially received them if they are notified in advance. Between May 2018 and April 2020, a total of 352 displaced persons returned to Rakhine State on their own volition.

On 13 April, Myanmar restricted border crossing to prevent the spread of COVID-19. However, some displaced persons entered the country without prior notice.

From 26 March 2020 to 2 June 2020, eight cases of COVID-19 had been identified among the returnees from Cox’s Bazar camps. They were quarantined and treated at Hlaphokaung transit centre in Maungdaw Township, and all of them recovered and tested negative.

7.4 Resettlement

Myanmar is engaging with different actors to create a conducive environment in Rakhine State for the prospective returnees from Bangladesh. A trilateral agreement with the UNDP and UNHCR has been extended to June 2021 to facilitate implementation of the bilateral agreements with Bangladesh.

UNDP and UNHCR teams have worked independently to assess immediate needs in over 120 villages. The Government has approved 75 ‘Quick Impact Projects’ (QIPs), as termed by the UN, relating to community infrastructure, skills training, and income-generation. With the advent of the pandemic, their efforts have now naturally focused on raising awareness of COVID-19 prevention within the communities.

The Government is also working with ASEAN’s Coordinating Center for Humanitarian Assistance on Disaster Management (AHA Centre). At the time of repatriation, the ASEAN assessment team will be deployed in the field to assess the process. This should enhance the trust and confidence of the returnees. In July this year, Myanmar and ASEAN identified and endorsed four joint projects: 1) improving access to information to facilitate the repatriation process; 2) capacity-building for the verification process at the reception centers; 3) provision of agriculture equipment, and 4) livelihood-recovery programme.

7.5 Social Cohesion

Myanmar has expended sustained efforts to foster social cohesion among the communities residing in Rakhine State to bring about reconciliation and rebuild trust and confidence.

With the support and cooperation from civil society partners, various activities have promoted mutual understanding and respect among the communities. So far, 203 community dialogues have been conducted, while respecting social distancing rules and other necessary precautions linked to the COVID-19 pandemic. The success of these community dialogues and activities augurs well for reconciliation and peace in Rakhine State.

Four youth camps have been held. Over 265 campaign activities to raise awareness of COVID-19 prevention measures have taken place in Rakhine State. Other activities in Rakhine include 17 anti-hate speech events, 3 gender-based violence awareness events, 5 community environmental campaigns, and 10 anti-drug campaigns. Besides, 28 training sessions on social cohesion, civic education, social mobilization, conflict analysis, managing rumors and hate messages have been organized.

Furthermore, 155 vocational training programmes have been conducted. Community members have participated in producing face masks and hand sanitizers. These activities created jobs for more than 5,000 people in Rakhine State. Communities in Rakhine State have also had the opportunity to participate in vocational training programmes offered by the UN, such as tailoring, mechanics, and livestock breeding. They were taking part in “cash for work” infrastructure development projects, such as renovation of village roads, water ponds and schools.

7.6 Implementation of the Recommendations of the Advisory Commission on Rakhine State

Despite many challenges, notable progress has been achieved in the implementation of the recommendations of the Advisory Commission on Rakhine State.

In health services, primary health care, maternal and child health, nutritional support, and immunizations have been provided for all communities by the mobile medical teams in the remote areas of Rakhine State. New hospitals have been built, and the old ones upgraded. Birth certificates have been issued to all communities regardless of nationality, race, or religion.

In the education sector, alternative education plans, such as technical and vocational training programmes have been provided for children who are not able to get access to formal education. For instance, the UK Department of Foreign and International Development (DFID) funded “Learning Together Programme” was jointly implemented by the Ministry of Education and the UNICEF in 10 townships in Rakhine, including two townships from Maungdaw District.

7.7 Accountability

In pursuit of accountability, the Government established the Independent Commission of Enquiry (ICoE) in July 2018, which submitted its final report to the President in January 2020. Based on these findings, the Union Attorney General is conducting ongoing investigations of allegations against civilian perpetrators.

Furthermore, the Office of the Judge Advocate General (JAG) announced on 15 September 2020 that the third court-martial concerning alleged human rights violations in Rakhine in 2017 will start before the end of 2020. It concerns the villages of Chut Pyin and Maung Nu. The ICoE final report identified them as the gravest on its list of 13 incidents. The cases had also been mentioned in the UN and civil society reports. Such significant steps taken by the military indicate Myanmar’s willingness to ensuring accountability for the most severe allegations.

Recently on 15 September, the Judge Advocate General announced that an investigation of possible broader patterns of violations in the region of northern Rakhine in 2016–2017 has started. Such alleged regional patterns of conduct could include, for example, “inadequate distinction between civilians and ARSA fighters, disproportionate use of force, failure to prevent the plundering of property destruction, or acts of forcible displacement of civilians. These possible patterns of conduct across northern Rakhine in 2016–2017 are now subject to the new investigation based on the ICoE final report, and other information. It is a significant progress in the domestic accountability process.

7.8 Closure of IDP camps in Rakhine State

On 22 May 2020, the Taung Paw IDP camp in Myay Pone Township was closed in line with the Camp Closure Strategic Plan, adopted on 19 November 2019. Currently, relevant ministries are working on the preliminary discussion for the closure of the Kyauktalone IDP camp in Kyaukphyu Township.

The camp population will be relocated to another nearby location. There are plans to construct 363 houses, schools, restrooms, and necessary infrastructures, including roads and pavements, and installation of running water and electricity. The Government will provide better infrastructure at the cost of over Kyat 2 billion (US\$1.4 million).

8. Conclusion

Myanmar, at its critical stage of political transformation, is facing formidable challenges that are of socio-economic, political and security nature. The COVID-19 pandemic has made the challenges even greater. However, the people of Myanmar are resilient, determined, and solidly united behind the leadership of State Counsellor Daw Aung San Suu Kyi to overcome the obstacles on our journey to peace and prosperity, freedom, and democracy.

Myanmar will continue to stride with the unity and strength of its people for peace, national reconciliation, the rule of law, and the socio-economic development

of the people despite all the formidable challenges it is facing. The Government is committed to fulfilling 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.
