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# 人权理事会

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需要理事会注意的人权状况

# 缅甸人权状况特别报告员的报告\*,\*\*

概要

本报告由缅甸人权状况特别报告员根据人权理事会第 40/29 号决议提交。在报告中,特别报告员回顾了她的任期,指出了在人权问题方面的事态发展,并就促进缅甸的人权提出了建议。

<sup>\*\*</sup> 本报告附件不译,原文照发。









<sup>\*</sup> 本报告逾期提交,以纳入最新信息。

# 一. 导言

- 1. 本报告根据人权理事会第 40/29 号决议提交,介绍了自缅甸人权状况特别报告员李亮喜 2019 年 3 月向理事会提交上一次报告(A/HRC/40/68)、2019 年 6 月和 9 月向理事会口头介绍最新情况和 2019 年 9 月向大会提交报告(A/74/342)以来缅甸的事态发展。这是她任期结束前的最后一次报告。
- 2. 虽然缅甸政府已取消与特别报告员的合作,但她继续寻求与缅甸政府进行接触,处理该国的人权问题。她请求于 2020 年 1 月访问缅甸;但这项请求遭到拒绝(见附件一)。尽管如此,特别报告员继续寻求对话机会,于 2020 年 2 月 4 日向该国政府发送了一份问题清单,但尚未收到答复(见附件二)。
- 3. 特别报告员于 2020 年 1 月 15 日至 17 日访问了泰国,并于 1 月 17 日至 23 日访问了孟加拉国。她感谢两国政府为访问提供便利。在泰国,她会见了联合国和从事缅甸人权工作的非政府组织。在孟加拉国,她在达卡和科克斯巴扎尔会见了政府官员和联合国代表。她访问了科克斯巴扎尔的难民营,会见了难民以及从事难民应对工作的民间社会和非政府组织的代表。她与联合国缅甸国家工作队举行了视频会议。
- 4. 特别报告员注意到,她的任期跨越了缅甸近代史上的重要时刻。她回顾了在2014 年上任时她和其他人的乐观精神,特别是在向民主过渡方面。她能够进入该国,并与政府和民间社会、联合国以及国际社会进行了坦率对话。她在三年多的时间里曾前往缅甸各地,访问了仰光、内比都、克钦邦、掸邦、若开邦、克伦邦和孟邦,并会见了范围广泛的利益攸关方,包括侵犯人权行为受害者、受发展项目影响的社区、境内流离失所者和被监禁者。
- 5. 在她 2014 年上任时,人权理事会第 25/26 号决议扩大了她的任务范围,将 2015 年选举前选举进程和改革方面的进展情况包括在内。2016 年 3 月,理事会 第 31/24 号决议还要求她确定进展基准以及技术援助和能力建设优先领域。特别报告员根据她先前向政府提出的建议,编写了联合基准草案,并提出了实施时间表。她就其中一些基准与政府进行了接触,但进展有限。虽然她一再提出的建议为缅甸提供了保护、尊重和实现人权的切实手段,但这些建议很少得到落实。
- 6. 特别报告员任期内在缅甸发生的事件的严重性和悲剧性怎么强调都不为过。 2016 年 10 月若开邦北部发生暴力事件后,特别报告员访问了该地区。她还首次 访问了科克斯巴扎尔,会见了那些逃离军事行动的人。在听取安全部队对他们实 施的暴行后,她建议人权理事会设立一个调查委员会调查若开邦发生的情况,并 就克钦邦和掸邦的情况举行一次特别会议。理事会第 34/22 号决议设立了一个独 立的国际实况调查团,其任务是查证在缅甸,军队和安全部队据称侵犯人权行为 及其他践踏人权行为的事实和情节。自 2017 年 8 月 25 日开始,若开邦北部又发 生了极端暴力事件,特别报告员发现这些事件带有灭绝种族的特征,她建议理事 会设立一个问责机制。理事会 2018 年 9 月第 39/2 号决议设立了缅甸问题独立调 查机制,该机制于 2019 年 8 月开始运作。特别报告员还呼吁联合国对与若开邦 有关的行动进行独立调查。格特•罗森塔尔在 2019 年初进行了这样的审查。
- 7. 自 2017 年 9 月以来,安全理事会已数次开会讨论缅甸问题。它于 2018 年 4 月访问了缅甸和孟加拉国,并在访问后就局势发表了声明。然而,特别报告员感到失望的是,安全理事会迄今未能团结一致通过一项决议,表明解决这一问题的一致决心。她再次呼吁安全理事会将缅甸局势提交国际刑事法院,或由国际社会设立一个国际法庭,起诉被控在缅甸犯下国际罪行的施害者。

# 二. 人权状况

# A. 民主空间

8. 2015 年,缅甸举行了具有里程碑意义的民主选举,2016 年,全国民主联盟政府就职。特别报告员曾期待新政府将开放广阔的民主空间,但事实并非如此。

## 1. 大选

- 9. 现在,缅甸再次接近大选。选举要达到透明、包容、参与、自由和公平的国际标准,有几个问题需要解决。
- 10. 在选举前和选举期间,应特别努力扩大社区中每个人进行自由公开辩论的空间,并寻求、接受和传播信息。然而,尽管特别报告员一再呼吁改革,但关于表达、集会和结社自由权利的法律框架仍然不符合国际标准,并压制表达自由。该国继续根据将合法表达和民主活动定为犯罪的法律对记者、活动人士和其他人进行指控和定罪。此外,根据 2013 年《电信法》第 77 条下达命令,若开邦和钦邦的九个乡镇被完全暂停了移动互联网服务,影响了一系列权利。特别报告员感到关切的是,这项规定可能会被用于该国其他地区以压制信息和公开辩论。必须作为紧急事项改革这一法律框架,特别是《电信法》、1908 年《非法结社法》、2016 年《和平集会与和平游行法》、1982 年《公民身份法》和《刑法》的部分条款。
- 11. 在选举期间,所有人都必须能够行使其参与、竞选和投票的权利。2010 年《政党登记法》规定,只有全面公民才能组建政党,只允许全面公民和入籍公民成为政党成员。由于歧视性的《公民身份法》及其任意执行,《政党登记法》影响到宗教和族裔少数群体成员的权利,使这些少数群体,特别是穆斯林在获得公民身份文件方面面临不必要的障碍。这些法律对罗兴亚人的结社自由权和政治参与的影响最为严重。
- 12. 大多数罗兴亚人在 2015 年选举前被剥夺了选举权,在 2020 年选举前留在缅甸的罗兴亚人基本上一直无法享有选举权。境外有 100 多万缅甸难民无法参加选举。特别报告员还多次被告知利益攸关方的关切,即投票是否会在受冲突影响的地区,特别是若开邦和钦邦南部以及掸邦北部举行,这将对族裔和宗教少数群体的代表性产生尤为严重的影响。政府绝不能继续剥夺其大量人口的政治权利:它应该改革法律框架,以确保所有人的选举权和被选举权,并确保在全国各地举行投票。如果对某一特定地区的安全有所担心,政府应探索个人到场投票的其他替代方式,以保证所有选民都能投票。选举期间,投票应向独立的当地和国际观察员和媒体开放,以确保投票自由、可信、公平、和平地进行。

## 2. 仇恨言论、民族主义和民粹主义

13. 特别报告员一再提出等同于煽动暴力、歧视和仇恨的言论问题,在缅甸这仍是一个普遍和严重的问题,特别是在社交媒体上。政府有责任谴责这种言论,但并没有这样做。特别报告员继续获悉,通过使用全面禁止和自动删除,脸书上的合法表达被过度抑制,而与此同时,在线煽动暴力、歧视和仇恨的事件仍然没有得到充分抑制。特别报告员获悉,内政部正在作为优先事项颁布一项反仇恨言论法草案。她仍感关切的是,该法依靠审查和刑事处罚作为手段处理定义宽泛的仇

恨言论,可能被用来进一步限制表达自由。这种做法不符合国际人权法。特别报告员再次呼吁政府采取广泛行动,包括根据《关于禁止构成煽动歧视、敌意或暴力的鼓吹民族、种族或宗教仇恨言论的拉巴特行动计划》颁布反歧视法。

14. 日益高涨的民族主义、极端主义和民粹主义言论与人权背道而驰,同样令人 关切,特别是令族裔和宗教少数群体感到关切的是,它们加剧了对这些群体的暴力、歧视和仇恨。这些言论妖魔化民间社会和人权活动人士,并导致他们进行自 我审查。政府有责任公开反驳这种言论,并促进多元化、宽容和包容。特别报告 员注意到媒体和社交媒体在这一领域的作用,应当利用它们的作用促进积极规 范、多样性和对各种想法的开放态度。

# 3. 出于政治动机的逮捕和起诉

15. 据报告,截至 2020 年 1 月,缅甸有 647 名政治犯,其中 73 人正在服刑,141 人拘留候审,433 人还押候审。据报告,从全国民主联盟政府执政至 2019 年 11 月,军事人员根据多项法律对 96 人提起了 47 起诽谤案件,包括针对活动人士、记者、宗教领袖、艺术家和政党成员的案件。在同一时期,议员及其工作人员对 37 人提出了诽谤议员的申诉。2016 年 3 月至 2019 年 11 月,议员及其代表对据称批评议员工作业绩的 30 人提起了 22 项诉讼。必须终止这些出于政治动机的起诉。

16. 2019 年 11 月,克耶邦垒固镇法院根据 2017 年《保护公民隐私和安全法》 第 8(d)条判处 6 名克伦尼族青年 6 个月苦役徒刑。这些青年反对建造昂山将军的雕像,并据称发表言论称,克耶邦首席部长及规划和财政部长是政治犯,是民族团结的敌人。特别报告员感到关切的是,这是对多项权利的侵犯;她呼吁释放这些人,停止逮捕和平抗议者。

17. 特别报告员获悉,克伦环境和土地权利维护者 Ohn Hla 被以《和平集会与和平游行法》第 19 条为名再次判处一个月监禁,同时被监禁的还有另外三人。 Ohn Hla 在与 Shwe Mya Sandi 住房项目的居民一起抗议失去他们的土地后于 2019 年 4 月被捕。她被捕的原因据称是她的名字不在抗议信中。必须废除该法过于繁琐的要求,撤销指控并释放 Ohn Hla。

18. 2019 年 4 月,孔雀世代妲恰剧团成员——Kay Khine Tun, Zayar Lwin、Paing Phyo Min、Paing Ye Thu、Zaw Lin Htut、Su Yadanar Myint 和 Nyein Chan Soe——因在互联网上流传的讽刺缅甸军队(又称缅军)的表演而遭到不公正起诉,这种情况仍在继续。今年 2 月,Botahtaung 镇法院根据《电信法》第 66(d)条判定三名成员犯有诽谤罪。四名成员已因第 66(d)条所述的诽谤行为被 Mayangon 镇法院判处 6 个月监禁。除了诽谤指控之外,2019 年 11 月,Botahtaung 镇法院根据《刑法》第 505(a)条判处六名成员一年监禁;五人已于 2019 年 10 月被Mayangon 的另一家法院以同样的罪名定罪,并将至少服刑两年。Zayar Lwin、Paing Ye Thu 和 Paing Phyo Min 还面临根据第 505 条(a)款在伊洛瓦底省其他四个镇法院提出的指控。特别报告员呼吁立即释放这些人并撤销所有指控;讽刺不是犯罪。她还指出,个人因同一行为在不同的镇法院面临多重指控违反了法治原则;他们获得公正审判的权利必须得到维护。

19. 记者 Swe Win、Ye Ni、Aung Marm Oo 和 Ye Kyi Myint 分别继续面临根据《电信法》、《非法结社法》和《刑法》提出的指控。2019 年 10 月,军方根据《刑法》第 505 条(a)款对律师 Kyi Myint、缅甸前陆军上尉 Nay Myo Zin 和诗人 Saw Wai 提出诽谤申诉,指控他们于 4 月在德林达依省 Kawthaung 镇支持修订《宪法》的公开集会上发表的言论。特别报告员呼吁撤销对这些人的指控。

# B. 土地权、工商业和人权

20. 在特别报告员任期内,缅甸的工商业环境发生了巨大变化。主要特点是经济自由化和取消经济制裁,这为投资和发展创造了机会。这无疑给许多人带来了好处,但也加剧了原有的人权问题。政府有责任保护其领土上的所有人免遭侵犯人权行为,包括工商企业实施的侵犯人权行为。目前,缅甸关于工商业活动的法律框架未能履行这一义务,而当地的现实情况增加了复杂性,增加了工商业对人权产生不利影响的风险。

21. 特别报告员还观察到大规模发展项目和行业在全国各地造成的严重影响。在许多情况下,这些活动在没有与受影响社区预先协商的情况下发生,导致土地丧失、环境破坏、被迫流离失所以及恐吓、压制甚至针对反对者的暴力事件。她回顾在克钦邦参观香蕉种植园的情况,这些种植园在以前的公土上绵延数英里,杀虫剂的使用污染了河流。已经就以下项目发生了抗议和公众反对:密松水电站和萨尔温江大坝;迪拉瓦经济特区和皎漂经济特区;莱比塘铜矿;Swe Ko Ko 赌场;Tigiyt发电厂;Alpha 水泥厂;以及横贯缅甸的石油和天然气管道。这些项目及更多大型项目缺乏透明度,削弱了公众对政府的信任,人们也不相信自己会从这些发展中获益。在人口主要由少数族裔构成的各邦尤其如此。迄今为止,政府未能落实透明、包容和尊重权利的发展方针;做到这一点仍是一个至关重要的优先事项。

## 1. 土地权

22. 在特别报告员的整个任期内,土地权利问题对缅甸一直至关重要。关于土地征用案件的长期争议尚未解决,法律框架方面的近期事态发展加剧了这方面的争议,同时不断有关于据称没收土地的新案件的报告。2016 年国家土地使用政策阐述了土地保有权,建议根据该政策颁布一项国家土地法。政府尚未执行这项建议。

23. 2019 年《土地获取、重新安置和恢复法》增加了土地保有权的不安全性。 该法未能反映缅甸土地使用和流离失所的复杂现实,并且载有关于"公共目的" 的过于宽泛的规定,政府可能出于这些目的获取土地。尚不清楚该法是否符合 2015 年确立的环境影响评估程序中确定的土地征用程序,而且该法不符合国际 标准,包括《经济社会文化权利国际公约》关于禁止强迫迁离的规定。

24. 对传统土地和公地使用权缺乏充分法律保护的情况可能会被公司、军队和其他人利用,从而导致侵犯和践踏人权行为。特别报告员获悉,2017 年和 2018 年,果园公司根据 2012 年《空置、休耕和未开垦土地管理法》对伊洛瓦底省 Maubin 镇的 29 名农民提起申诉。这些农民自 1991 年以来一直在耕种据称为该公司占有的土地。2019 年 4 月,该公司根据《公民隐私和安全保护法》第 8(f)条 对村民 Sein Sein Soe 提出了进一步的申诉,而此前她在国务资政访问期间曾提出

了农民案件的问题。2019 年 9 月,11 名农民被根据《空置、休耕和未开垦土地管理法》判处徒刑。特别报告员呼吁立即释放他们,归还他们的土地或提供适当补偿。

25. 2019 年,军事人员根据 1947 年《公共财产保护法》第 6(1)条,对在克耶邦 Demoso 镇耕种土地的 21 名农民提出了危害申诉。根据《刑法典》第 447 条,还 对其中 12 名农民提起了进一步的非法侵入指控,因为据称这块土地在 30 年前被 军方没收。在克耶邦的 Loikaw 镇,军事人员还根据《刑法》和《公共财产保护法》对 20 名农民提出了多项申诉。一些农民已经根据 2012 年《农田法》获得了土地 使用证,但军方声称他们继续使用这些没收的土地。特别报告员呼吁撤销对这些农民的指控。

26. 特别报告员重申,政府应停止执行倒退性立法。缅甸需要土地法来保护农村人口的权利。特别报告员呼吁政府作为优先事项通过透明和协商程序起草符合国家土地使用政策和国际标准的国家土地法。届时,必须改革范围更广的有关土地使用和占用的法律框架,以一致和明确的方式纳入国家土地法关于权利的规定。

#### 2. 数据保护

27. 在 2014 年特别报告员任期开始时,缅甸的互联网普及率约为 1%,移动电话普及率为 5%。这些数字此后大幅提高。信息和通信技术部门的迅速发展带来了许多机会,但也引起了严重的人权问题。其中一个问题是缺少关于数据保护和监控的法律。《电信法》规范电信公司的行为,并赋予政府过于宽泛的服务和数据管制,但没有明确界定这种管制的理由。

28. 2015 年,政府规定移动电话用户强制性登记用户识别卡。人们对此感到严重关切,因为该国缺少符合国际标准的监管合法数据拦截的明确和全面的程序,也没有对这一程序实施监督的独立和有效的司法系统。强制性登记使得在没有相称和必要理由的情况下追踪和定位已登记个人成为可能。它还有可能被用于监视、审查、针对政治反对派和压制表达自由。这对安保、安全、隐私和其他权利构成了严重风险。此外,特别报告员注意到,政府计划建立一个国家数据库,用于存储已登记的用户识别卡用户的生物特征信息,这将严重加大监控和安全漏洞的风险,并进一步侵犯人民的权利。

29. 特别报告员还感到关切的是,政府计划将数字身份证作为包括生物识别信息的系统的一部分。在如何使用和存储此类信息方面存在严重风险,尤其是在没有数据保护法的情况下。此外,这些计划引起了对缅甸边缘化群体(包括但不限于罗兴亚人)权利和安全的严重关切。特别报告员紧急呼吁政府在通过广泛和包容的协商进程制定必要的数据保护法律框架前暂停这些计划。在更广泛层面上,法治、独立的司法机构和《公民身份法》改革都是确保个人数据的收集和存储符合人权保护所必需的。参与开发数字治理系统的公司必须警惕可能对人权构成的严重风险,并加强尽职调查,包括如果发现风险过高,应减少其服务销售。

## 3. 自然资源开采

30. 在整个任期内,特别报告员从人权以及对环境、冲突动态和社区的影响等方面报告了缅甸的自然资源开采情况。特别报告员指出,在受冲突影响的地区管理自然资源开采仍然面临很多问题,并构成严重的治理挑战。开采该国自然财富涉及武装冲突各方的利益,这增加了和平谈判的复杂性。

- 31. 特别报告员继续收到关于全国各地不负责任的采矿造成侵犯人权行为的报告。2019 年 8 月发生在孟邦 Paung 镇的山体滑坡据称造成 70 多人死亡,幸存者称这场灾难是由不负责任的采砂造成的。尽管一名孟邦议员在 2019 年 11 月发出呼吁,但尚未对这一严重事件进行调查。2019 年 12 月,由于掸邦东部 Tachileik区金矿开采对环境的影响,该地区的自给农被迫搬迁。据称未获作业许可的公司向附近的小溪河流中倾倒采矿废物,流入这些农民的稻田。农民没有得到补偿,他们享有适当生活水准的权利受到严重影响。
- 32. 缅甸的治理框架仍然不支持负责任的采矿。相关政策、法律和法规之间的复杂性以及缺乏明确性和一致性造成了法律上的不确定性。此外,政府执行现行的环境和社会法规的资源和技术能力有限,特别是在邦和省政府一级。公司正在利用这种情况,必须要求它们遵守国际标准。特别报告员敦促政府确保继续将采掘部门的持续改革作为其议程上的优先事项。她呼吁政府作为优先事项切实实施环境影响评估程序,使之成为一项一致、透明和可执行的要求。享有健康环境的权利汇集了使人过上有尊严生活的基本权利的环境层面,必须保护这项权利不受自然资源开采的影响。
- 33. 特别报告员再次赞扬该国继续参与《采掘业透明度行动计划》,这是提高该部门透明度和问责制的积极手段。这将支持进一步实现权利,包括知情权和获得补救的权利。她欢迎政府最近采取举措,增加披露采掘业实益所有人和"政治公众人物"的信息,该举措称这些人是现在或曾经被委以重要公共职能的人。特别报告员呼吁政府继续努力,确保按照《采掘业透明度行动计划》的标准,对采掘业公司实行透明、一致和可执行的报告要求。
- 34. 特别报告员感到关切的,她收到信息称,石油法律草案在几个关键领域似乎存在缺陷。报告称,该法律草案没有解决国有公司缅甸石油和天然气公司作为商业伙伴和监管者的双重角色所固有的利益冲突,这不符合缅甸可持续发展计划下的国有企业改革计划。该法律草案也没有纳入与缅甸在《采掘业透明度行动计划》下的义务相一致的信息披露条款,这将严重损害加强透明度和问责制的努力。此外,它没有述及有争议的收入分享问题,这有可能加剧若开邦人民的不满。近年来,在缅甸获得的外国投资中,若开邦占有相当大的比例,这主要是因为其近海石油和天然气储量。然而,若开邦的贫困率仍远高于全国平均水平。建立有效的收入分享制度对和平至关重要。此外,特别报告员强调,根据《经济社会文化权利国际公约》,政府有义务保障人民不受歧视地行使《公约》承认的权利。此外,应通过经济政策、预算分配和资源分配来推进实质性平等。

## 4. 服装厂

35. 特别报告员收到报告称,七名劳工罢工领袖和一名劳工权利活动者因参与 2019 年 8 月在伊洛瓦底省 Pathein 市的缅甸针织厂的罢工而面临根据《和平集会 与和平游行法》第 19 条提出的指控。报告称,工人们的工资低于最低工资,有 关休假和上洗手间时间的请求被拒绝,因而发起罢工。一些工人还报告称他们的 雇主实施了辱骂和性骚扰。二月,五名劳工权利活动者因 2019 年 11 月带领 400 名工人到仰光地区政府办公室抗议而被依据《和平集会与和平游行法》罚款。由于全国服装出口不断增加,以及据称计划在全国各地建造更多服装厂,特别报告 员强调必须通过协商和三方进程加强缅甸劳工治理和保护。

36. 根据《经济社会文化权利国际公约》,政府有义务确保享有公正和良好工作条件的权利。这包括公平和平等的薪酬、安全和健康的条件、平等的机会以及休息、合理的工作时间限制以及定期和带薪的公共假日。缅甸还批准了一些国际劳工组织(劳工组织)公约,2019 年 12 月,议会支持批准劳工组织《1973 年最低年龄公约》(第 138 号)。应对工人进行权利培训,政府必须保护结社和集会自由权,并与雇主协会和工会合作,增强工人权能,改善工作条件。还应继续努力消除强迫劳动和最恶劣形式的童工劳动。外国公司和国内公司必须按照《工商企业与人权指导原则:实施联合国"保护、尊重和补救"框架》,确保在整个供应链中尊重人权。

## 5. 应尽职责

37. 鉴于与缅甸工商业环境相关的人权问题,特别报告员强调所有工商企业都必须加强人权尽责,工商企业必须通过有效和持续地履行应尽职责才能将符合《工商企业与人权指导原则》的尊重人权责任转化为日常实践。

38. 尽职程序应包括查明和评估实际或潜在的人权影响,包括进行冲突分析;采取适当行动停止或防止此类影响,并利用影响力缓解剩余的不利影响;追踪用于处理不利影响的措施和程序的有效性;与利益相关方就如何处理不利影响进行沟通。此外,通过根据《工商企业与人权指导原则》建立业务层面申诉机制来补救不利的人权影响至关重要(A/73/163,第10-15段)。

39. 由于政府有责任保护人权不受侵犯,包括工商企业的侵犯,特别报告员呼吁政府通过加强法律、政策和监管框架,推动企业履行应尽职责。这包括在其当前投资政策审评的背景下。政府必须在履行应尽职责方面发挥领导作用,例如通过国有企业的工作。投资者也可以发挥重要作用,应利用他们的影响力来促进人权。

# C. 武装冲突和暴力局势以及和平进程

40. 在特别报告员的整个任期内,她监测了全国各地的武装冲突和暴力局势。 2015 年签署《全国停火协议》后,人们乐观地认为,数十年的冲突可能会结束。然而,该协议的起草过程并未包容各方,签署的协议和随后的和平进程排除了一些关键的少数族裔武装组织。克钦邦、掸邦、克伦邦、钦邦和若开邦继续在不同时期冲突发生,对平民造成毁灭性影响,并据称犯下了国际罪行。这包括缅军与少数族裔武装组织之间的武装冲突,包括签署停火协定的组织之间的武装冲突,以及少数族裔武装组织之间的武装冲突。在任期内,与缅军结盟或受缅军指挥的民兵人数也有所增加(见附件三)。国家和平的前景似乎很渺茫。

# 1. 若开邦和钦邦

41. 2016 年 9 月,政府成立了若开邦咨询委员会,委员会由科菲•安南领导,由国际和国内专家组成。该委员会的组成并不理想,其中没有罗兴亚成员,其任务不是调查侵犯人权行为。然而,委员会在 2017 年 8 月编写了一份报告,就若开邦人民面临的问题,包括人权问题,得出了广泛的调查结果。政府和国际社会接受了该报告的建议。政府声称大部分建议已经落实。然而,对国家执行委员会

报告的审查表明,没有一项建议得到充分落实,许多建议根本没有得到执行。落 实这些建议仍然是若开邦的前进方向。

- 42. 2016 年和 2017 年,在若开邦北部可能发生了针对罗兴亚人的危害人类罪、战争罪和灭绝种族罪。特别报告员收到消息称,在若开邦北部罗兴亚人持续遭受暴力、抢掠、强迫劳动和敲诈勒索,继续受到行动限制,获得食物、生计、保健和教育的机会有限。国民身份验证卡仍在实行,据报告称对继续拒绝接受验证卡的人施加了更严格的行动限制,接受验证卡的人获得的福利也很有限。
- 43. 若开民族军与缅军之间的武装冲突在一年多来不断升级,影响到若开邦许多城镇和钦邦的 Paletwa 镇。包括缅甸海军和空军在内的安全部队在若开邦和钦邦大量集结。冲突各方之间的激烈战斗对平民造成严重影响,据称发生了战争罪行。特别报告员感到关切的是,缅军正在若开邦有系统地攻击平民,尤其是若开族人,特别是实际上或被认为支持若开民族军的人。
- 44. 现有报告称,由于冲突,约有 58,000 人逃往流离失所者收容点,整个若开邦共有 128,000 多名流离失所者,包括在其他村庄、寺院和宗教建筑中避难的人。大多数流离失所者是若开族人,估计钦邦有 1,800 名流离失所者,主要是钦族人。报告称,缅军第 66 轻步兵师士兵于 1 月摧毁了 Myebon 镇的一个临时流离失所者收容点,向空中开枪驱赶境内流离失所者,几乎没有给营地组织者任何理由或预告。
- 45. 作为一项"安全要求"和"公共利益",若开邦的 Maungdaw、Buthidaung、Rathedaung 和 Myebon 以及钦邦的 Paletwa 的移动互联网服务于 2月 3日再次全面暂停三个月。这些城镇已于 2019 年 6 月到 8 月被关闭了互联网。自 2019 年 6 月以来,Ponnagyun、Mrauk-U、Kyauktaw 和 Minbya 等镇的人被无限期地剥夺了移动互联网接入。互联网关闭严重影响了 100 多万人的基本权利。政府未能证明全面关闭是必要和相称的,这种做法可能等同于集体惩罚。特别报告员深感不安的是,她收到报告称,2020 年 2 月,在 Maungdaw、Buthidaung 和 Rathedaung 的安全行动升级,造成一些平民死亡,数十人受伤。在每天的炮击中,数千人逃离了每日遭到炮击的 Buthidaung 和 Rathedaung 以及 Kyauktaw 和 Mrauk-U 镇的村庄,炮击据称已经烧毁了许多住宅。2 月 13 日,Buthidaung 镇 Kha Mawe Cahung 村的 21 名哈米斯族儿童在学校据称遭到炮击后受伤。
- 46. 自 2019 年 4 月以来,在所有受冲突影响的城镇严格执行宵禁,加上已经在 Maungdaw、Buthidaung 和 Rathedaung 实施的宵禁,对权利、生计和服务,包括 保健和教育产生了深远影响。自 2019 年 1 月以来,政府一直限制人道主义准入,这加剧了冲突的影响。
- 47. 有许多报告称,在一些村庄附近不分青红皂白的开火和战斗造成多名平民伤亡,包括儿童。还收到了关于村庄中发生纵火案的报告。报告称,12 月,缅军士兵进入 Minbya 镇 Satetara 村,据称开枪打死了一名妇女。报告称,士兵们随后打死了村长。还发现了当时正访问该村的 Kyaukmaw 村村长的尸体。政府必须调查所有这些事件,并追究施害者的责任。
- 48. 据报告,截至 2019 年 11 月,因涉嫌与若开民族军有关联而在若开邦被捕的人数超过 500 人。特别报告员对关于羁押期间发生酷刑和不人道及有辱人格的待遇的指控感到关切,据报告,2019 年在若开邦发生了几起羁押期间死亡事件。

她还感到非常关切的是,若开民族军高级成员的家庭成员,包括居住在缅甸境外的家庭成员因政治目的而成为逮捕的目标。她收到报告称,若开民族军于 2 月 21 日绑架了地方官员,包括 Myebon 镇 Taung Shey 村的村长。

49. 冲突升级导致缅军利用儿童的情况显著增加,包括利用儿童挖掘战壕、竖立栅栏、搬运砖块、清理灌木丛和收割田地。特别报告员指出,缅军招募和使用儿童违反了该国的国际义务和 2019 年《儿童权利法》,因此,必须追究犯罪者的责任。

# 2. 克钦邦和掸邦

- 50. 克钦邦和掸邦据称自 2011 年以来发生了战争罪和危害人类罪。2019 年 9 月,缅军包括掸邦北部在内的五个军区司令部没有延长单方面停火。由德昂民族解放軍、若开民族军和缅甸民族民主同盟军组成的兄弟会联盟宣布将单方面停火延长至 2020 年 3 月 25 日。
- 51. 2019年11月,缅军与德昂民族解放軍一直在 Kutkai 镇发生零星冲突,缅军与掸邦重建委员会在 Namtu 镇也发生了冲突。12月,缅军与克钦邦独立军在 Muse 镇发生冲突。尽管自 2019年8月以来冲突有所缓和,但安保和安全仍然令人严重关切。据报告,2019年8月至 2020年1月期间,75名平民受伤,88名 平民被缅军或民兵团体拘留,6名平民遭受酷刑。

## 3. 克伦邦和孟邦

- 52. 由于缅军从 2018 年开始一直在 Lu Thaw 镇(克伦民族联盟领地)修建公路,缅军与克伦民族联盟及其克伦民族解放军在克伦邦的紧张关系依然存在。克伦民族联盟声称,修建道路违反了《全国停火协议》,缅军正在扩大在该地区的部队部署。1月9日,缅军和克伦民族解放军在 Lu Thaw 发生战斗,造成两名平民受伤。据报告,缅军 2 月初炮击了 Lu Thaw,造成 300 多名村民逃离。
- 53. 2019 年 11 月,缅军及其盟军边防卫队与新蒙邦党武装部门孟邦民族解放军之间发生战斗,缅军夺取了孟邦民族解放军的一个基地。战斗发生在泰国边境的三塔山口附近,导致 1000 多名孟族村民逃往泰国(后来已返回家园)。新蒙邦党认为这一行动违反了《全国停火协定》。2019 年 12 月 3 日,缅军从孟邦民族解放军基地撤离,但继续占领着该地区的一个孟邦民族解放军哨所。当地人报告说,他们担心紧张局势和缅军在邻近地区的驻扎会导致另一场冲突。

#### 4. 地雷

54. 冲突各方继续使用地雷和简易爆炸装置,造成平民死亡和伤残。据报告,2019 年,地雷和简易爆炸装置造成 221 名平民死伤,仅在 2020 年 1 月就造成 7 人死亡,32 人受伤。据报告,1 月 9 日,掸邦 Nam San 镇 Myoi Thit 村的一名青年在取水时被地雷炸死。特别报告员认为,由于受冲突影响地区的人道主义准入受到限制,此类事件没有得到充分报告。特别报告员欢迎政府关于建立国家地雷行动管理机构的计划,希望政府努力按照国际标准制定一个人道主义地雷行动方案。

# 5. 境内流离失所者

55. 政府于 2019 年 12 月 19 日通过了一项重新安置境内流离失所者和关闭境内流离失所者营地的战略计划。该战略参考了国际标准,包括持久解决办法、安全和尊严、自愿和可持续性、充分享有人权、不歧视、"无害"原则和人道主义援助准入。特别报告员呼吁政府确保该该战略的执行工作符合国际标准,并采取人权方针。必须给予境内流离失所者返回他们的原籍地或他们选择的地方的权利。她敦促政府不要过早地将人们送回或重新安置在受武装冲突或地雷影响的地区,应在此之前消除导致流离失所的原因。

56. 自 2019 年 1 月以来,克钦邦 Waingmaw 镇 Nam San Yang 村约 500 名村民已经返回家园。2019 年 11 月,缅军与克钦邦独立军在该村附近发生冲突,村民非常担心他们会再次被迫逃离。特别报告员还收到报告称,由于雷患,村民们无法耕种自己的土地,因而很难获得食物和生计。

57. 特别报告员几次走访实兑的境内流离失所者,目睹了禁闭超过 130,000 人 (主要是罗兴亚人)近八年的营地的恶劣条件。特别报告员还走访了克钦邦(有 97,000 名流离失所者)和掸邦(有 9,600 名境内流离失所者)的流离失所者,他们自 2011 年前后一直生活在流离失所者营地。自 2016 年年中以来,联合国和国际人道主义组织一直无法接触到克钦邦少数族裔武装组织控制地区的 40,000 名流离失所者,国际和国家人道主义工作者进入克钦邦和掸邦北部政府控制地区的机会也很有限。

# 6. 难民

58. 自 2016 年以来,特别报告员访问了科克斯巴扎尔难民营中的罗兴亚难民,当年 10 月,在若开邦开展安全行动后,多达 80,000 人逃离该邦。科克斯巴扎尔难民营目前有 914,998 名罗兴亚难民,其中超过 730,000 人是在 2017 年 8 月的安全行动后逃难而来的,现在还有难民陆续抵达。虽然孟加拉国与缅甸政府在 2017 年底达成了一项遣返协议,并两次试图开始遣返,但难民仍坚持认为,除非他们能够安全和有尊严地返回家园,否则他们不会这样做。缅甸的条件不利于他们现在返回,要想实现这一点,必须做出巨大的改变。特别报告员欣见孟加拉国政府最近宣布将按照缅甸的课程为罗兴亚儿童试行一项正式教育方案。然而,特别报告员感到关切的是,难民营最近的限制做法令难民担忧,还有计划将难民重新安置到巴山查尔。所有关于难民的决定必须在难民完全、事先和知情同意的情况下执行。

59. 约 100,000 名缅甸难民仍滞留在泰国的难民营中。由于捐助方的优先事项没有认识到缅甸的局势仍不稳定,那里的状况有所恶化。对雷患的恐惧、持续的军事化和新的冲突使滞留泰国的难民无法返回家园。特别报告员了解到难民对缅甸政府实施"国民身份验证前"收集数据感到关切。在没有保障措施及难民的完全、事先和知情同意的情况下,绝不应采取这种做法。

# 三. 结论

# A. 前进方向

#### 1. 全国对话

60. 虽然缅甸的民主过渡始于 2010 年左右,但特别报告员认为,民主过渡显然 仍处于非常早期的阶段。即使受到军方制定的宪法的限制,全国民主联盟领导的 政府也有充分的机会展示领导作用并进行改革,以推进过渡和改善人权状况。然 而,这些机会都被浪费了。许多领域出现倒退,特别是民主空间,和平进程停滞 不前,武装冲突肆虐,可能发生了国际罪行。虽然修订《宪法》是一个关键目标,并且已经作出一些尝试来启动这一进程,但现在还不确定这些努力能否取得 成果,因为军方仍然反对这些努力。特别报告员感到严重关切的是,该国可能正在背离民主;但她认为现在改变方向仍为时不晚。

61. 有鉴于此,特别报告员建议缅甸开展全国对话,使全国人民团结起来,提供一个就过去和未来进行辩论和讨论的论坛,并重振国家建设的愿景。全国对话必需具有包容性、参与性,并牢固植根于人权。全国对话应使全国各地的利益攸关方参与其中,包括妇女、男子、青年、残疾人、男女同性恋、双性恋、跨性别者和双性者、民间社会以及不同宗教和族裔的人,并包括留在国外的难民。真正的地方自主权是这一进程的关键:地方一级的对话应纳入邦、省和国家各级的对话。全国对话应始终保持透明度和公众参与,讨论比当前和平进程范围更广的问题,包括公民空间、土地使用、资源共享、可持续发展、冲突遗留问题以及难民和境内流离失所者的回返。此外,应讨论持续存在的歧视和不平等问题,以期迈向一个平等、宽容和多元的社会。对话应调查申诉的原因,并探索以受害者为中心的解决办法,包括促进真相、正义、赔偿和保证不再发生的过渡期正义机制。对话应就国家的未来达成共识,并可包括和平以及宪法、法律、安全和行政改革的建议。这将为继续进行民主转型提供坚实的基础。

# 2. 正义和问责

62. 政府设立的独立调查委员会于 2020 年 1 月 21 日向总统提交了报告。特别报告员审查了总统办公室公布的执行摘要以及附件 16 至 28,并再次呼吁公开发布报告全文。没有报告全文,就不可能了解事实调查结果和法律结论的依据。她指出,执行摘要没有说明报告所提供的大多数信息的方法和来源。她继续质疑该委员会的独立性和公正性,并指出,报告显然无条件地引用了报告称是政府提供的事实和数字,其中包括逃到孟加拉国的人数,但她注意到这一数字远远低于联合国和孟加拉国政府记录的人数。关于没有证据表明发生了强奸或轮奸或表明男性国防人员实施的搜查可能构成性暴力的调查结果令人难以置信。特别报告员回顾了她与罗兴亚族性暴力(包括强奸)幸存者进行的访谈。一些调查结果类似于政府以前作出的声明,包括在没有引用任何证据的情况下声称罗兴亚人烧毁了自己的房子。

63. 该委员会认定,2017年8月25日之后,在若开邦北部发生了战争罪、严重侵犯人权和违反国内法的行为,据报告,军法检察官和总检察长目前正在进行进一步调查。负有最大责任的人是否会被追究责任完全值得怀疑,因为国内法中不存在战争罪。此外,根据1959年《国防法》,被定为犯罪的侵犯人权行为只有

谋杀、刑事杀人和强奸,这些类别未涵盖所有发生的罪行。特别报告员担心委员会的工作只会使有罪不罚现象长期存在。她建议国际社会不要接受该委员会报告的执行摘要,以此作为迈向真正问责的一步,并密切监测政府和军方的反应。

64. 自 2016 年以来,在为被控发生在若开邦的罪行伸张正义的努力在国际上取得了重大进展。国际刑事法院预审分庭授权于 2019 年 11 月 14 日启动对孟加拉国/缅甸局势的调查。将调查 2010 年 6 月 1 日之后(如果是仍在持续的罪行,则包括该日之前开始的罪行)至少有一个犯罪要素发生在孟加拉国或另一缔约国领土上的被控罪行。特别报告员指出,调查涵盖法院管辖范围内与 2016 年和 2017年在若开邦发生的暴力事件有关的任何罪行,可包括罗兴亚人以外的个人或团体。

65. 2019 年 11 月 11 日,冈比亚向国际法院提起诉讼,指控缅甸违反《防止及惩治灭绝种族罪公约》,并寻求启动临时措施。在关于临时措施问题的听证会上,国务资政作为缅甸的代理人<sup>1</sup> 向法院作出陈述称,缅甸从 2017 年 8 月 25 日起发生了内部武装冲突,期间可能发生了战争罪和过度使用武力及侵犯人权的行为。这是政府首次给予这种承认,积极的方面是,先前的否认立场现在已经结束了。2020 年 1 月 23 日,法院认定冈比亚具有初步证据,法院对该案件拥有初步管辖权,并指出了对缅甸采取的临时措施。特别报告员呼吁缅甸遵守临时措施。她注意到,加拿大和荷兰已公开表示打算共同探讨所有选项,以支持和协助冈比亚在法院的努力,马尔代夫宣布将提交一份声明,以出面支持罗兴亚人;她鼓励其他国家效仿它们的举措。

66. 民间社会组织根据普遍管辖原则在阿根廷提出自诉,指控针对罗兴亚人实施的灭绝种族罪和危害人类罪。特别报告员鼓励利用普遍管辖权在不同国家提起案件诉讼。缅甸独立调查机制目前正在开展工作,可以协助各国采取这种行动。必须开展更多工作,为缅甸所有军队罪行的受害者伸张正义和追究责任。在这方面,该机制的任务(范围覆盖全国)至关重要。安全理事会应该将整个局势提交国际刑事法院,或由国际社会设立一个国际法庭,审判被控在缅甸犯下国际罪行的施害者。

67. 如果不结束普遍存在于各级司法系统的有罪不罚现象,缅甸的过渡就不可能成功。政府有责任追究施害者的责任。为此,它需要改革司法制度,确保司法独立,消除阻碍问责的系统性障碍,并根据国际标准加强司法和调查能力。由军事法庭处理侵犯人权行为不符合国际人权法。应修订《宪法》中规定将对军方所犯罪行的管辖权完全交予军事法庭且不可对军事法庭的判决进行上诉的条款,以及保障军事人员对 2011 年之前所犯罪行享有免遭起诉的豁免权的条款。此外,应修订《国防法》,将军队犯下的构成侵犯人权行为的罪行交由民事法院管辖。包括边防警察在内的警察受 1995 年《缅甸警察部队维持纪律法》的管辖,必须对该法进行修订,将构成警察侵犯人权的罪行置于民事法院的控制之下。必须在国内刑法中界定国际罪行,包括战争罪、危害人类罪和灭绝种族罪。必须改革司法制度,为侵犯人权行为的受害者提供有效的补救,提供充分和有效的赔偿,包括恢复原状、补偿、康复、抵偿和保证不再发生。

<sup>&</sup>lt;sup>1</sup> 国际法院所审理案件的当事国由一名代理人代理,该代理人的作用与国家法院中律师的作用相同,但也有权使主权国家承担义务。

# 3. 通过法治、改革和能力建设保护权利

68. 法治是全国民主联盟的优先事项之一,尽管这对巩固民主至关重要,但法治尚未确立。这表现在在对个人的起诉经常侵犯他们的公平审判权,一些案件严重司法不公。特别报告员回顾了路透社记者瓦隆和吴觉梭被定罪的情况,,他们因揭露 2017 年若开邦因丁发生的屠杀事件而被依据 1923 年的《公务秘密法》判处有罪。在整个任期内,特别报告员建议改革可能侵犯人权的法律,并提供了一份应改革的立法条款的非详尽清单(A/HRC/31/71, 附件),她在拟议的联合基准中提到了这份清单。她列举的条款很少被修正或废除,立法审查和起草过程仍然缺乏透明度。应制定一个系统的立法起草和审查协商程序,以确保与利益攸关方的充分协商。

69. 《公民身份法》亟待改革。该法继续被歧视性地适用,越来越多的人担心若 开邦外的穆斯林会因此成为无国籍人。必须结束国民身份验证卡程序,因为它没 有法律依据,具有歧视性,而且政府提供的数字表明,它不会使个人的公民身份 得到承认。特别报告员感到关切的是,她收到消息称,政府向印度教徒和其他宗 教少数群体发放了国民身份验证卡。缅甸社会的结构不能建立在公民身份等级的 基础上,而应建立在平等的基础上。公民身份与"国族"身份之间的联系必须消 除,取而代之的是应承认多样性的好处。

70. 拟议的《防止暴力侵害妇女法》已提交议会。特别报告员多次就该法某些内容提出问题,它应完全符合国际标准和缅甸根据《消除对妇女一切形式歧视公约》承担的义务。尤其是必须将所有形式的性暴力都定为刑事犯罪。特别报告员获悉,缅甸正在制定《儿童权利法》的执行规则和程序,应尽快予以通过。不歧视和儿童最大利益的指导原则对于获得保健和教育尤为重要。

71. 特别报告员认为,为了推动国家向前发展,必须在各级政府进行改革、提高能力和现代化,以保护权利。必须修订《宪法》,以确保所有人的权利得到保障,并确保《宪法》不纳入不符合国际法的实施限制的模糊理由,例如维护"社区和平与安宁"。此外,整个政府和安全部队应由文官控制。在这方面,她注意到综合行政局取得的进展,该局 2019 年已由文官控制。

72. 政府必须继续与国际社会合作,建立有能力和才能履行职能,不加歧视地为国家人民服务的现代机构。这包括改革缅甸国家人权委员会,使其符合《关于促进和保护人权的国家机构的地位的原则》(《巴黎原则》),并确保它成为真正促进和保护人权的机构。特别报告员对最近任命的委员感到沮丧。新的委员会包括四名妇女,妇女人数比以前多三人。然而,任命过程不透明,没有宗教或种族多样性,没有来自民间社会的委员,所有委员都是与军方有直接或间接联系的前公务员。这表明在促进人权方面出现了严重倒退。

## 4. 国际文书和国际机制

73. 缅甸必须加入其尚未加入的所有核心国际人权文书,并且必须将这些权利纳入其法律、政策和实践。这同样适用于在法律、政策和实践中纳入它已经加入的条约规定的义务。这样做将为缅甸提供手段,进行改革以推进过渡并克服长期问题。与包括人权理事会特别程序、普遍定期审议和条约机构以及人权事务高级专员办事处(人权高专办)在内的所有人权机制接触,将为缅甸提供必要的指导和援助。特别报告员指出,缅甸有一些尚未履行和接下来应履行的报告义务。

# 四. 建议

- 74. 特别报告员回顾她以前提出但尚未得到落实的建议,并呼吁落实这些建议。她就所向政府提出了一些与她所报告的专题领域有关具体建议以及一些帮助政府向前迈进的建议。她建议政府:
- (a) 规划和举行一次包容各方和立足人权的参与式的全国对话,让全国各地地方、邦、省和国家各级的各种利益攸关方参与其中,为民主转型奠定基础;
- (b) 签署和批准所有核心人权文书。与包括人权条约机构、普遍定期审议 进程和特别程序任务负责人在内的国际人权机制进行充分接触,并确保及时履行 其报告义务:
  - (c) 设立一个拥有全面授权的人权高专办国家办事处;
  - (d) 落实其关于将与下一任缅甸人权状况特别报告员充分合作的声明。
- 75. 关于民主空间,特别报告员建议政府:
- (a) 在选举前,扩大社区中每个人进行自由和公开辩论的空间,确保所有有权投票的人都能行使这一权利,特别是在受冲突影响的邦,恢复罗兴亚人的投票权,并确保选举具有透明度、包容性、参与性,做到自由和公平,并向独立的地方和国际观察员和媒体开放;
- (b) 撤回反仇恨言论法草案,与广泛的地方和国际利益攸关方就有效的反歧视法进行公开磋商,并根据《拉巴特行动计划》采取广泛的积极行动,打击煽动暴力、歧视和仇恨的行为:
- (c) 公开反对民族主义、极端主义和民粹主义言论,促进多元化、宽容和包容;
- (d) 释放所有政治犯,为他们提供补救和康复,撤销对个人合法言论和民主活动的所有指控,并停止所有侵犯表达、集会和结社自由权的出于政治动机的指控。
- 76. 关于土地权、工商业和人权,特别报告员建议政府:
- (a) 根据国际标准,承认和保护使用公地和传统土地的人以及因冲突而流 离失所的人的土地保有权,停止不经协商和没有适当补偿的强迫迁离和没收土地 行为;
- (b) 经过透明和协商式的起草过程,颁布符合国家土地使用政策以及国际 法和国际标准的国家土地法,然后按照国际标准,改革现有的土地使用和分配法 律,使之与国家土地法相一致;
- (c) 作为优先事项开展包容各方的协商进程,以制定适当的法律框架,以符合国际标准的方式数据保护,修订 2013 年《电信法》,使之符合国际标准;
- (d) 与受影响社区和民间社会协商,继续改革管理自然资源开采的法律框架,以减少不一致和复杂性,分配足够的资源并开展培训,以执行环境和社会法规,确保受影响社区享有获得补救的权利,执行和实施 2015 年环境影响评估程序;

- (e) 继续参与《采掘业透明度行动计划》,确保按照《采掘业透明度行动计划》的标准,对采掘业公司实行透明、一致和可执行的报告要求;
- (f) 确保拟议的石油法支持遵守《采掘业透明度行动计划》规定的义务。 建立公平的收入分享制度;
- (g) 保护工人的结社和集会自由权,与雇主协会和工会合作,结束强迫劳动和危险的童工劳动,增强缅甸工人的权能,改善工作条件;
- (h) 根据《工商企业与人权指导原则》,通过有效的法律、政策和监管框架,推动企业履行应尽职责。
- 77. 关于武装冲突和暴力局势,特别报告员建议政府、军队和少数族裔武装组织:
- (a) 在敌对行动中严格遵守国际人道主义法和人权法,包括保护所有平民和民用物体,并停止构成严重侵害儿童的行为;
- (b) 立即停止埋设地雷、批准《关于禁止使用、储存、生产和转让杀伤人员地雷及销毁此种地雷的公约》,按照国际标准清除地雷和未爆弹药,对雷区设立标识和围栏,开展系统的地雷风险教育活动;
- (c) 立即准许向所有受武装冲突和暴力影响地区的有需要者提供充分和不受阻碍的人道主义援助,并准许媒体和人权监测员进入这些地区;
- (d) 为所有缅甸难民自愿、安全、有尊严和可持续地返回本国创造条件,确保返回的难民享有基本权利,包括正义、公民身份、返回原籍地和获得对被烧毁、损坏或掠夺的财产的补偿,以及获得适当的生计、教育和保健;
- (e) 确保境内流离失所者营地的关闭完全符合国际标准, 尊重境内流离失 所者的权利, 并确保流离失所者返回他们的原籍地或他们选择的地方, 不被重新 安置在受正在进行的武装冲突或地雷影响的地方。
- 78. 关于法治,特别报告员建议政府:
- (a) 消除结构性有罪不罚现象,包括修订《宪法》、1959 年《国防法》和1995 年《缅甸警察部队维持纪律法》,将构成侵犯人权的罪行纳入独立的民事法院的管辖范围,并颁布立法,根据国际标准将战争罪、危害人类罪和灭绝种族罪定为刑事犯罪:
- (b) 改革《宪法》,包括对所有政府部委和安全部队实行文官控制,并根据国际法规定全体人民的权利和自由;
- (c) 改革所有可能侵犯人权的法律,包括特别报告员关于 2016 年状况的报告(A/HRC/31/71, 附件)中提到的法律;
  - (d) 为起草和审查修正案和新法案制定系统的协商程序;
- (e) 改革 1982 年《公民身份法》,包括取消公民身份等级和依靠"国族"作为公民身份的决定因素的做法,确保任何新的公民身份法得到不加歧视地执行,停止国民身份验证卡程序,恢复罗兴亚人的公民身份;
- (f) 颁布拟议的防止暴力侵害妇女法,确保该法符合国际标准和缅甸根据 《消除对妇女一切形式歧视公约》承担的义务;

- (g) 根据不歧视和儿童最大利益的指导原则,迅速制定 2019 年《儿童权利法》的实施规则和程序;
  - (h) 公开发布独立调查委员会的报告全文;
- (i) 充分遵守国际法院指示的临时措施,并与国际刑事法院和缅甸问题独立调查机制合作;
- (j) 改革缅甸国家人权委员会,以确保该机构完全符合《巴黎原则》,包括创建该机构的法律,并任命维护该委员会的独立性和代表民间社会的委员,并纳入族裔和宗教少数群体,以反映国家的多样性。
- 79. 特别报告员建议联合国和国际社会:
- (a) 立即将缅甸局势提交国际刑事法院,或设立一个国际法庭,审判被控犯下国际罪行的施害者;
  - (b) 考虑对适用普遍管辖权的国际罪行的被控施害者提起诉讼:
- (c) 支持冈比亚根据《防止及惩治灭绝种族罪公约》在国际法院起诉缅甸的案件;
- (d) 支持缅甸举行全国对话,并确保进行包容各方和立足人权的参与式对话,让全国各地地方、邦、省和国家各级的各种利益攸关方参与其中;
- (e) 协助缅甸进行广泛的改革,特别是司法部门和缅甸国家人权委员会的 改革,并建立不加歧视地为该国人民服务的现代机构;
- (f) 鼓励缅甸签署和批准所有核心人权文书,与国际人权机制进行充分接触,并在该国开设一个拥有全面授权的人权高专办办事处;
- (g) 确保在缅甸经营的公司按照《工商企业与人权指导原则》在整个工作和供应链中尊重人权,并加强应尽职责,特别是在冲突地区,如果发现风险过高,考虑减少销售;
- (h) 与缅军和少数族裔武装组织共同努力,将它们从秘书长报告所附的招募和使用儿童的团体名单中移除;
- (i) 确保为缅甸境内外的人道主义援助方案提供充足资金,包括为孟加拉国提供支助,以及为罗兴亚人道主义危机联合应对计划和泰国境内难民援助方案提供资金;
- (j) 在支持缅甸政府履行人权义务方面团结一致,在有原则的基础上参与和资助缅甸境内的方案,包括与和平进程有关的方案,根据真正的改革努力确定支助范围和提供资金;

# Annex I



Permanent Mission of the Republic of the Union of Myanmar to the United Nations Office and other International Organizations
47 avenue Blanc, 1202 Geneva, Switzerland
Tel.(+41-22)906-9870, 906-9871/ Fax.(+41-22) 732-8919
E-mail: mission@myanmargeneva.org

No. 639 / 3-27 / 91

30 December 2019

Madame,

I am writing this letter to you in response to your proposal on 12 December 2019 to visit my country in connection with the mandate of Special Rapporteur on the situation of human rights in Myanmar.

As a member of the United Nations, Myanmar believes in enhancing cooperation with the UN through a constructive engagement to address human rights issues.

It is in the spirit of cooperation that the authorities of Myanmar had granted you to visit the country to carry out your mandate as UN Special Rapporteur on the situation of human rights in Myanmar.

However, as we have repeatedly stated that, your continued failure to comply with the code of conduct, as well as the lack of impartiality and the lack of genuine goodwill towards Myanmar in a non-objective manner have caused not only public resentment against you but also negative effects to my country in its democratic transition.

In this regard, I am obliged to reaffirm Myanmar's position to discontinue cooperation with you and our inability to accept your proposed visit at this time.

Please accept, Madame, the assurances of my highest consideration.

(Kyaw Moe Tun)

Ambassador and Permanent Representative

United Nations Special Rapporteur on the situation of human rights in Myanmar

## **Annex II**

# **Questions for Government of Myanmar from UN Special Rapporteur on the Situation of Human Rights in Myanmar**

#### **Previous recommendations**

1. Please provide information on your plans to implement the recommendations in my report to the General Assembly of October 2019.

#### Law and institutional reform

- 2. I understand that the Constitutional Amendment Committee has now submitted two Charter Amendment Bills to parliament. Please provide an update on the progress of this.
- 3. I refer to the non-exhaustive list of laws, which are not compatible with human rights standards and are in need of reform, provided in my report to the Human Rights Council of March 2016. What progress has been made to amend this legislation? Please give a detailed list of laws from that list that have been amended or reformed.
- 4. Please provide an update on the progress of the Prevention and Protection of Violence against Women Law, and in particular how the law will define sexual violence so as to properly protect women and meet international standards.
- 5. I understand that committee under the Office of the Attorney General tasked with drafting the National Land Law has been established. Please provide details on the progress being made in drafting the National Land Law, and on how the Law will be aligned with the National Land Use Policy.
- 6. Please provide an update on the progress of the draft Prisons Law, and how it will be aligned with the Minimum Rules for the Treatment of Prisoners.
- 7. Please provide an update on the progress of the draft Petroleum Law, and how it will align with Myanmar's obligations under the Extractive Industry Transparency Initiative.
- 8. I understand that all previous members of the Myanmar National Human Rights Commission (MNHRC) have been replaced with new commissioners. Please provide information on the selection process. Please also provide information on plans to amend the MNHRC's enabling Law, and how it will be aligned with the Paris Principles.

#### Administration of justice

- 9. It is reported that there are 74 political prisoners currently serving sentences. What is obstructing their release? Please provide information on the steps being taken to bring about the release of all political prisoners.
- 10. Please provide information on the reported conviction of the following people, including the proceedings that were commenced against them, any trial that took place and whether they had legal representation:
- (a) Thein Aung Myat (reportedly sentenced to two years in prison in Ayeyarwady Region under section 17(1) of the Unlawful Associations Act for publishing a calendar using terminology used by the Arakan Army)
- (b) Kaung Myat Thu (reportedly sentenced to two years in prison in Ayeyarwady Region under section 17(1) of the Unlawful Associations Act for publishing a calendar using terminology used by the Arakan Army)
- 11. Please provide information, including the status of proceedings and whether the defendants have legal representation, about the following cases that are ongoing:
- (a) Nay Zar Tun (reportedly jailed and facing two charges for defamation in Yangon in relation to her campaigning for release of her brother, Aung Ko Htwe)

- (b) Swe Win (reportedly facing charges of defamation in Mandalay under section 66(d) of the Telecommunications Law)
- (c) Ye Ni (reportedly facing charges of defamation in Yangon under section 66(d) of the Telecommunications Law)
- (d) Aung Marm Oo (reportedly facing charges under the Unlawful Associations Act)
- (e) Aung Kyi Myint (reportedly jailed in solitary confinement and facing charges sections 114, 147, 332, 333 and 353 of the Penal Code)
- (f) Kyi Myin (reportedly facing charges in Tanintharyi Region under section 505(a) of the Penal Code)
- (g) Nay Myo Zin (reportedly facing charges in Tanintharyi Region under section 505(a) of the Penal Code)
- (h) Saw Wai (reportedly facing charges in Tanintharyi Region under section 505(a) of the Penal Code)

# General election and democratic space

- 12. Please provide information on plans to ensure that polling for the 2020 General Election will be carried out in all areas and that all communities will be eligible to participate and exercise their right to vote.
- 13. What steps are being taken to address the spread of hate speech on social media, and what specific measures will be taken in the run up to the 2020 General Election?

#### **Natural resources**

- 14. What steps are being taken to strengthen transparent implementation, monitoring and enforcement of the Environmental Impact Assessment Procedure?
- 15. What steps are being taken to establish a fair and effective system of revenue sharing from natural resource extraction?
- 16. Please provide information on plans to ensure that companies will disclose details of their beneficial owners and that "Politically Exposed Persons" will be transparent about their ownership in natural extraction companies in line with Myanmar's obligations under the Extractive Industry Transparency Initiative.

#### **Business and human rights**

- 17. I understand that the government is planning to develop a digital identification database alongside digital identification cards. I also understand that the government is planning to require biometric registration of mobile subscriber identification module (SIM) cards. Please provide information on the progress of these plans, and details of what data will be collected, from whom, from where and how it will be used and stored. Please also provide details of plans to develop legislation to regulate data protection.
- 18. What measures are being taken to empower workers and improve conditions in all sectors including garment factories and the fishing industry?

# Armed conflict and peace process

- 19. Please provide information on reports civilian casualties of the conflict between the Tatmadaw and the Arakan Army in northern and central Rakhine and southern Chin States.
- 20. Please provide information as why the suspension of mobile internet services was reinstated in Maungdaw, Buthidaung, Rathedaung, Myebon in Rakhine and Paletwa in Chin, bringing the number of affected townships to nine. Please provide information about when the suspension of mobile internet services in all the nine townships will be lifted, and details of any interim arrangements being implemented to ensure the rights to information and freedom of expression. Please explain how communities affected by armed conflict are adequately supported and protected under the suspension.

- 21. Access to humanitarian assistance remains severely restricted in northern and central Rakhine and southern Chin States, as does freedom of movement. Please provide detailed information as to what is being done to ensure access of humanitarian access to civilians affected by the conflict, and to ensure safe passage to those displaced and / or in need of healthcare and assistance.
- 22. I have received reports that Rohingya in Rakhine State continue to face violence, intimidation and harassment. Please provide information about this, any investigations undertaken and perpetrators held to account.
- 23. I have received reports that village administrators in Rakhine State are being targeted by the Tatmadaw and subjected to violence, intimidation and harassment. Please provide information about this, any investigations undertaken and perpetrators held to account.
- 24. I understand that charges have been filed against an approximate 500 people in Rakhine State over alleged links to the Arakan Army. Please provide information, including whether the defendants have access to legal representation
- 25. How has the expiration of the Tatmadaw's unilateral ceasefire covering Shan and Kachin States affect the peace process?
- 26. Please provide information about civilian casualties of the conflict between the Tatmadaw and ethnic armed organizations in northern Shan State.
- 27. I understand that there has been recent fighting between the Tatmadaw and the Karen National Liberation Army. Please provide information on reports of civilians affected. How will this affect the peace process?
- 28. I understand that there has been recent fighting between the Tatmadaw and the Mon National Liberation Army. Please provide information on reports of civilians affected. How will this affect the peace process?
- 29. Is the Tatmadaw continuing to lay landmines? Please provide details of where, the precautions that are taken to minimize harm to civilians and any demining programs in place.

#### Refugees and internally displaced persons (IDPs)

- 30. Please provide details on measures to support the voluntary, safe, dignified, and sustainable return of refugees currently living in Thailand.
- 31. Please provide details on the reported voluntary repatriation of Rohingya refugees from Bangladesh. How many have returned; their place of origin; and where they are currently residing.
- 32. Please provide information on the progress of implementation of the "National Strategy for the closure of the IDP camps in Myanmar."
- 33. Please provide information on what measures are being taken to protect the rights of the growing number of IDPs in Rakhine State, now reported to have reached 100,000. Given there are restrictions on humanitarian access, how are you ensuring that they have the assistance that they require?
- 34. Please provide information on the recent reports of the Tatmadaw destroying IDP camp in Myebon Township, Rakhine State.

# Accountability

- 35. Please provide a copy of the full version of the report of the Independent Commission of Enquiry. How was independence and impartiality of the Commission secured? Do you plan to implement all the recommendations that were made? If so, please provide information on how you plan to do this and the timeline.
- 36. Please provide information about how you plan to comply with the provisional measures indicated by the International Court of Justice on 23 January 2020.

# Annex III

# Militia and Drug Addiction in Conflict-Affected Areas

# I. Introduction

This briefing paper, annexed to the report of the Special Rapporteur, provides a brief overview of the situation of militia and drug addiction in Myanmar, which is impacting on human rights. The aim of the briefing paper, which is drawn from open source material, <sup>1</sup> is to raise awareness of and encourage further research into the issues.

For decades there has been a range of armed actors involved in Myanmar's internal armed conflicts. Alongside the Myanmar military, or Tatmadaw, and ethnic armed organisations (EAOs), there are numerous smaller armed groups known collectively as militia. The majority of militia are allied with the Tatmadaw and operate under its command.<sup>2</sup>

Currently, Myanmar may be the second largest producer of heroin in the world and the largest producer of methamphetamine.<sup>3</sup> EAOs are often reported to be highly involved in the narcotic industry in Myanmar, however analysts suggest that militia allied to the Tatmadaw are among the key players.<sup>4</sup>

The scale of the industry and its connection to Myanmar's conflicts has many serious implications for the situation of human rights in Myanmar. One of these is the serious harm it is inflicting on the civilian population by having resulted in high rates of drug addiction across the country, that is particularly acute in conflict-affected areas.

# II. Militia and the narcotic industry

# A. Background

For decades the Tatmadaw has been engaged in armed conflicts in Myanmar's border areas against dozens of EAOs from amongst the Karen, Karenni, Shan, Mon, Kachin, Chin and Rakhine and other ethnic groups. The peace process launched by the Government in 2011 is it at a standstill, and recent years have seen intense fighting in Myanmar.

Alongside the Tatmadaw and the EAOs, there are many smaller conflict actors known collectively as militia. The majority are pro-Tatmadaw, operate under its command to varying degrees, and are part of its defence strategy; although they differ significantly in type, size and precise nature of their relationship with the Tatmadaw (for example, some may be under its direct command, some may even travel with Tatmadaw battalions, whereas some carry out security operations in designated areas).<sup>5</sup> The Tatmadaw has long incorporated militia into its command structure. However, despite the role they play for the

With supporting research by Htike Htike for dissertation titled "The Politics of Illicit Drug Trade in Conflict: A comparative study of the contemporary Kachin War and Rohingya Crisis in Myanmar (Burma)" MSc Politics of Conflicts, Rights and Justice Department of Politics and International Studies, SOAS, University of London, 2019.

<sup>&</sup>lt;sup>2</sup> For more information see "Militias in Myanmar" by John Buchanan for the Asia Foundation, 2016.

<sup>&</sup>lt;sup>3</sup> For more information see "Transnational Organized Crime in Southeast Asia: Evolution, Growth and Impact" by the United Nations Office on Drugs and Crime (UNODC), 2019 and ICG, 2019.

<sup>&</sup>lt;sup>4</sup> For more information see "Fire and Ice: Conflict and Drugs in Myanmar's Shan State" by the International Crisis Group (ICG), 2019.

<sup>&</sup>lt;sup>5</sup> Buchanan, 2016.

Tatmadaw, they are expected to be self-funding. Under General Ne Win, the Government did not provide militia allied to the Tatmadaw with funding and instead authorized them to control the administration of the areas in which they operated and engage in profit-generating activities – including the narcotic industry.<sup>6</sup>

The Tatmadaw-drafted 2008 Constitution states that "all the armed forces in the Union shall be under the command of the Defence service". Accordingly, from 2009 to 2010, the Tatmadaw attempted to transform EAOs into pro-government militia, namely People's Militia Forces (PMF) and Border Guard Forces (BGF). This contributed to the breakdown of several long-standing bilateral ceasefire agreements. However, several progovernment militias, EAOs with bilateral ceasefire agreements with the Tatmadaw and anti-government EAOs in Myanmar's conflict areas did become PMFs and BGFs. In a continuation of the policy initiated under General Ne Win, rather than being provided with funds from the military budget, BGFs and PMFs are allowed to control territory and conduct their own profit-generating activities within it, while they perform security duties and if necessary fight alongside the Tatmadaw.

There also remains many militias that are not PMF or BGF but are allied to the Tatmadaw, operate under its command and supervision, and are authorised to conduct their own profit-generating activities within designated territory. 10

## B. Conflict areas

Shan State has long been a global epicentre of illicit drug production. It was the primary global source of opium and heroin for decades and is now the centre of a massive regional methamphetamine production and trafficking industry, linked to transnational criminal organisations. <sup>11</sup> By 2019, the United Nations Office on Drugs and Crime (UNODC) estimated that the Southeast Asian methamphetamine market could value up to USD \$61.4 billion annually, and the heroin market around USD \$10.3 billion. <sup>12</sup> Sites of drug production on an industrial scale need to remain hidden and inaccessible to law enforcement or others who may scrutinise them. With many areas under the control of Tatmadaw allied militia and BGF, and large enclaves under the full territorial control of EAOs that have bilateral ceasefire agreements with the Tatmadaw, much of Shan State provides the necessary environment for mass synthetic drug production and trafficking. <sup>13</sup>

After the 17-year long ceasefire between the Kachin Independence Army (KIA) and the Tatmadaw broke down in 2011, some armed groups that had splintered off from the KIA transformed into BGF and PMF. For example, the Kachin Defence Army became a PMF and the New Democratic Army – Kachin became several BGF units. <sup>14</sup> Civil society groups report that the increased number of PMF and BGF has corresponded with a rise in the production, distribution and sale of narcotics in Kachin State. <sup>15</sup>

Since 2008 as many as fifteen separate BGF battalions have been established in Kayah and Kayin States. <sup>16</sup> Again, civil society report this period as having corresponded with an increase in production, distribution and sale of narcotics in those States. Tatmadaw

For more information see "A Return to War: Militarized Conflicts in Northern Shan State" by the Institute for Security and Development Policy, 2018.

<sup>&</sup>lt;sup>7</sup> Constitution section 338.

<sup>8</sup> Buchanan, 2016, "Silent Offensive How Burma Army strategies are fuelling the Kachin drug crisis" by the Kachin Women's Association Thailand (KWAT), 2014.

<sup>&</sup>lt;sup>9</sup> Buchanan, 2016.

<sup>10</sup> Buchanan, 2016.

<sup>&</sup>lt;sup>11</sup> ICG, 2019.

<sup>&</sup>lt;sup>12</sup> UNODC, 2019.

<sup>&</sup>lt;sup>13</sup> ICG, 2019.

<sup>&</sup>lt;sup>14</sup> KWAT, 2014.

<sup>&</sup>lt;sup>15</sup> KWAT, 2014.

Buchanan, 2016.

allied militia, such as the Democratic Karen Buddhist Army also hold territory and are reported to be engaged in methamphetamine production, allegedly with the support of the United Wa State Army.<sup>17</sup>

In Rakhine State, the Border Guard Police (BGP) operates in addition to PMFs. The BGP is under the command of the Myanmar Police Force, which is controlled by the Tatmadaw-run Ministry of Home Affairs. BGP forces control regional checkpoints and other parts of the administration in Rakhine State. Since 2012, central and northern Rakhine State has become heavily militarised. Following the 2016 and 2017 security operations against the Rohingya in northern Rakhine, and in the context of the Tatmadaw's current serious armed conflict with the Arakan Army, people and the transport of goods have been subject to curfews and movement restrictions. Over this same period, seizures of narcotics in Rakhine State have increased. By 2018, Rakhine accounted for the largest portion of methamphetamine pill seizures besides Shan 18 and is reported to be along a major trafficking route for methamphetamine going into South Asia.

# III. Drug addiction

#### A. Trends in use

From the 1950s to the 1990s heroin was the predominant drug produced in Myanmar, and has been widely available and used in parts of Myanmar for decades. In the 1990s heroin production began to decline but was replaced by the production of methamphetamines. These typically take the form of "yaba" – tablets containing a mixture of low-purity methamphetamine and caffeine. Since the early 2000s, yaba use has surged in Myanmar, corresponding with increased production of the drug. Yaba has become steadily cheaper and more readily available, despite significant increases in large and small seizures, and arrests of users and small-time dealers. The production of the drug.

More recently there has been a sharp rise in the production of crystal methamphetamine, <sup>21</sup> a high-purity crystalline form of methamphetamine, also known as "ice". Crystal methamphetamine is reportedly becoming increasingly popular in the southeast Asia region, and while retail supply and demand in Myanmar at the present time is limited, it may increase. This has public health implications as crystal methamphetamine is more potent that yaba, and it is suitable for injection.<sup>22</sup>

## B. Conflict areas

Drug addiction affects people around Myanmar, however a confluence of factors in ethnic states affected by conflict can fuel rates of drug use and addiction and exacerbate the negative impacts for individuals and communities. The presence of Tatmadaw, militia, BGF, and EAOs, all of whom may be involved in the production, sale and distribution of narcotics, combined with weak rule of law, results in drugs being readily available.

Marginalisation, discrimination and economic deprivation faced by ethnic communities have contributed to conditions conducive to high rates of drug use and addiction. These issues are acute in internally displaced persons camps in Myanmar and refugee camps on Myanmar's borders with Thailand and Bangladesh. A joint report by Mon, Kachin, Karen, Karenni, Shan, Pa-o and Ta-ang civil society groups on the impact of

<sup>17</sup> Buchanan, 2016.

<sup>&</sup>lt;sup>18</sup> UNODC, 2019.

For more information see "Addressing drug problems in Myanmar: 5 key interventions that can make a difference" Drug Policy Advocacy Group Myanmar, 2017.

For more information see "Methamphetamine use in Myanmar, Thailand and Southern China: assessing practices, reducing harms" by Renaud Cachia and Thura Myint Lwin for the Transnational Institute, 2019.

<sup>&</sup>lt;sup>21</sup> ICG, 2019.

<sup>&</sup>lt;sup>22</sup> Cachia and Thura Myint Lwin, 2019.

protracted displacement amongst ethnic communities due to armed conflict described how drug addiction is common in many displacement sites. This is due to easy availability of drugs and fuelled by the hopelessness and frustrations of displacement. These civil society groups report that in recent years the reduction of aid in eastern Myanmar and to refugee camps on the Thai border coupled with uncertainty about the future and a lack of options seen by people in these areas have led to higher rates of drug dependency.<sup>23</sup>

Humanitarian access restrictions by the Myanmar Government on the United Nations and international organisations to parts of Kachin, northern Shan and Rakhine State have undermined services, including health services. This makes it more difficult for those suffering from drug addiction to receive adequate treatment and support. Local initiatives aimed at breaking the cycle of addiction and treating addicts have been established in some areas, but they are under resourced, and in some cases have reportedly been forced to stop their activities after receiving threats.<sup>24</sup>

A local actor involved in drug rehabilitation estimated that in Kutkai, northern Shan, every household has a drug addict.<sup>25</sup> Drivers on the Muse-Mandalay road, the main trading route to China, reportedly use both heroin and yaba.<sup>26</sup> At some petrol stations in Muse, syringes and distilled water are reportedly given instead of small change.<sup>27</sup> The Lahu National Development Organisation has estimated that in about 70 per cent of households in the villages surveyed there are young men who are addicted to drugs and that this is a threefold increase from 2008. Lahu villagers say that the reason for the increase in addiction is the greater availability of drugs, and that militia groups actively promote local drugs sales. They report that militia members have stopped local addicts from entering drug rehabilitation programs, because they fear a loss of income.<sup>28</sup>

In Kachin State, civil society report that drugs are flooding into Kachin towns and mining sites, and along trading routes. Levels of drug addiction have been described by local actors as having reached epidemic proportions.<sup>29</sup> In the jade mines of Hpakant, which are tightly controlled by armed actors including the Tatmadaw and Tatmadaw allied militia, drug use takes place openly and permeates every aspect of life. Informal mine workers report being paid in heroin and methamphetamine. Local residents have estimated that 90 per cent of workers in the Hpakant jade mines are drug users.<sup>30</sup>

Myitkyina, the capital of Kachin State, is reported to have one of the highest concentrations of drug addicts in the world.<sup>31</sup> The Kachin Baptist Convention, which runs a drug rehabilitation programme, claims that approximately 80 per centopll, of ethnic Kachin youth are drug addicts. Health and social workers report that about a third of students at Myitkyina and Bhamo universities are injecting drug users.<sup>32</sup> Another local actor estimates that almost every Kachin family has been affected by the drug problem. According to one drug user, "You can get drugs everywhere in Myitkyina city. I was arrested many times. I have 4 older brothers, but they all died because of drugs." People from Kachin communities reportedly blame the Tatmadaw for targeting them with illicit drugs and have

For more information see "The Is No One Who Does Not Miss Home: Report on Protracted Displacement

Due to Armed Conflict in Burma/Myanmar" by fifteen ethnic community-based organizations and locally-based civil society organizations, coordinated by Progressive Voice, 2019.

<sup>&</sup>lt;sup>24</sup> For more information see "Drug crisis ravages Myanmar's Shan State" Agence France-Presse, 2019.

<sup>&</sup>lt;sup>25</sup> AFP, 2019.

<sup>&</sup>lt;sup>26</sup> KWAT, 2014.

<sup>&</sup>lt;sup>27</sup> KWAT, 2014.

For more information see "Naypyidaw's drug addiction: The Burma Army's strategic use of the drug trade in the Golden Triangle and its impact on the Lahu" by The Lahu National Development Organisation, 2016.

<sup>&</sup>lt;sup>29</sup> KWAT, 2014.

For more information see "Battling for blood jade" by Hannah Beech for Time, 2016

For more information see "Drug addiction lurks in Myanmar conflict's shadow" by Gemunu Amarasinghe for the Associated Press, 2013.

<sup>&</sup>lt;sup>32</sup> KWAT, 2014.

<sup>33</sup> KWAT, 2014.

accused the Tatmadaw of using drugs as a weapon against their communities, and suspect drugs are promoted to Kachin youth to distract them from political activism.<sup>34</sup>

In Kayin and Kayah States local people have been reporting their concerns over rising drug use in recent years. They report that yaba in particular is being widely used by many children, students and men, as it is not difficult to buy. In Hlaingbwe Township in Hpa-an District, Kayin State, high school students reportedly know how to use these drugs and are already addicted to them,<sup>35</sup> and there are four BGF battalions present in Hlaingbwe Township.<sup>36</sup> According to a community member from southeast Kayin State, "The methamphetamine drugs came from the organizations [armed groups], then [they] spread it to the civilians."<sup>37</sup> A mobile health worker described their sense of helplessness in the face of rising drug addiction, "We cannot solve the problem. Only the leaders of the armed groups can set up the rules and prohibit people from using drugs. It really affects our development. The young people do not have interest in the other things [education, etc.] anymore. It is like people stole and destroyed our future."<sup>38</sup>

It is challenging to obtain information on rates of drug use and addiction in Rakhine State. However, according to testimony of Rohingya living in displacement camps in Sittwe since 2012, a yaba pill costs only 200–300 Kyats (which is about 0.13 to 0.20 USD) and this is cheaper than food. Drug dealers reportedly distributed free samples when the camps were set up by the Tatmadaw and State authorities in 2012. Since then, yaba is widely available in the camps, and many Rohingya are addicted.

# C. Government response

The Tatmadaw also has significant influence over the central Government response to illicit drugs, as the Central Committee for Drug Abuse Control is part of the Ministry of Home Affairs.

The Narcotic Drugs Act and Psychotropic Substances Law 1993 has for years been used to target opium farmers, small-scale dealers and drug users, rather than those responsible for large-scale drug production and supply. In 2018, Myanmar released its National Drug Control Policy, which was developed by the Central Committee for Drug Abuse Control after extensive consultation with UNODC. The Policy focuses on harm reduction, prioritising public health approaches for users and refocusing law enforcement and criminal justice efforts toward combating organised crime and corruption. However, amendments to the Narcotic Drugs Act and Psychotropic Substances Law 1993 were enacted shortly after and retain a focus on criminal penalties for those in possession of any quantity of drugs.<sup>39</sup>

The National Drug Control Policy states that in 2016, 48% of Myanmar's 60,000–80,000 prisoners were detained for drug-related offences, with the percentage of drug-related offenders as high as 70–80 per cent in some prisons (such as in Myitkyina, Kachin State, and Lashio, Shan State). 40 Imprisoning drug users exacerbates issues of drug addiction, as drug use rates in prison are high, and once imprisoned users are unable to access rehabilitation services. At the same time, the militia running and profiting from the illicit drug industry operate with impunity.

<sup>&</sup>lt;sup>34</sup> KWAT, 2014.

<sup>35</sup> Interview KHRG #15-83-A2-I1, Karen Human Rights Group (KHRG), 2015.

<sup>&</sup>lt;sup>36</sup> Buchanan, 2016.

For more information see "Growing drug use and its consequences in Dooplaya and Hpa an districts" KHRG, 2015.

<sup>&</sup>lt;sup>38</sup> Interview KHRG #14-63-A3-I1, KHRG, 2014.

<sup>&</sup>lt;sup>39</sup> ICG, 2019.

The National Drug Control Policy, developed by the Myanmar Police Force (MPF) Central Committee for Drug Abuse Control (CCDAC), the Ministry of Home Affairs, with support from the UNODC Regional Office for Southeast Asia and the Pacific and Country Office for Myanmar.

## D. Harm caused

Drug addiction can inflict severe physical, psychological, emotional, financial and other harm on an individual, which has consequential negative effects for the family, and also society. The mental and physical harm caused by high and/or prolonged use of methamphetamine can include insomnia, anxiety, palpitations, loss of teeth, confusion, irrational behaviour, hallucinations and paranoid thoughts, bleeding cough, loss of memory, fatigue and exhaustion, impatience, anger and increased aggressiveness. There is also an increased risk of tuberculosis transmission due to sharing smoking equipment. <sup>41</sup> Heroin is more commonly injected. The mental and physical harm caused by high and/or prolonged use of heroin can include damage to veins and arteries that can lead to gangrene and to infections, severe depression, insomnia, anxiety, fatigue, intense craving and death by overdose or vomiting. <sup>42</sup> Sharing needles and syringes carries a high risk of HIV, hepatitis B or hepatitis C transmission. Nearly 1 in 3 injecting drug users in Myanmar is living with HIV, which is 48 times higher than the prevalence in the general population. <sup>43</sup>

The impacts of drug addiction are also felt by families of drug addicts. Although increasing numbers of women, particularly in trading sites for goods transported to China, are reportedly taking drugs, most users in Myanmar are reportedly male. Gender inequality in Myanmar society heightens problems, as already bearing the burden of all domestic work, women struggle when husbands, sons and fathers not only stop providing income to the family but sell off family possessions and steal to feed their drug habit. Women are also expected to care for drug users when they fall ill.<sup>44</sup>

# IV. Conclusion

The high rate of drug addiction in Myanmar is affecting fundamental rights of many individuals, particularly within ethnic communities affected by conflict. This includes the rights to an adequate standard of living, work, just and favourable conditions of work, the highest attainable standard of physical and mental health, education, take part in cultural life, life, freedom from cruel, inhuman or degrading treatment, liberty and security of person, and privacy and family life.

More research into this area, and in particular the human rights implications, is needed. The Government must do more and implement the National Drug Control Policy, focusing on tackling organised crime and corruption. At the same time community level interventions should be centred on education and harm reduction instead of punitive criminal justice measures, with the assistance of international agencies. Finally, there must be accountability for the Tatmadaw, and militias involved in drug production and sales.

<sup>41</sup> Cachia and Thura Myint Lwin, 2019.

<sup>&</sup>lt;sup>42</sup> National Institute on Drug Abuse https://www.drugabuse.gov/publications/drugfacts/heroin.

<sup>&</sup>lt;sup>43</sup> Drug Policy Advocacy Group Myanmar 2017.

<sup>&</sup>lt;sup>44</sup> KWAT, 2014.