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May 4, 2016

President U Htin Kyaw  
Naypyidaw  
Republic of the Union of Myanmar

### Re: Human Rights Priorities for the New Government

Dear President U Htin Kyaw,

We congratulate you on becoming Myanmar's first civilian president appointed by a democratically elected parliament since 1962. We respect the sacrifices that you, National League for Democracy (NLD) leader Daw Aung San Suu Kyi, and millions of people in Myanmar have made in ending repressive military rule in the country.

Human Rights Watch is a nongovernmental organization that monitors and reports on human rights in over 90 countries around the world. We have documented the human rights situation and advocated for the promotion and protection of human rights in Myanmar for more than 25 years.

We write to you to outline key human rights challenges Myanmar faces and make recommendations to your government to address them. We hope that these recommendations will be helpful in formulating and implementing policies to tackle the country's many human rights problems. We recognize the scale of the challenges your government faces in transforming Myanmar into a rights-respecting democracy after more than a half-century of military dictatorship and repression. The legacy of misrule you have inherited includes the fundamentally flawed 2008 constitution, which was designed to limit civilian reform and ensure residual constitutional powers for the Tatmadaw (national armed forces).

Human Rights Watch reiterates its call for amendments to the constitution to end the military quota of members of parliament, rescind provisions empowering the military to control three key ministries, and end reserved powers which allow the military to make decisions that should be overseen by an elected civilian government. The next national election

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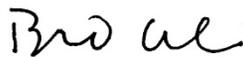
should be for all parliamentary seats so that the people of Myanmar can choose a fully civilian government.

Myanmar faces many deep-rooted challenges, such as an unprofessional judiciary, decades of disregard for the rule of law, and poorly trained and unaccountable military and police. Up until the change in government, the authorities continued to arrest peaceful protesters and critics, which we hope will end now that your government has started the process of issuing pardons for political prisoners and dropping charges against those facing trial for political reasons. Extremists have fanned the flames of violence and discrimination against religious and ethnic minorities. While Southeast Asia has seen significant economic development over recent decades, military rule has left many in Myanmar in extreme poverty, estimated at 26 percent of the population, made worse by high-level corruption. Ongoing armed conflict between the state and ethnic armed groups has resulted in countless atrocities and economic hardship for millions of the country's most marginalized civilians.

Human Rights Watch is aware that no new government in Myanmar can immediately meet the very high expectations held both nationally and internationally for improvements in the human rights situation. However, we believe there are many steps that can quickly be taken to improve the lives of many in Myanmar, while at the same time developing policies that will take longer to implement and bring to fruition. Below we identify key issues and present immediate and more gradual recommendations that we urge you and your government to undertake to make Myanmar a significantly more rights-respecting country.

We hope you find these recommendations useful. We look forward to learning the actions you plan to take and to working with your government in a constructive manner in the months and years ahead.

Sincerely,



Brad Adams  
Executive Director  
Asia Division

Cc:

Daw Aung San Suu Kyi, *State Counselor, Minister of Foreign Affairs, and Minister of the President's Office*

U Tun Tun Oo, *Attorney General*

Lt. Gen. Kyaw Swe, *Minister of Home Affairs*

U Pe Myint, *Minister of Information*

U Win Mra, *Chairman, Myanmar National Human Rights Commission*

U Kyaw Myo Htut, *Ambassador to the United States*

## Human Rights Priorities for the New Myanmar Government

### 1. Release All Political Prisoners

More than 100 National League for Democracy (NLD) members of parliament (MPs) are former political prisoners, so we are confident that freeing current political prisoners is a primary concern of your government, as evidenced by the release of 199 on April 8, 2016. While the previous government should be credited with a series of political prisoner amnesties from 2011-2014, in the final years of its rule the Thein Sein government fell short of its public commitment to free all remaining political prisoners. We welcome the major undertaking of your government to free Myanmar's remaining political prisoners and drop charges against over 400 others currently facing trial, a process that began with the April 8 amnesty. We urge you to complete this process as soon as possible.

The NLD government's finalization of a formal definition of "political prisoner," in consultation with former political prisoner groups, should expedite releases of those unjustly imprisoned. Pursuant to that agreed definition, a political prisoner is "anyone who is arrested, detained, or imprisoned for political reasons under political charges or wrongfully under criminal or civil charges because of his or her perceived or known active role, perceived or known supporting role, or association with activity promoting freedom, justice, equality, human rights, and civil and political rights, including ethnic rights."

Human Rights Watch urges your government to make it a priority to finalize the release of all current political prisoners and to order local authorities to immediately drop politically motivated charges against those in detention or facing trial. We call on your government to end the cycle of politically motivated arrests, and work to rein in local officials who use rights-abusing laws to stifle basic freedoms.

### 2. Reform Laws that Violate Basic Rights

The NLD has made the establishment of the rule of law in Myanmar a priority after decades of repressive and arbitrary military rule. We believe the prompt repeal or revision of laws that are used to prosecute peaceful critics of the government or military will remove the tools of repression from abusive authorities and end the long cycle of politically motivated arrests and detentions.

Human Rights Watch urges your government to take up in parliament the repeal or revision of the following laws and provisions (we will be providing more specific recommendations on how to do so in a report to be released soon):

- **Right to Peaceful Assembly and Peaceful Procession Act, Article 4:** requiring those seeking to hold an assembly to obtain "consent" rather than simply provide

- notice; **Article 8**: requiring that the consent specify items such as the identification of those “permitted” to speak and the “chants that are allowed”; **Article 18**: imposing criminal penalties of up to six months in prison for conducting a peaceful assembly or peaceful procession; and **Article 19**: imposing criminal penalties of up to three months in prison for holding a peaceful assembly in other than the assigned location and for violating a range of rules, including broadly worded rules on content, in the conduct of an assembly.
- **Penal Code, Section 124(a)** (sedition): imposing criminal penalties of up to three years in prison for speech that “attempts to bring into hatred or contempt, or excites or attempts to excite disaffections towards” the government; **Sections 141-147**: a series of broad provisions relating to “unlawful assemblies” that have been used against a range of protesters; **Section 295(a)**: imposing criminal penalties of up to two years in prison for insulting or attempting to insult religious feelings of any class of persons “with deliberate and malicious intent”; **Section 298**: imposing criminal penalties of up to one year in prison for “wounding the religious feelings” of any person; **Sections 499-502**: imposing criminal penalties of up to two years in jail for defamation; and **Section 505(b)**: imposing criminal penalties of up to two years in prison on anyone who makes, publishes, or circulates any statement, rumor, or report “with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offense against the State or against the public tranquility.”
  - **Telecommunications Act, section 66(d)**: imposing criminal penalties of up to three years in prison for “extortion of any person, coercion, unlawful restriction, defamation, interfering, undue influence, or intimidation using a telecommunications network.”
  - **News Media Law, Section 9**: imposing a vague and broadly worded code of conduct on the media, with particularly problematic subsections 9(g) (essentially a broad defamation provision) and 9(h) (“ways of writing which may inflame conflicts regarding nationality, religion, and race shall be avoided”); and **Section 25(b)**: imposing criminal penalties of up to 1,000,000 kyats for violating subsections (d), (f) or (g) of the code of conduct in section 9.
  - **Electronic Transactions Act, Section 33**: imposing criminal penalties of up to seven years in prison for (a) “doing any act detrimental to the security of the state or prevalence of law and order or community peace and tranquility or national solidarity or national economy or national culture,” or (b) “receiving or sending and distributing any information relating to secrets of the security of the State or prevalence of law and order or community peace and tranquility or national solidarity or national economy or national culture”; and **Section 34(d)**: imposing criminal penalties of up to 10,000,000 kyat for “creating, modifying, or altering of

information or distributing of information created, modified, or altered by electronic technology to be detrimental to the interest of or to lower the dignity or any organization or any person.”

- **Contempt of Courts Act:** defining criminal contempt so broadly that it impairs the ability of the media to accurately report on, and of the media and the public to criticize, proceedings in the courts, and subjecting those who do so to the possibility of up to six months in jail.
- **Official Secrets Act 1923, Section 3:** imposing criminal penalties for “spying” using unclear and outdated terminology, with no requirement that the government prove a real risk to national security, and permitting the use of “known character” evidence to establish intent; and **Section 6(2):** imposing criminal penalties for the disclosure or receipt of “any official document” without any requirement that the disclosure poses a real risk of harm to national security.
- **Printing and Publishing Enterprise Law, Article 8:** imposing several broadly worded content restrictions on printers, publishers, and news agencies, including prohibitions on “matters that can tarnish the ethnicity, religion, or culture of an ethnic group or citizen,” or “matters that can undermine national security, the rule of law, community peace, and tranquility, or the equality, freedom, justice, and rights of every citizen.”
- **Emergency Provisions Act 1950, and the State Protection Act 1975:** long outdated laws that previous military governments frequently used against critics and more recently against the media.
- **Unlawful Associations Act 1908:** “Whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association or in any way assists the operations of any such association.” This provision is regularly used to punish people suspected of having involvement with an unlawful armed group. The act has been used to arrest and convict dozens of civilians in Arakan State suspected to have provided support for the Arakan Army, and was used recently on April 8, the day of the government's general pardon, to convict and sentence two interfaith activists in Mandalay, Pwint Pyu Latt and Zaw Zaw Latt, to two years with hard labor.

### **3. Protect and Facilitate the Work of Civil Society Organizations**

The transition from military rule to semi-civilian rule in Myanmar has been partly realized by a long-term contribution by nongovernmental organizations (NGOs) to the promotion of human rights and development throughout the country. Some of these groups began working from exile before 2011, and have continued that work on their return to Myanmar.

Myanmar NGOs are playing a prominent role in the transition by advocating for women's rights, land rights, financial transparency, rights of minorities, religious freedom, and rights of people living with disabilities. Many of these NGOs are also playing pivotal roles in electoral reform, including having helped make the 2015 elections transparent and inclusive, and in disaster relief, health, and education development. The promotion of democratic values, human rights, rule of law, basic freedoms, and developmental goals by national and international NGOs should be recognized as a crucial feature of Myanmar's long-term effort to be a rights-respecting democracy. These groups work hard to protect the right to associate freely, online as well as offline, for persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists, migrants working in Myanmar and overseas, and others. They have important perspectives, information, and capacity that we believe can assist your government in its reform agenda. We strongly recommend you hold regular and meaningful consultations with diverse civil society groups on all aspects of governance and legal reform.

Accordingly, Human Rights Watch urges your government to amend the Association Registration Law of 2014, which contravenes international standards on freedom of association. Bringing this law into line with Myanmar's international obligations should displace efforts by the Attorney General's department to finalize implementing regulations for the law.

Myanmar is not a party to the International Covenant on Civil and Political Rights (ICCPR) or the International Covenant on Economic, Social and Cultural Rights (ICESCR). It has not signed the ICCPR but did sign the ICESCR in July 2015. The Myanmar National Human Rights Commission recommended in 2013 that the government ratify the covenants and their optional protocols—promptly doing so would bring Myanmar in line with international human rights standards that will be pivotal in guiding the transition and development of the country. Chapter 8 of the 2008 Constitution guarantees many economic, social, and cultural rights, even if they are interspersed with problematic qualifications about national security and non-disintegration of the union, and we believe that adopting and adhering to the principles included in the ICESCR will be crucial to major challenges your government will face on rights to land, water, resources, and cultural freedoms.

#### **4. Reform National Human Rights Commission**

A key initiative will be to reform the Myanmar National Human Rights Commission (MNHRC) to be fully in line with the United Nations principles relating to the status of national institutions (the Paris Principles). Created by the Thein Sein administration in 2011, the commission lacks genuine independence. It remains institutionally weak and received little financial support from the central government, relying largely on international

development aid. Although it has been critical of government actions in a number of cases, such as the police assault on protesting students at Letpadan in March 2015, for the most part it has refrained from investigating pressing reports of human rights violations, particularly by the Myanmar military. As a result it has frequently been criticized by Myanmar human rights groups.

The MNHRC should be reconstituted in line with the Paris Principles, including ensuring a diverse composition involving representatives of civil society. Its composition and activities should be gender-sensitive, and it should be trained and equipped to fully address women's rights issues. The commission should also be granted an adequate budget and full scope to investigate and report on human rights violations throughout the country. A first step should be to amend the 2014 MNHRC Law, particularly sections 5, 8, and 9 on the selection and independence of commissioners, and section 46 on the transparency and independence of the commission's budget, in consultation with Myanmar civil society groups to ensure the selection criteria are developed in an inclusive manner.

#### **5. Invite the Office of the United Nations High Commissioner for Human Rights (OHCHR) to Open an Office with a Full Mandate and Adequate Staff**

We urge your government to promptly approve the establishment of a formal OHCHR office with full reporting and capacity-building mandates. The establishment of this office was a key pledge by President Thein Sein to United States President Barack Obama that he failed to fulfill, partly because of resistance from the Ministry of Foreign Affairs, which has long been institutionally antagonistic to UN human rights mechanisms. The establishment of a full OHCHR office will immeasurably improve the cooperation your government will have with the United Nations and help to bolster promotion of the UN's "Human Rights Up Front" approach to assistance throughout the world. The office would work proactively with parliament, the bureaucracy, and civil society to promote and reinforce a commitment to human rights, provide technical assistance to the government in drafting legislation, and help strengthen national institutions concerned with human rights, including the MNHRC.

#### **6. Protect and Promote Women's Rights**

The promotion and protection of women's rights in Myanmar should be a key priority of your government. Previous military governments marginalized women's participation in public life. The new parliament elected in November 2015 has more women MPs than at any time in Myanmar's history; women now comprise 14.5 percent of the MPs elected to the Union parliament and 12.5 percent of state and regional assemblies. Five out of 29 ethnic affairs ministers elected in the regional assemblies are women, and women were selected as chief minister for both Tenasserim Region and Karen State. Yet promoting the

rights of women in Myanmar still has a long way to go, and the 18-person cabinet of the national government has just one woman. We propose several measures your government can pursue to help promote the rights of women in Myanmar.

The government should ensure Myanmar is in full compliance with its obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which Myanmar acceded to in 1997. Myanmar is scheduled to provide its next report to the Committee on the Elimination of Discrimination against Women, which oversees implementation of the convention by member states, in 2016. The previous government's submission to the committee claimed it had enacted eight pieces of legislation that promoted women's rights, but many of them did so only tangentially, such as the Social Security Law. The draft law most important to women's rights is still awaiting parliamentary action and approval: the Protection and Prevention of Violence Against Women Law. We call on your government to ensure Myanmar is in full compliance with its obligations under CEDAW. The National Strategic Plan for the Advancement of Women 2013-2022 formulated by the previous government should be amended to be in line with CEDAW and other international human rights conventions.

We urge your government to enact the Protection and Prevention of Violence Against Women Law, the draft of which was the result of extensive consultation with Myanmar women's groups and the United Nations. This draft law has languished in recent months, and some suggested amendments would cause the law to fall short of Myanmar's commitments to international human rights standards, including the need to include a full definition of rape and specifically outlaw domestic violence and marital rape. Nonetheless, if passed, this law would go farther than the piecemeal legislative reforms of the previous administration toward guaranteeing the protection of women and would serve as a firm basis for amending other existing laws that discriminate against women.

Of particular concern are reports of sexual violence perpetrated against women and girls in conflict zones. These persistent abuses have been facilitated by the lack of accountability for those responsible for such crimes, whether by members of Myanmar's military or non-state armed groups. The Ministry of Defense has informed the Special Rapporteur on the situation of human rights in Myanmar that the military has prosecuted 61 armed services personnel for rape offenses between 2011 and 2015. Yet these numbers are well below what numerous groups believe to be the extent of the problem, and many proceedings take place in military rather than civilian courts, and are rarely if ever open to the public. There are numerous cases of alleged sexual violence that the military has refused to seriously investigate, notably the rape and murder of two Kachin schoolteachers, Maran Lu Ra and Tangbau Hkawn Nan Tsin, in January 2015 by suspected Myanmar army soldiers. In

addition, abductions and enforced disappearances of women in conflict zones is an ongoing concern, such as the case of a Kachin woman, Sumlut Roi Ja, abducted by Myanmar army troops in October 2011 whose fate is unknown.

Human Rights Watch also urges your government to ensure full participation of women in all future peace negotiations. Women's voices and concerns have been noticeably absent from nearly four years of negotiations, and women hold few if any senior positions in organizations involved in peace negotiations. The now defunct Myanmar Peace Center (MPC), the government's secretariat for the negotiations, had few women on its staff, and many women's groups involved in peace and conflict in Myanmar reported being treated with disdain or as "spoilers" by MPC officials for their involvement in the process and for pressing for women's rights to be included. The principles contained in UN Security Council Resolution 1325 and subsequent resolutions on women, peace, and security should set the standard for the essential role of women in Myanmar in the prevention and resolution of conflicts, including in peace negotiations, peace-building, peacekeeping, humanitarian response, and in post-conflict reconstruction. The commitment of the Union Peace Conference in January to "enable at least 30 per cent participation by women at different levels of political dialogues" is an important development and we urge you to ensure the full and unfettered involvement of women at all levels of the peace process. Your government should also encourage leaders of non-state armed groups to support the full participation of women, since those groups have also failed to ensure women's meaningful participation. Women's rights organizations should have a central role in the design and implementation of these processes, ensuring a diverse population is able to provide substantive input to policy and programming on peace and security in Myanmar.

## **7. Protect and Promote Land Rights**

One of the major nationwide challenges your government faces concerns land issues. Seizures of land and forced displacement of rural communities have risen sharply since 2011, and as parliamentary investigations have concluded, one of the major agents of land seizures is the Myanmar military. Increased protests throughout Myanmar have resulted in a marked increase in the arrest and prosecution of peaceful protesters and land rights activists, often under the abusive laws outlined above. The enactment of the National Land Use Policy in January 2016 will help address the vexing problem of land disputes, as it contains rights-based language on equality of men and women in land rights, rights standards concerning land acquisition, and rights of ethnic minorities. Yet the land use policy is limited by other laws regulating land use, such as the Farmland Act; the Vacant, Fallow and Virgin Lands Management Law; and the Myanmar Investment Law, which has made it easier for national authorities and national and international businesses to acquire land without ensuring adequate protection of land tenure rights of local

communities. We urge your government to amend these three laws in line with the principles presented in the National Land Use Policy and ensure regular and meaningful consultation with civil society groups and rural communities at every stage of legislative reform of this crucial sector. These laws should also be in full compliance with international standards on transparency including Myanmar's commitments under the Extractive Industries Transparency Initiative (EITI), environmental protection, and human rights protection. Your government should create a complaints body that addresses current and former land disputes, operating in full accordance with international standards.

We also urge your government to end the cycle of arrests of land rights activists under abusive laws on assembly, and to drop cases against anyone charged for peaceful protest. When the right to peaceful assembly is unnecessarily restricted, otherwise peaceful protests can turn violent, as occurred during the protests in Letpadaung in 2012 to 2013 when local authorities refused to permit peaceful assembly and arrested prominent land rights activists.

Human Rights Watch urges the government in addressing land rights issues to provide for the full participation of women, based on their informed, active, meaningful, and effective engagement in the formulation of laws, policies, and programs. Your government should ensure that women and women's rights groups and collectives are effectively represented on equal terms with men in all decision-making structures relevant to land and agriculture, including in mechanisms that have a voting function. Women's rights groups in Myanmar should be provided with full and accurate information about decision-making processes relevant to land and agriculture, and should be able to benefit from capacity-building in this regard in order to ensure that their participation in decision-making is informed, active, meaningful, and effective. The right to participation applies to all stages of law, policy, and program development, including assessment and analysis, program planning and design, budgeting and financing, implementation, and monitoring and evaluation. As the International Fund for Agricultural Development (IFAD) has recognized, "In all instances, training women on their rights has proved extremely useful as it increases their awareness of the claims they can make and provides opportunities for enhancing their political capital and their participation in the policy process."

## **8. Protect and Promote the Right to Health**

We recognize your government's commitment to reforming the health sector and improving access to health throughout the country. We urge you to pursue reform of the health sector in line with international human rights standards, which recognize that the right to health is related to the enjoyment of other rights, including the right to safe drinking water and

adequate sanitation, safe food, adequate nutrition and housing, healthy working and environmental conditions, health-related education and information, and gender equality.

Government healthcare goods and services throughout Myanmar should ensure access based on genuine need, and not discriminate on the basis of ethnicity, religion, language, or gender. In particular, the provision of humanitarian needs and health care to people internally displaced by conflict, communal violence, or dispossession of land through development and business ventures should not be limited by arbitrary security restrictions at a local level. There have been numerous reports for many years of government troops targeting health workers and clinics in conflict zones, so we urge your government to work to end all targeting of healthcare facilities and workers, and to hold those responsible to account, regardless of their position or rank.

The enactment of the Rights of Persons with Disabilities Law in 2015 is an important gain for the rights of people with disabilities in Myanmar. We urge your government to take steps to ensure that there is no discrimination in the provision of healthcare services to people living with physical and mental disabilities throughout Myanmar.

Myanmar is a major producer and exporter of illicit narcotics, and there are many reports of increases in drug use in Myanmar. Human Rights Watch recognizes that governments have a legitimate interest in preventing societal harms caused by drugs. But the Myanmar government's current drug control policies have caused or contributed to serious human rights violations. Decades of misguided national drug policies—often shaped by the international community which has long adopted prohibitive policies that seek to ban all use, possession, production, and trafficking of drugs—has driven armed conflict in rural areas, displaced and impoverished hundreds of thousands of farmers, and contributed to official corruption in the hinterlands. Punitive eradication by the government and military, often mirrored by approaches by non-state armed groups in Kachin and Shan States, have a destructive impact on the livelihoods of farming communities in opium cultivation zones. Some initiatives pursued by local authorities to reduce drug dependence, such as compulsory drug detention centers, are abusive and violate the right to health, as well as other rights. Drug dependence treatment should not be forced. Human Rights Watch considers that no one should be routinely detained for the purpose of compulsory treatment and opposes any system that provides for routine detention for the purpose of treatment for drug dependency.

In the wake of the United Nations General Assembly Special Session (UNGASS) on drugs in April 2016, we urge your government to reconsider Myanmar's drug laws and policies. Your government should support law reform that reshapes drug policy to mitigate the effects on

human rights, public health, and development of punitive drug approaches. To deter, prevent, and remedy the harmful use of drugs, Myanmar should rely on non-penal regulatory and public health approaches that do not violate human rights. We urge your government to work closely with international agencies in Yangon working on narcotic drug programs to ensure that Myanmar's anti-narcotic's efforts comport with international standards.

## **9. End Persecution of Rohingya and Other Muslims**

One of the most pressing human rights challenges your government faces is the situation in Arakan State. The communal violence of 2012, which Human Rights Watch research found resulted in ethnic cleansing and crimes against humanity, left over 125,000 Rohingya Muslims displaced and living in horrific conditions. The 1.2 million Rohingya in Myanmar have long been targets of government persecution, which has been facilitated by their effective denial of citizenship under the discriminatory 1982 Citizenship Law. Past public statements by senior members of the NLD have often been dismissive of Rohingya concerns, downplayed claims of the Rohingya minority's right to citizenship, and rejected their claims to self-identification. We call on you as president to strongly urge an end to official denunciations of the Rohingya minority as a first step in the resolution of this issue.

President Thein Sein's recent lifting of the state of emergency that was imposed in 2012 in Arakan State opens the door to greater respect for the human rights of all in the state. However, we remain concerned by the retention of the curfew order in Maungdaw and Buthidaung townships, which bans gatherings of more than five people in public places, including mosques. We urge your government and Nyi Pu, the NLD-appointed chief minister of Arakan State, to immediately rescind this curfew order.

The effective denial of citizenship to the Rohingya has facilitated various human rights violations against them, including restrictions on the right to freedom of movement, discriminatory limitations on access to education, arbitrary detention, forced labor, and arbitrary taxation and confiscation of property. Curbs on basic freedoms in Arakan State maintained by security forces and officials of the three ministries remaining under military control will be an obvious obstacle. The swift repeal of these local security measures would immeasurably improve the situation of the Rohingya population. We urge you to strengthen efforts to ensure that the security environment in Arakan State protects all communities equally and without discrimination.

We remain especially concerned that humanitarian access to camps for internally displaced Rohingya in Sittwe and to Rohingya communities in northern Arakan State continues to be obstructed by local officials and security forces. While the number of

officially designated internally displaced persons (IDPs) in Arakan State has decreased in the last year, from 140,000 to around 125,000, and the number of camps decreased from 67 to 40 following resettlement and rebuilding projects in isolated IDP areas, the humanitarian conditions for remaining displaced Rohingya and Arakanese Buddhists remains dire.

A statement released by the NLD Central Executive Committee on June 1, 2015, following the maritime crisis in the Andaman Sea, said, “The National League for Democracy, and the party’s Chairperson [Aung San Suu Kyi], have consistently said that resolution of the communal conflict in Rakhine [Arakan] State should be founded on the principles of human rights, democracy and rule of law,” and committed to “address the issue of citizenship fairly, transparently, and as quickly as possible.” You now have the opportunity to act on these words.

In a broader national context, we urge your government to publicly call for an end to the public vilification and in some cases incitement to violence against Myanmar’s Muslim minority population. This entails public repudiation of calls by ultranationalist Buddhist organizations to discriminate against, incite violence against, or expel Muslims from Myanmar. The anti-Rohingya abuses in Arakan State in 2012 unleashed anti-Muslim violence throughout the country that has seriously complicated the democratic transition. In contrast to what was an otherwise inclusive election in 2015, neither the NLD nor the now opposition Union Solidarity and Development Party (USDP) fielded a single Muslim candidate in the 2015 election. No Muslim from any party was voted into office.

Your government should also immediately repeal the four so-called race and religion protection laws proposed by the Thein Sein government at the urging of the Association for the Protection of Race and Religion (Ma Ba Tha) and passed into law by the Union Parliament in 2015. All four laws were designed to limit the rights of religious minorities and women, and in doing so contravene Myanmar’s international human rights obligations and provisions of the 2008 Constitution. We note with appreciation that the NLD MPs voted against these laws, and Aung San Suu Kyi has spoken out publicly against the threats several of these laws pose to women’s rights. Your government now is in position to take measures against these deeply problematic laws and should do so immediately.

Ending decades of repression and communal conflict in Arakan State is complicated and cannot be resolved through development alone, and government efforts there must also address ongoing root causes of human rights abuses and pressing humanitarian realities.

## **10. Amend Myanmar’s 1982 Citizenship Law**

The 1982 Citizenship Law provides that “full” citizens are members of named “national races” (including Arakanese, Bamar, Chin, Kachin, Karen, Karenni, Mon, and Shan), or those whose ancestors settled in the country before 1823, the beginning of British occupation of what is now Arakan State. If individuals cannot provide evidence that their ancestors settled in Myanmar before 1823, and if they are not members of a national race, the law denies them full citizenship.

The law designates three categories of citizens: full citizens, associate citizens, and naturalized citizens. Foreigners may become naturalized citizens if they can provide “conclusive evidence” that they or their parents entered and resided in Myanmar prior to independence in 1948. Persons who have at least one parent who holds one of the three types of Myanmar citizenship are also eligible to become naturalized citizens. Beyond this qualification, section 44 of the law requires that a person seeking to become a naturalized citizen must be at least 18-years-old, able to speak one of the national languages well (the Rohingya language is not recognized as a national language), and of good character and sound mind. The UN Human Rights Committee has long expressed concern over stringent language criteria set out for citizenship in this law. The Universal Declaration of Human Rights (UDHR) and all major international human rights conventions prohibit discrimination on the basis of race, religion, language, and other grounds. The 1982 Citizenship Law discriminates against Rohingya by applying distinctive standards to them that are not supported by reasonable and objective criteria.

Under the Convention on the Rights of the Child (CRC), to which Myanmar is a party, children have the right to acquire a nationality and have this right ensured under national law, particularly where they would otherwise be stateless. The 1982 Citizenship law thus violates this convention.

Your government should request technical assistance from the United Nations to amend the citizenship law to meet international standards. The law should then be implemented to allow Rohingya full citizenship on a non-discriminatory basis and ensure that children are never made stateless. The category of “associate citizen” and other forms of second-class citizenship that give local officials legal tools and bureaucratic latitude to deny minority groups their full rights should be eliminated.

## **11. Press the Military to End Human Rights Violations in Conflict Areas**

Decades of armed conflict between the central government and various ethnic armed groups has been accompanied by countless violations of the laws of war and human rights abuses that have adversely affected millions of predominantly marginalized people. The ceasefire signed by the outgoing government and eight of the ethnic armed groups in

October 2015 was followed by resumed fighting in northern Myanmar that has seen renewed instances of forced labor, forced recruitment, torture and ill-treatment, sexual violence, indiscriminate attacks, and use of anti-personnel landmines, by all warring parties. Fighting in Shan State over the past several months has displaced thousands of civilians, while over 90,000 civilians remain internally displaced by the fighting in Kachin State between 2011 and 2013, where reports of abuses are ongoing.

Human Rights Watch urges your government to impress upon the military the country's obligations to abide by Common Article 3 to the Geneva Conventions and customary laws of war in its conflicts with ethnic armed groups. Of particular concern has been the lack of accountability for serious abuses committed by members of the armed forces. This failure has engendered deep distrust in communities affected by past and ongoing fighting. Human Rights Watch believes that justice and accountability should be the foundation of any process to end armed conflict. While the Myanmar military is constitutionally protected against civilian oversight, the government could nonetheless hold regular parliamentary hearings to discuss laws of war violations and abuses against civilians by all parties to the conflict, and publish reports of those hearings. It would be crucial to include the voices of Myanmar civil society in such hearings and perhaps compel the military to be more forthright about abuses and accountability measures.

Human Rights Watch also remains concerned about the return of thousands of civilians internally displaced by conflict in northern Myanmar, and over 100,000 civilians displaced by decades of war still in refugee camps along the Thailand-Myanmar border. We call on your government to ensure that any repatriation of IDPs and refugees takes place in full compliance with international standards, including the UN Guiding Principles on Internal Displacement and the 1951 Refugees Convention, which we urge your government to ratify. Any IDP returns and refugee repatriation must be conducted voluntarily, in safety and dignity, and with full oversight from international bodies such as the UN High Commissioner for Refugees (UNHCR), and in full consultation and planning with refugee rights representatives and community leaders. Failing to ensure these important principles could imperil the rights of displaced people and refugees and increase tensions in many ethnic areas.

## **12. End All Recruitment and Use of Children as Soldiers**

Reports of continued use of child soldiers by the military and non-state armed groups persist, despite the signing of a Joint Action Plan between the Myanmar government and the United Nations in 2012. While the military has released 745 underage or underage recruited soldiers since the plan was signed, reports of continued recruitment by the military continue, although the scale is difficult to estimate. In 2014, for example, 357

cases of child recruitment and use by the military were reported through the UN, the forced labor complaint mechanism of the International Labor Organization (ILO), and community monitoring.

Similarly, while prosecution of military officials involved in underage recruitment has risen, mostly before military tribunals, restrictions on access to military facilities suspected of holding child soldiers and information make it impossible to accurately assess the scale of the problem of continued recruitment, and the extent of punishment of military officials. Reports of recruitment and use of underage soldiers by pro-government militias has risen, as have recent reports of forced recruitment by non-state armed groups such as the Kachin Independence Army and others. We urge your government to fully implement the 2012 Joint Action Plan, and bolster these efforts by ratifying the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and ensure the draft Child Law is fully in line with Myanmar's obligations as a state party to the CRC.

### **13. Accountability for Past and Ongoing Abuses**

The people of Myanmar have endured decades of military repression and armed conflict, and many patterns of abuses persist despite a transition from authoritarian rule. Establishing a framework for accountability that includes mechanisms to prosecute civilian and military officials implicated in serious rights abuses should be a priority of your government, despite resistance from the military and obstacles contained in the 2008 Constitution. Ongoing violations by all sides to the fighting in Shan, Kachin, and Arakan States should also be investigated in line with international standards. Patterns of violations have included extrajudicial executions, use of torture and ill-treatment, use of forced labor including convict labor on the front line, sexual violence against women and girls, use of child soldiers, and looting and destruction of property.

Investigating and prosecuting individuals responsible for serious violations of international human rights and humanitarian law is an obligation under international law. Holding individuals accountable for human rights abuses and war crimes is important because it can provide avenues for much-needed redress for the victims of these crimes and their families. Credible accountability measures—meaning justice that is independent, impartial, and fair—can also deter future violations and promote respect for the rule of law. Such actions can promote discipline and professionalism by the armed forces and law enforcement officials, support responsible command and control structures, and improve relations with the civilian population. Governments that fail to hold key violators to account undermine their standing in conflict areas and globally, and increase the likelihood of international action being taken against them.

Ensuring justice for serious violations is, in the first instance, the responsibility of the state whose nationals are implicated in the violations. The state must ensure that military or domestic courts or other institutions impartially investigate whether serious violations occurred, identify and prosecute the individuals responsible for those violations in accordance with international fair trial standards, and impose punishments on individuals found guilty that are commensurate with their deeds. While non-state armed groups do not have the same legal obligation to prosecute violators of the laws of war within their ranks, they are nonetheless responsible for ensuring compliance with the laws of war and have a responsibility when they do conduct trials to do so in accordance with international fair trial standards.

Human Rights Watch strongly recommends that your government sign and ratify the 1998 Rome Statute of the International Criminal Court, joining 124 member states, as a firm commitment to promoting accountability.

We also urge your government to amend the Former President's Security Bill, passed by the outgoing parliament in 2016, especially article 10, which grants immunity to former heads of state "from any prosecution for actions during his term." This clause is inimical to democratic governance and rule of law by granting immunity to heads of state who may be guilty of serious crimes committed while in office. Retaining such a clause sends a signal to abusive officials further down the line of command that impunity persists.

We recognize that promoting accountability will be a major challenge for your government, as Myanmar's judiciary is weak, corrupt, and often controlled by the military or government ministries under military control. By pursuing accountability for past and ongoing abuses, the reform of the judiciary and its full independence can be obtained, possibly through technical assistance from the OHCHR and donor countries.

#### **14. Constitutional Reform**

Civilian rule in Myanmar is constitutionally circumscribed by the 2008 Constitution. Amending the constitution can only be achieved with the cooperation of the military, and so far the military commander in chief has been unwilling to do so, despite having been in discussions with NLD leadership since November 2015.

Parliament voted down a package of constitutional amendments in 2015, although some proposals had strong support. Producing a roadmap for constitutional reform that provides for a genuinely democratic political system with the military under civilian rule should be a priority, though there will likely be opposition from entrenched interests. Many provisions of the constitution could be changed by a majority parliamentary vote. However, Section

436 of the constitution sets out sections that require more than 75 percent of Union parliamentary votes, which will be difficult given the 25 percent of seats reserved for appointed Tatmadaw MPs, and a nationwide referendum needing a majority of votes.

We suggest focusing on the following provisions in parliament and in consultation with Myanmar civil society organizations so that constitutional reform remains a top priority of public debate:

- **Section 6(f)**, “Enabling the Defence Services to be able to participate in the national political leadership role,” is counter to the principles of a civilian democratic system and preserves extraordinary power for the military.
- **Section 20**, which grants the military a key role in safeguarding the constitution, should instead be the responsibility of a democratically elected parliament or an independent judiciary.
- **Section 59(f)**, which blocks from the presidency anyone with a foreign spouse or child is discriminatory and should be amended. The military’s unwillingness thus far to amend this provision—obviously intended to deny Aung San Suu Kyi the presidency—is evidence of the arduous challenge your government faces to amend the constitution.
- **Section 232(b) [ii, iii]**, which empowers the military to appoint serving military officers to the key ministries of Defense, Home Affairs, and Border Affairs. In particular, the guarantee of the Ministry of Home Affairs to a serving military officer places key security services in the hands of the military, notably the Myanmar Police Force, Special Branch, the General Administration Department, and the Correctional Department. These law enforcement agencies should be under civilian control and oversight.
- **Chapter 7**, on the role of the Defense Services, should be reframed in line with the principles of a national military being under full civilian control and oversight. In particular, the military justice system, which falls under the authority of the commander in chief, should be placed under civilian jurisdiction.
- **Chapter 8**, on the Fundamental Rights and Duties of Citizens, should be amended in line with Myanmar’s obligations under international human rights law. Several provisions are antithetical to these commitments such as **Section 352**, which states, “Nothing shall prevent appointment of men to the positions that are suitable for men only,” in violation of the right to gender equality under CEDAW; and **Section 383**, which enshrines as a citizen’s duty upholding the military’s Three Main National Causes of non-disintegration of the Union, non-disintegration of national solidarity, and perpetuation of sovereignty.
- **Section 436**, which grants the military effective veto over specific amendments to the constitution, requiring over 75 percent of votes in parliament and a nationwide

referendum with an approval of over half of eligible voters. This effectively blocks constitutional amendments without approval of the Defense Services, namely the commander in chief, who appoints the military MPs.