



MYANMAR

Stakeholder Report for the United Nations Universal Periodic Review

Submitted by **The Advocates for Human Rights**,

a non-governmental organization in special consultative status

and

The World Coalition Against the Death Penalty

for the 37th Session of the Working Group on the Universal Periodic Review

January 2021

Submitted 9 July 2020

Founded in 1983, **The Advocates for Human Rights** (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publication. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a Death Penalty Project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

The World Coalition Against the Death Penalty, an alliance of more than 150 NGOs, bar associations, local authorities and unions, was created in Rome on May 13, 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

Anti-Death Penalty Asia Network (ADPAN) is a regional network of organizations and individuals committed to working towards abolition of the death penalty in the Asia Pacific. Its role is to create wider societal support for abolition of the death penalty in the Asia Pacific region through advocacy, education and network building.

EXECUTIVE SUMMARY

1. This report addresses Myanmar's compliance with its human rights obligations with regard to the death penalty. Myanmar has reportedly been observing a *de facto* moratorium on executions since 1988; however, this practice does not necessarily reflect a change in the Government of Myanmar's position on the death penalty.¹ Indeed, Myanmar maintains that "[r]etaining or abolishing [the] death penalty is a decision which falls within the domestic jurisdiction of a sovereign state given its history, social, culture and traditional values."² Courts in Myanmar continue to render death sentences; the death penalty remains a possible punishment for numerous crimes, including crimes that do not involve intentional killing; and the imposition of the death penalty is mandatory for certain crimes. Moreover, the use of torture to extract confessions undermines confidence in the outcome of judicial proceedings. People in detention are subjected to torture and other forms of ill-treatment. The ongoing crisis in Rakhine State has further undermined respect for the right to life. In sum, this report recommends that Myanmar abolish the death penalty, ratify relevant human rights treaties, and engage with international human rights mechanisms.

I. BACKGROUND AND FRAMEWORK

A. The 2015 Universal Periodic Review of Myanmar

2. During its second-cycle Universal Periodic Review in 2015, Myanmar received 18 recommendations related to the death penalty. Myanmar fully supported only two recommendations that called on it to consider abolishing the death penalty. Myanmar accepted several other recommendations that touch upon issues relevant to the death penalty, but it has made little progress in implementing these recommendations.

1. *Ratify relevant human rights treaties*

Status of Implementation: Partially Accepted, Not Implemented

3. Myanmar received 12 recommendations to sign, accede to or ratify the human rights treaties.³ The recommendations included 23 recommendations to ratify or accede to the ICCPR,⁴ 5 recommendations to ratify or accede to the ICCPR's optional protocols,⁵ and 15 recommendations to ratify the Convention against Torture.⁶ Myanmar accepted some of these recommendations either fully or in principle.⁷ For example, Myanmar supported Namibia's recommendation to "[c]onsider ratification of the International Covenant on Civil and Political Rights and its second Optional Protocol, with the view of total abolition of the death penalty." Myanmar noted recommendations from Estonia, Ghana, Greece, and Spain to ratify or accede to the ICCPR and its Second Optional Protocol. Myanmar has not ratified or acceded to the ICCPR, its Second Optional Protocol, the Convention Against Torture, or its Optional Protocol.

2. *Cooperate with human rights mechanisms*

Status of Implementation: Accepted in Part, Not Implemented

4. Myanmar received three recommendations to continue cooperation with human rights mechanisms, including with the Special Rapporteur on the Situation of Human Rights in Myanmar.⁸ Myanmar supported these recommendations.⁹
5. Myanmar did not support six recommendations to issue a standing invitation to special procedures and mandate holders.¹⁰ Myanmar also noted Ireland's recommendation to "[g]rant the Special Rapporteur on the situation of human rights in Myanmar unimpeded access to Rakhine state."¹¹ Myanmar also noted seven recommendations to open a United Nations Office of the High Commissioner for Human Rights country office.¹² Since December 2017, Myanmar has denied UN Special Rapporteur on Myanmar Yanghee Lee access to the country.

3. *Impose a moratorium on the death penalty or abolish the death penalty*

Status of Implementation: Accepted in Part, Not Implemented

6. Myanmar accepted Panama's recommendation to "consider abolishing de jure the death penalty." Myanmar further received four recommendations to abolish the death penalty,¹³ five recommendations to place a moratorium on the death penalty with a view to its abolition,¹⁴ and two recommendations to change its *de facto* moratorium to a *de jure* moratorium.¹⁵ Myanmar did not support these recommendations and has not abolished the death penalty or instituted a formal moratorium.

4. *Ensure the protection of human rights defenders*

Status of Implementation: Accepted in Part, Not Implemented

7. Myanmar received two recommendations to ensure the protection of human rights defenders.¹⁶ Myanmar accepted these recommendations.¹⁷ Myanmar did not support Uruguay's recommendation to investigate and punish cases of intimidation, harassment, persecution, torture and enforced disappearances, especially against political dissidents, journalists, ethnic and religious minorities, and human rights defenders.¹⁸ Nor did Myanmar accept Norway's recommendation to release immediately and unconditionally all human rights defenders, student activists, and political detainees.¹⁹ Myanmar continues to violate the rights of human rights defenders and lawyers.

B. Domestic Legal Framework

8. Myanmar has a quasi-parliamentary system of government in which the national parliament selects the president.²⁰ The 2008 Constitution grants one quarter of parliamentary seats to active-duty military appointees. Notably, civilian authorities have no authority over the security forces.²¹ The Myanmar Police Force, which includes the Border Guard Police, falls under the authority of the Ministry of Home Affairs. The Ministry also operates Myanmar's prison system. An active-duty general leads the Ministry.²²

9. Article 353 of the 2008 Constitution recognizes the right to life: “[n]othing shall, except in accord with existing laws, be detrimental to the life and personal freedom of any person.” Article 382, however, allows legislation to strip away fundamental rights under certain circumstances.²³
10. The Penal Code, the Defense Services Act, the Narcotic Drug and Psychotropic Substances Law, the Law on Anti Trafficking in Persons, and the Counter-Terrorism Law authorize the use of the death penalty. Myanmar abolished the death penalty as a form of punishment for crimes that fall under the 1950 Emergency Provisions Act.²⁴
11. Some crimes are eligible for the death penalty simply if they result in death, regardless of whether the death was the result of an intentional killing. Further, many crimes that do not result in death are eligible for death penalty, including offenses against the State and drug trafficking offenses.
12. Under the Penal Code, premeditated murder²⁵ and aggravated murder (while committing an offence punishable with imprisonment for a term exceeding seven years) are punishable by death.²⁶ The death penalty is an available penalty for the following crimes if they result in death: gang robbery resulting in death²⁷ and perjury resulting in execution of an innocent defendant.²⁸ Crimes not resulting in death but punishable by death include: treason,²⁹ abetting a successful mutiny,³⁰ assault by a person under a life sentence, assault with the intention to murder,³¹ drug trafficking,³² drug possession (certain quantities),³³ drug offenses committed by using influence of a public servant,³⁴ and committing a crime punishable by at least four years imprisonment in the course of human trafficking.³⁵
13. The Defense Services Act provides a long list of offenses punishable by death. This list includes some vaguely defined offenses such as “in the presence of the enemy, shamefully cast[ing] away [one’s] arms, ammunition, tools, or equipment or misbehav[ing] in such manner as to show cowardice.”³⁶ A court-martial decides whether the convicted person shall be hanged or shot to death.³⁷
14. Under the Counter-Terrorism Law, the death penalty may be imposed for:
 - Acts of terrorism committed against state-owned or government-owned objects,³⁸
 - Actions related to arms and ammunition, biological, chemical, and nuclear weapons, explosive weapons or nuclear materials to a terrorist or a member of a terrorist group,³⁹
 - Offenses “harming civil aviation,” such as using violence against somebody on-board in order to harm the aircraft during a flight duty period, use of violence to harm civil aviation,⁴⁰ and “doing violence to the airport which offers service to civil aviation,” for example.⁴¹
 - Offenses related to “unlawful seizure of aircraft.”⁴²
15. The imposition of the death penalty in Myanmar is mandatory for certain offenses. For example, judges have no discretion to impose a sentence other than death for murder and certain drug offenses (trafficking; import or export; facilitation of the same; production; or when the offender is a recidivist, part of criminal organization, uses arms

- or explosives, uses children under the age of 16, or uses the influence of a public servant; and drug possession in certain circumstances).⁴³
16. People with certain psycho-social disabilities are exempt from the death penalty, as nothing is an offense when done by a person who because of “unsoundness of mind” is “incapable of knowing the nature of the act or its wrongness or criminality at the time it is done.”⁴⁴ If a woman is pregnant, the court will postpone the death sentence or may reduce the sentence to life imprisonment.⁴⁵ Under the 1993 Child Law, no child may be sentenced to death.⁴⁶
 17. Under the Constitution, the President has the power to grant a pardon as well as amnesty in accord with the recommendation of the National Defense and Security Council.⁴⁷ The Penal Code also prescribes the President’s power to commute the death penalty.⁴⁸
 18. The Constitution guarantees certain fair trial rights: the right of defense,⁴⁹ judicial independence,⁵⁰ the right to legal protection without regard to race, religion, citizenship, or sex, for example,⁵¹ and the right of appeal.⁵² If a person is charged with a crime for which death is a possible punishment, the government must provide the accused with a lawyer.⁵³ The 2010 Judiciary Law mandates that “[t]he Supreme Court of the Union has the jurisdiction on confirming death sentence and appeal against the death sentence.”⁵⁴
 19. The Constitution implicitly prohibits all forms of torture; it states that “[n]othing shall be detrimental to the life and personal freedom of any person.”⁵⁵ The Penal Code prohibits causing of “hurt” and “grievous hurt” during an official interrogation.⁵⁶ Similarly, the Code of Criminal Procedure states that the accused shall not be induced by threat, promise, or otherwise to disclose or withhold any matter within the accused’s knowledge.⁵⁷

II. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Right or area 2.1. Acceptance of international norms

20. Myanmar has not ratified the ICCPR, the Second Optional Protocol to the ICCPR, the Convention against Torture, or its Optional Protocol.⁵⁸ The Ministry of Information had released a statement that Myanmar planned to sign the ICCPR,⁵⁹ but the Pyithu Hluttaw (Lower House of Parliament) rejected a ratification motion. Reportedly, Tatmadaw (military) MPs said that the treaty could infringe on the country’s sovereignty and endanger its security.⁶⁰

Right or area 3.2. Cooperation with special procedures

21. As discussed above, Myanmar did not support recommendations to issue a standing invitation to special procedures mandate-holders. It justified its position by stating that it “has been accepting the visits of the successive Special Rapporteurs on the situation of human rights in Myanmar.”⁶¹ In 2017, however, the Government of Myanmar informed UN Special Rapporteur on Myanmar Yanghee Lee that all access to the country had been denied and cooperation withdrawn for the duration of her tenure.⁶² Since then, Myanmar has denied the Special Rapporteur access to the country.⁶³

22. In 2018, after the publication of a report by the UN Independent International Fact-Finding Mission on Myanmar, the Government denied the Mission permission to enter the country.⁶⁴ The Human Rights Council had expressed deep regret that the Government had refused to cooperate with the Mission.⁶⁵ The Government of Myanmar has permitted UN Special Envoy of the Secretary-General on Myanmar Christine Schraner Burgener to enter the country on multiple occasions and meet with officials.⁶⁶
23. Despite recommendations during the interactive dialogue in 2015 and calls from the Human Rights Council,⁶⁷ the Government of Myanmar has not allowed OHCHR to open an office in Myanmar.⁶⁸ Myanmar allows OHCHR staff to maintain a nominal presence in country, but the Government sometimes delays visa issuance for some OHCHR staff and continues to require travel authorization for visits to Rakhine State and conflict areas.⁶⁹

Right or area 12.4. Death penalty

24. Many sources suggest that Myanmar has not executed anyone since 1988.⁷⁰ According to *The Irrawaddy*, however, in March 2016, two men were allegedly executed in the Wa Special Region, an autonomous zone in Shan State. The report quotes a spokesperson for the United Wa State Army, who told the publication, “They killed other people. The court gave the death sentence to them yesterday.” According to the publication, The UWSA-run Wa State TV aired a broadcast showing photos of the two men kneeling before police officers, presumably before they were shot and killed.⁷¹ *The Irrawaddy* also reports that authorities in the Mong La special administrative region were suspected of executing a Chinese national in early 2016.⁷²
25. Myanmar authorities do not publish data about the exact number of death sentences that have been issued. According to Amnesty International and the international press, since 2015, approximately 16 people have been sentenced to death.⁷³ The local media report a much higher figure; the Deputy Director of the Prisons Department told a local newspaper that 66 people had been sentenced to death between 2016 and 2018.⁷⁴
26. Between 2011 and 2016, former President Thein Sein commuted all death sentences being served to life imprisonment. The subsequent Presidents, Htin Kyaw (2016-2018) and Win Myint, are reported not to have commuted any death sentences.⁷⁵
27. The death penalty may be used disproportionately against Rohingya men. In 2017, Amnesty International reported two new death sentences, one of which was imposed against a Rohingya man. He was found guilty of involvement in an attack on border police posts in Rakhine State in October 2016.⁷⁶ Similarly, in 2018, four of at least nine new death sentences were imposed on Rohingya men in relation to the same attack.⁷⁷
28. Charges of treason and offenses under the Defense Services Act may be used to target political opponents and minorities. For example, according to the Special Rapporteur, after police in Mrauk-U killed seven demonstrators, authorities accused parliamentarian Aye Maung and nationalist writer Wai Hin Aung, both from Rakhine State, of organizing the demonstration and charged them with treason.⁷⁸ Similarly, in 2019 Saw Ye Htet was sentenced to death under the Defense Services Act for desertion and for providing intelligence to an “enemy.” In 2010, he had fled the army while he

was receiving treatment for back injuries sustained when a senior student beat him during training. He later joined the Democratic Karen Benevolent Army. He belongs to the Shan-ni ethnic minority.⁷⁹

Right or area 12.5. Prohibition of torture and cruel, inhuman or degrading treatment

29. The army and the border police use torture and other forms of ill-treatment. In March 2018, soldiers rounded up men hiding in a monastery in a village in Rakhine State. The men were stripped naked, forced to do jumping exercises and were beaten, while being asked about the Arakan Army.⁸⁰ In August 2017, at least two contingents of Border Guard Police tortured and otherwise abused 25 Rohingya men and boys to extract information or to force them to confess to involvement with the Arakan Army.⁸¹ Torture included severe beatings, burnings, and sexual violence lasting several days or even weeks.⁸²
30. In September 2019, UN human rights experts, including Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment Nils Melzer, called for an independent investigation into allegations of torture and inhuman treatment, deaths in custody, and reliance on forced confessions in cases involving Arakan Army-related allegations.⁸³ The experts cited the case of Naing Aung Htun, who was given electric shocks by soldiers, after which he confessed to having ties to the Arakan Army insurgent group.⁸⁴ Naing Aung Htun's father said his son had sustained injuries to his face and was complaining of pain in his chest and back, headaches and being unable to chew.⁸⁵
31. People arrested during security operations reportedly face torture and other forms of ill-treatment. The Special Rapporteur raised concern regarding treatment in detention⁸⁶ and deaths in custody, including deaths of children.⁸⁷ At least seven people reportedly died in police custody in Rakhine State between January and August 2019, with serious allegations of torture and ill-treatment reported.⁸⁸ In May 2019, 27 men from Letka village, Mrauk-U, were arrested and charged under the Counter-Terrorism Law. In June, it was reported that three of them died in custody. In the same month, another eight villagers were arrested in Mrauk-U, and two of them have reportedly died in detention.⁸⁹ The Government generally asserts that those deaths resulted from pre-existing health conditions.⁹⁰
32. Torture and cruel, inhuman or degrading treatment or punishment takes place against people housed in prisons.⁹¹ Amnesty International reported one particularly egregious practice, in which prisoners are placed in “dog cells”—cells designed and used for guard dogs—which greatly restrict prisoners' movement.⁹² Prisoners faced harsh conditions in labor camps as well; the military routinely force prisoners to carry heavy loads of ammunition and other supplies during military operations.⁹³

Right or area 12.6. Conditions of detention

33. The Ministry of Home Affairs operates the prison system, which consists of 47 prisons and 48 labor camps. The military also operates its own detention facilities. The Ministry and the military significantly restrict access to these facilities by international observers—including the Special Rapporteur on Myanmar.⁹⁴

34. “Conditions in prisons and labor camps are harsh and sometimes life threatening due to overcrowding, degrading treatment, and inadequate access to medical care and basic needs, including food, shelter, and hygiene.”⁹⁵ In 2019, more than 20,000 people served sentences in these labor camps, sometimes even when their sentences did not include “hard labor.”⁹⁶ The World Prison Brief estimated that in 2018, there were more than 92,000 people in Myanmar’s detention facilities and the occupancy level was at 139.4%.⁹⁷ Some prisons held pretrial detainees together with people serving sentences.
35. In overcrowded prisons, bedding sometimes consists of a single mat, wooden platform, or laminated plastic sheet on a concrete floor.⁹⁸ People in detention have little or no access to nutritious food, clean drinking water, or proper sanitation.⁹⁹ Physical structures are not properly maintained, provide little protection from the elements, and have infestations of rodents, snakes, and mold.¹⁰⁰ People in detention are unable to access adequate and timely medical care.¹⁰¹
36. The Prisons Acts of 1894, the Prisoners Act of 1900, the Identification of Prisoners Act of 1920, and the Jail Manual of 1894 contain rules and regulations related to the penitentiary system. In July 2015, a draft Prisons Law was introduced, which would replace the colonial-era laws. But Amnesty International believes that the draft “falls far short of international standards [and] fails to include a number of provisions necessary to protect the rights of people deprived of liberty.”¹⁰² In fact, Section 24(f) of the draft law requires separating people sentenced to death from other detained persons and keeping them in separate rooms, thereby calling for prolonged solitary confinement, in violation of international human rights standards and the Nelson Mandela Rules.¹⁰³
37. Human Rights Watch reports that “Myanmar’s poor healthcare infrastructure, along with other public services, are ill-equipped to deal with an outbreak of coronavirus,”¹⁰⁴ particularly in overcrowded prison conditions. According to this report, “only 30 doctors and 80 nurses are employed across the entire prison system,”¹⁰⁵ and they are therefore unable to effectively treat people who become infected. Many people are arbitrarily held in long-term custody, including “74 political prisoners serving sentences and an additional 139 detainees being held while facing trial on politically motivated charges.”¹⁰⁶

Right or area 15.1. Administration of justice & fair trial

38. The Constitution and other laws provide certain fair trial guarantees, including the right to an independent judiciary. But the control and influence of the executive branch over the judiciary undermine judicial independence.¹⁰⁷ For example, President Win Myint and State Counsellor Aung San Suu Kyi sometimes speak publicly regarding pending criminal proceedings.¹⁰⁸ In addition, Myanmar’s judiciary faces allegations of rampant corruption.¹⁰⁹
39. Other constitutional fair trial guarantees are not upheld in practice. Defendants often are not informed promptly and in detail of the charges against them; indeed, the Special Rapporteur on Myanmar noted with alarm that the majority of accused and convicted persons in detention facilities did not fully comprehend the charges they faced or sentences handed down.¹¹⁰ The military’s practice of using incommunicado detention impedes access to counsel.¹¹¹ The majority of defendants either meet their lawyers only

- on the first day of trial or have no legal representation whatsoever.¹¹² Only defendants in capital cases have the right to an attorney provided at government expense.¹¹³ The procedure for applying the constitutionally guaranteed writ of habeas corpus—an important tool guarding against torture and ill-treatment during pretrial detention—is particularly onerous. Authorities often disregard guarantees against self-incrimination.¹¹⁴ Authorities reportedly use coerced testimony or a defendant’s confession of guilt in court.¹¹⁵
40. There is no right to adequate time and facilities to prepare a defense, but defense attorneys in criminal cases generally had approximately 15 days to prepare for trial.¹¹⁶ There is no right to confront witnesses and present evidence, although defense attorneys could sometimes call witnesses and conduct cross-examinations.¹¹⁷ The lack of access to written judgements hinders efforts to appeal convictions.¹¹⁸

Right or area 36. Human rights defenders

41. Human rights defenders, lawyers, journalists, and others who publicly speak out against injustice continue to face reprisals and persecution. In September 2015, Khin Khin Kyaw, a defense lawyer representing student protestors, was charged by the presiding judge in that case with violating section 228 of the Penal Code (intentionally insulting or interrupting a public servant in judicial proceedings).¹¹⁹ In September 2017, the Special Rapporteur on Myanmar reported that at least three lawyers had been “disbarred, ostensibly for having applied constitutional writs.”¹²⁰ The Special Rapporteur recommended reform of the Bar Council to ensure that an independent and impartial tribunal handled complaints against lawyers and that lawyers were not punished for their association with politically sensitive cases.¹²¹
42. Some human rights activists have been murdered. In 2016, Naw Chit Pan Daing, a 22-year old Karen woman human rights defender and an advocate against land confiscation, was murdered.¹²² The same year, Soe Moe Tun, an investigative journalist, was beaten to death.¹²³ In 2017, Ko Ni, a Muslim lawyer advocating constitutional reform and adviser to the State Counselor, was assassinated.¹²⁴ In April 2018, Government soldiers killed the environmental rights activist and community leader Saw O Moo.¹²⁵
43. The Government prosecuted journalists that were investigating heinous crimes. In December 2017, Reuters journalists Wa Lone and Kyaw Soe Oo were arrested and held incommunicado for two weeks. They were prosecuted for uncovering a military massacre of Rohingya in Rakhine State’s Inn Din village. They were subjected to ill treatment during interrogation and pre-trial detention.¹²⁶ In September 2018, a Yangon court sentenced them to seven years in prison, despite evidence from a police officer that their arrest had been a set up.¹²⁷
44. In April and May 2018, more than 45 activists were charged for participating in peaceful protests related to military offensives in Kachin State. Human Rights Watch reported that “Police in riot gear violently dispersed the protest and arrested 17 demonstrators.”¹²⁸ Moreover, three human rights defenders who had helped organize protests were charged with criminal defamation. In December 2018, a court sentenced them to six months in prison.¹²⁹

III. RECOMMENDATIONS

45. This stakeholder report suggests the following recommendations for the Government of Myanmar:

- Abolish the death penalty and replace it with a sentence that is fair, proportionate, and in compliance with international human rights standards.
- Impose an immediate moratorium on the death penalty, effective immediately both going forward and retroactively.
- In the absence of a *de jure* moratorium, conduct a comprehensive review of all criminal laws and amend them to ensure that the death penalty is available as a penalty only for crimes in which the defendant committed an intentional killing.
- While working toward abolition of the death penalty, eliminate the mandatory death penalty and ensure that all judges are freely able to exercise discretion to impose alternate penalties, taking into account all mitigating circumstances surrounding the offense and the person accused of committing it.
- Ensure that all defendants potentially facing a sentence of death have unfettered access to their own counsel at all stages of the investigation, judicial proceedings, trial, appeal, pardon, commutation, and habeas corpus proceedings, regardless of ability to pay, and that they have the opportunity to present witnesses and other evidence in their defense and question witnesses offered by the prosecution.
- Ratify the International Covenant on Civil and Political Rights, its Second Optional Protocol, the Convention Against Torture, and its Optional Protocol.
- Resume constructive engagement with the Special Rapporteur on the Situation of Human Rights in Myanmar and extend her a standing invitation to conduct unimpeded visits to the country, particularly detention facilities.
- Extend a standing invitation to all special procedures mandate-holders.
- Fully cooperate with the Independent Investigative Mechanism for Myanmar.
- Authorize the United Nations Office of the High Commissioner for Human Rights to open a country office in Myanmar.
- Create an independent authority to conduct credible, impartial investigations of allegations of torture and other ill-treatment, prioritizing allegations raised by persons who have been sentenced to death or charged with crimes that are eligible for the death penalty, and ensure that procedures are in place to hold perpetrators of torture accountable.
- Ensure that officials at the highest level publicly condemn torture and ill-treatment by State agents and adopt a zero-tolerance policy.
- Prohibit the introduction of evidence obtained under duress, and issue guidelines on the steps judges must take when a defendant alleges torture, including investigating all credible allegations and taking immediate steps to protect individuals alleging torture or ill-treatment from retaliation.

- Establish an independent monitoring mechanism to visit all places where persons may be deprived of their liberty and extend an open invitation to international observers to visit and inspect all detention facilities.
- Ensure that detention conditions comply with the internationally accepted standards, such as the Nelson Mandela Rules.
- Ensure that the use of solitary confinement complies with Rules 43-46 of the Nelson Mandela Rules.
- Cease prosecution and harassment of attorneys representing defendants in criminal proceedings and human rights defenders promoting fair trial rights and opposing the death penalty, and release all persons detained for legitimately and peacefully exercising their right to freedom of expression.
- Provide comprehensive data about all death sentences pronounced, all persons currently under sentence of death, the location of their detention, and all executions carried out in all territories and regions of Myanmar.
- Increase the transparency of the criminal justice system, including collecting and publicly releasing data on all charges of death-eligible crimes, the exact crime charged, date of arrest and date of charge, demographic information about the accused (including ethnicity), the evidentiary basis for the charge, dates when the accused met with counsel, whether the accused was afforded an opportunity to challenge their detention, dates of trial, outcome of the criminal proceeding, status of any appeals, requests for pardon or commutation, or similar relief, location of detention for any person under sentence of death, how long the person has been held under sentence of death, and whether the accused had access to counsel at all stages of criminal proceedings.

¹ David T. Johnson and Franklin E. Zimring, *The Next Frontier: National Development, Political Change, and the Death Penalty in Asia* (New York: Oxford University Press, 2009), 448.

² Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Myanmar, Addendum*, (March 10, 2016), U.N. Doc. A/HRC/31/13/Add.1, ¶12.

³ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Myanmar*, (December 23, 2015), U.N. Doc. A/HRC/31/13, ¶¶ 143-144.

⁴ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Myanmar*, (December 23, 2015), U.N. Doc. A/HRC/31/13, ¶¶ 143-144.

⁵ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Myanmar*, (December 23, 2015), U.N. Doc. A/HRC/31/13, ¶¶ 143-144.

⁶ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Myanmar*, (December 23, 2015), U.N. Doc. A/HRC/31/13, ¶¶ 143-144.

⁷ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Myanmar*, (December 23, 2015), U.N. Doc. A/HRC/31/13, ¶ 143; Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Myanmar, Addendum*, (March 10, 2016), U.N. Doc. A/HRC/31/13/Add, ¶¶ 6-7 Myanmar noted Kyrgyzstan's recommendation to "[c]ontinue acceding to international human rights treaties, strengthen the process of reforms, and pay more attention on the problems related to indigenous people in Rakhine state". Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Myanmar*, (December 23, 2015), U.N. Doc.

A/HRC/31/13, ¶145; Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Myanmar, Addendum*, (March 10, 2016), U.N. Doc. A/HRC/31/13/Add.1, ¶7.

⁸ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Myanmar*, (December 23, 2015), U.N. Doc. A/HRC/31/13, ¶143.50 Engage closely with the United Nations human rights system, including treaty bodies and special procedures mandate holders (Turkey); ¶143.31 Continue to cooperate with human rights mechanisms, including the special rapporteur on Myanmar (Republic of Korea); ¶143.52 Ensure ongoing cooperation with the special rapporteur for Myanmar of the Human Rights Council and with other Special Procedures (Chile).

⁹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Myanmar*, (December 23, 2015), U.N. Doc. A/HRC/31/13, ¶143.

¹⁰ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Myanmar*, (December 23, 2015), U.N. Doc. A/HRC/31/13, ¶144.29 Issue a standing invitation to the Special Procedures (Guatemala); ¶144.34 Issue a standing invitation to all thematic special procedures (Montenegro); ¶144.35 Extend a standing invitation to mandate holders (Senegal); ¶144.36 Extend an open invitation to the Special Procedures and respond favourably to pending requests (Uruguay); ¶144.37 Extend an open and permanent invitation to the United Nations human rights special procedures mandate-holders (Cyprus); ¶144.38 Extend a standing invitation to special procedures, respond positively to their requests to visit the country and cooperate fully, promptly and substantively with all mandate holders (Latvia); Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Myanmar, Addendum*, (March 10, 2016), U.N. Doc. A/HRC/31/13/Add.1, ¶10.

¹¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Myanmar*, (December 23, 2015), U.N. Doc. A/HRC/31/13, ¶145.

¹² Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Myanmar*, (December 23, 2015), U.N. Doc. A/HRC/31/13, ¶144.39 Allow the OHCHR to open a country office with a full mandate (United States of America); ¶144.40 Expedite the establishment of an OHCHR office with a full mandate (Turkey); ¶144.41 Take further steps towards the establishment of the OHCHR country office in Myanmar (Croatia); ¶144.42 Establish a timeline for an early opening of the OHCHR country office with a full mandate (Czech Republic); ¶144.43 Approve the opening of an OHCHR country office to provide for enhance protection of an cooperation on human rights (Hungary); ¶144.44 Facilitate the establishment of an OHCHR office in the State, which would be able to operate throughout the country with a full promotion and protection mandate (Ukraine); ¶144.45 Facilitate the establishment of an OHCHR country office in Myanmar, able to operate throughout the country with a full promotion and protection mandate and establish timeframe in that respect (Belgium); Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Myanmar, Addendum*, (March 10, 2016), U.N. Doc. A/HRC/31/13/Add.1, ¶11.

¹³ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Myanmar*, (December 23, 2015), U.N. Doc. A/HRC/31/13, ¶144.56 Abolish the death penalty (Holy See, Poland, Slovenia, Spain, Portugal).

¹⁴ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Myanmar*, (December 23, 2015), U.N. Doc. A/HRC/31/13, ¶144.58 Place a moratorium on the death penalty with a view to its abolition (Sierra Leone); ¶144.59 Institute a de jure moratorium on the death penalty, with a view to its future abolition (Switzerland); ¶144.60 Institute a de jure moratorium on the death penalty, with a view to its definitive abolition (Luxembourg); ¶144.61 Establish an official moratorium on the death penalty with a view to its abolition for all crimes (France); ¶144.62 Establish a formal moratorium on the death penalty with a view to ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights (Australia).

¹⁵ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Myanmar*, (December 23, 2015), U.N. Doc. A/HRC/31/13, ¶144.63 Translate de-facto moratorium on the death penalty into binding law, with a view to completely abolish the death penalty altogether (Croatia); ¶144.64 Change a de facto moratorium, which is in place in Myanmar since 1988, to a de jure moratorium on the use of the death penalty as a first step to its abolishing (Lithuania).

¹⁶ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Myanmar* (December 23, 2015), U.N. Doc. A/HRC/31/13, ¶144.82 Ensure the protection of human rights defenders (Chile); ¶144.83 Create and maintain a safe and enabling environment for civil society, human rights defenders and journalists (Norway).

¹⁷ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Myanmar, Addendum* (March 10, 2016), U.N. Doc. A/HRC/31/13/Add.1, ¶6.

¹⁸ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Myanmar* (December 23, 2015), U.N. Doc. A/HRC/31/13, ¶145.

¹⁹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Myanmar* (December 23, 2015), U.N. Doc. A/HRC/31/13, ¶144; Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Myanmar, Addendum*, (March 10, 2016), U.N. Doc. A/HRC/31/13/Add.1, ¶13.

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- ⁴⁴ Penal Code, arts. 84, 464, No. 45 of 1860 (Myanmar).
- ⁴⁵ Code of Criminal Procedure, art. 382, of 1898 (Myanmar).
- ⁴⁶ Child Law, arts. 45, 71, No. 9/93 of 1993 (Myanmar).
- ⁴⁷ Constitution, Art. 204. See also Penal Code, art. 54, No. 45 of 1860 (Myanmar).
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