

MEMORANDUM OF UNDERSTANDING

Between

The Ministry of Labour, Immigration and Population of the Government of the Republic of the Union of Myanmar (GoM)

AND

The United Nations Development Programme

AND

The Office of the United Nations High Commissioner for Refugees

The Ministry of Labour, Immigration and Population (MoLIP), United Nations Development Programme (UNDP) and the Office of the United Nations High Commissioner for Refugees (UNHCR), jointly referred to as “the Parties”:

a) RECALLING the ‘Arrangement on Return of Displaced Persons from Rakhine State’ (“the Arrangement”) signed by the Union Minister for the Office of the State Counsellor of Myanmar and the Foreign Minister of Bangladesh on 23 November 2017, wherein the Government of the Republic of the Union of Myanmar agreed that the services of the UNHCR could be drawn upon as needed and at the appropriate time and that other mandated UN agencies would be invited to take part, as appropriate, in various stages of return and resettlement, and to assist returnees to carry on life and livelihood as members of Myanmar society;

b) NOTING that the Government of the Republic of the Union of Myanmar and the Government of the People’s Republic of Bangladesh have agreed on the ‘Physical Arrangement for Repatriation of Displaced Myanmar Residents from Bangladesh under the Arrangement for Repatriation of Displaced Myanmar Residents from Bangladesh under the Arrangement on Return of Displaced Persons from Rakhine State dated 16 January 2018’ which is attached to this MoU;

c) NOTING that UNDP and UNHCR have a Framework for Operational Cooperation (signed in 1997) which identifies the complementary mandates and roles of both agencies and which may be called upon by the GoM in its efforts to create conditions conducive for

sustainable voluntary return of displaced persons from Rakhine State in safety and dignity;

d) ALSO NOTING that UNDP's mandate is to support countries to reduce poverty, and achieve inclusive and sustainable development including coordinating the UN System at the country level on matters relating to development and Sustainable Development Goals (SDGs) implementation; whereas UNHCR is mandated to protect and assist refugees and stateless persons, coordinate humanitarian action on their behalf and to support States in achieving durable solutions for them, in accordance with UNHCR's global responsibilities including its key role on repatriation, and a convening and coordinating role in situations of voluntary return. Furthermore, the General Assembly has authorised UNHCR to conduct operations under certain circumstances to protect and provide humanitarian assistance to Internally Displaced Persons (IDPs);

e) CONSIDERING that the mandate and the work of the UNDP and UNHCR is of an entirely non-political character, impartial and neutral and requiring their personnel to uphold and promote the highest standards of ethical and professional conduct, in accordance with the obligations placed upon their conduct by the Charter of the United Nations and the UN Staff Rules and Regulations;

f) RECOGNISING that displacement presents development challenges that require coherent approaches linking humanitarian and development action and that both UNDP and UNHCR are committed to helping achieve the 2030 Agenda for Sustainable Development in Myanmar;

g) RESOLVING to cooperate and harmonise humanitarian and development action in Rakhine State in assisting the GoM in the voluntary return in safety and dignity of the displaced persons from Rakhine State who have been duly verified as residents of Myanmar according to the 'Arrangement on Return of Displaced Persons from Rakhine State';

h) REAFFIRMING a shared commitment to ensuring that humanitarian and development assistance is used effectively, accountably and transparently;

HAVE AGREED AS FOLLOWS:

GENERAL PRINCIPLES

1. The GoM is responsible for the safety, reception and reintegration of the returnees and for the overall coordination and implementation of the voluntary repatriation exercise.
2. The GoM will work for a comprehensive and durable solution to the displacement of persons in and from Rakhine State, including as contained in the recommendations of the Advisory Commission on Rakhine State.
3. The Parties will uphold the principle that was contained in the Arrangement, that after the necessary verification, those who have left Myanmar are to return voluntarily and safely to their own households and original places of residence or to a safe and secure place nearest to it *of their choice based on their well informed decision*. [language]
4. The returnees will enjoy the same freedom of movement as all other Myanmar nationals in Rakhine State, in conformity with existing laws and regulations, and in conformity with the recommendations of the Rakhine Advisory Commission.
5. Children under foster care and born out of unwarranted incidents are to be certified by a Court of Bangladesh. They will be considered for verification. Unregistered children, whose bona fide has been established, will be considered for verification with their parents. Relevant information or data generated by, and available with, relevant UN agencies may be used for reference, as and when necessary.
6. The status of those displaced persons who decide not to avail themselves of the voluntary repatriation programme that has been established shall continue to be governed by applicable international laws.
7. UNDP and UNHCR will operate within their respective mandates as stated in the Framework for Operational Cooperation and build upon global best practices adapted to the Myanmar context. This cooperation will include joint assessment between UNDP and UNHCR, planning, coordination, fundraising and implementation. UNDP and UNHCR will coordinate with each other, with respect to programming, technical design

and financial allocations so as to ensure complementarity and synergies between all relevant humanitarian and development actions.

8. That humanitarian and development assistance provided by UNDP and UNHCR under this MoU shall be implemented in full accordance with the existing laws, rules and regulations established by the GoM to the extent they are not inconsistent with, and without prejudice to the United Nations rules and regulations.

9. The Parties agree to the principle that assistance must be designed and implemented in a way that is conflict sensitive, inclusive, and non-discriminatory, taking into account international humanitarian and developmental principles.

SCOPE OF COOPERATION

10. This MoU sets out the general operational modalities governing UNDP and UNHCR's involvement in the repatriation process of displaced persons from Rakhine State who wish to return voluntarily, safely and in dignity to their own households and original places of residence or to a safe and secure place nearest to it of their choice.

11. As a matter of urgent priority, the Parties will immediately collaborate to support the GoM to find voluntary and safe solutions in dignity for the displaced persons currently residing along the international border between Myanmar and Bangladesh, in particular the area between the international border and the fence erected on Myanmar's land in an expeditious manner and resettle them to their own households and original places of residence or to a safe and secure place nearest to it of their choice.

12. The GoM shall conduct the verification process of the returnees in accordance with the criteria for eligibility and supporting evidence as set out in the Arrangement on Return of Displaced Persons from Rakhine State and other supporting documents. The arrangement set out in the Physical Arrangement for Repatriation of Displaced Myanmar Residents from Bangladesh under the Arrangement on Return of Displaced Persons from Rakhine State shall apply.

13. The UNHCR will undertake the following in view of supporting the GoM's efforts:

- assist the process in the implementation of the voluntary repatriation programme and the reintegration of all those who return under this MoU including through mandated protection activities, community consultations and site visits;
- undertake visits to and assessments of potential pilot project sites in close consultation with the government;
- support pilot coexistence and other programmes benefitting all communities in potential return areas through quick impact projects (QIPs) to support measures that will make return sustainable;
- work with UNDP to prepare the conditions for recovery and resilience-based development in potential areas/places of origin and/or return, including through joint assessment and programming.

14. The UNDP will assist the GoM:

- to coordinate and support the necessary assessments related to community resilience-building, including sustainable livelihoods, conflict sensitivity and local institutional capacity building, at the selected project sites;
- to undertake the planning process for resilience-based recovery and development that will benefit all returnees and host communities in the areas of potential return;
- to promote social cohesion amongst returnees and host communities;
- to support access to livelihoods through the design and implementation of community based interventions.

These activities are to be compatible with local and national development plans, SDGs priorities and existing national services and systems.

Activities by UNDP will be detailed in project documents to be signed with Government.

THE RESPONSIBILITIES OF MoLIP

15. After the necessary verifications, the MoLIP will issue to all returnees the appropriate identification papers and ensure a clear and voluntary pathway to citizenship to those eligible.

16. The MoLIP shall take all necessary and appropriate steps to facilitate the proper implementation of this MoU:

- a) Seek a waiver of customs formalities required for goods, supplies, materials, equipment, or property imported in connection with this MoU, and assist, where appropriate, in expediting their movement through port and transportation facilities and their clearance through customs;
- b) Issue the necessary entry visas for UNDP and UNHCR personnel in connection with this MoU and expedite authorisation of travel and access to the locations in Rakhine State covered by this MoU; and
- c) Facilitate operational logistics for UNDP and UNHCR, which may include communication systems, vehicles, and motor cycles as necessary.

17. In order to enable UNDP and UNHCR to discharge their responsibilities, the MoLIP will ensure that UNDP and UNHCR have effective access to all areas in Rakhine State covered by this MoU.

18. The MoLIP confirms that it recognizes that UNDP and UNHCR staff enjoy the same privileges and immunities granted to other UN agencies working in Myanmar in accordance with the 1946 Convention on the Privileges and Immunities of the United Nations. Without prejudice to those privileges and immunities, it is understood that such staff are obliged to respect at all times the laws of Myanmar.

19. MoLIP and responsible authorities will ensure the safety and security of all UNDP and UNHCR personnel, premises and assets.

20. UNHCR may continue to use the compounds that the MoLIP put at its disposal in Maungtaw and Buthidaung since 1994.

THE RESPONSIBILITIES OF UNDP AND UNHCR

21. UNDP and UNHCR will support the GoM's comprehensive and durable solutions to the issue of displacement and its implementation of the recommendations of the Rakhine Advisory Commission as contained in the GoM Statement dated 24 August 2017.

22. Activities on repatriation, reintegration assistance and resilience-based recovery and development under this MoU will be aimed at helping returnees to resume their normal life in the shortest possible time. UNDP and UNHCR will seek to obtain the necessary funds for the implementation of these activities.

IMPLEMENTATION ARRANGEMENTS

23. UNDP and UNHCR may enter into standard sub-agreements with other relevant international and national partners with prior consultation with the GoM, that will further the efficient and cost-effective implementation of this MoU. Such sub-agreements shall not conflict with the terms and obligations set out in this MoU.

24. The Parties shall, in a format and at intervals to be mutually agreed share information regarding:

- a) the quality and effectiveness of the humanitarian and development assistance provided;
- b) projects, programmes and other operations implemented in connection with this MoU;
- c) any type of event or situation which may affect the implementation of the humanitarian and development assistance.

The foregoing information shall be provided subject to and in accordance with the Parties' respective information disclosure policies and any decisions, resolutions, etc of their governing bodies.

25. UNDP and UNHCR shall share such information through formal channels including but not limited to the Myanmar Aid Information Management System ("AIMS").

CONFIDENTIALITY

26. The Parties shall ensure that information under this MoU is not transferred or supplied to any third party without prior written consent from all Parties.

27. The sharing of confidential personal data of persons displaced from Rakhine, and other persons of concern, in connection with this MoU shall at all times be conducted in conformity with the laws, rules and regulations of the Republic of the Union of Myanmar.

MONITORING AND EVALUATION

28. The GoM shall be responsible for the overall monitoring and evaluation framework for the smooth implementation of the aforementioned assistance and to which UNHCR and UNDP will produce and submit regular progress reports to the GoM in line with their established regulations, rules and procedures.

REVISION, MODIFICATION AND AMENDMENT

29. The Parties may request in writing, a revision, modification or amendment of any part of this MoU to address urgent needs. Any revision, modification or amendment agreed to by the Parties will be in writing and will form an integral part of this MoU and shall enter into force on such dates as determined by the Parties.

REVIEW, SUSPENSION AND TERMINATION

30. Any party shall have the right, after consulting all other Parties, to suspend or terminate this MoU if:

- a) any party considers another Party has either materially breached or failed to fulfil one or more element of this MoU;
- b) the management of the humanitarian/development assistance is deemed to be unsatisfactory;
- c) if any condition has arisen which interferes or threatens to interfere with the implementation of this MoU; and

- d) a suspension is deemed warranted by a fundamental change in the circumstances under which the MoU was agreed.

Notice of intention to terminate the MoU, or suspend its execution, shall be by providing three (3) months advance written notice to the other Parties.

31. Any suspension shall be lifted as soon as the event or events which gave rise to the suspension are agreed by the Parties to have ceased to exist.

32. Suspension or termination of this MoU will immediately affect all project activities contained in any project document related to this MoU unless the Parties agree otherwise.

INTERPRETATION

33. All Parties also agree that any difference in interpretation, and on implementation, of this MoU shall be resolved through consultation.

ENTRY INTO FORCE

34. This MoU shall enter into force for a period of 12 months commencing from the date of signing.

35. Not less than ninety (90) days prior to the expiry of this MoU, the parties shall decide by mutual consent whether to seek an extension to this MoU. In the event the MoU is not officially renewed, the MoU will terminate after 30days from the last date of validity.

IN WITNESS THEREOF, the authorised representatives of the Parties have hereby signed the present MoU, in three equally authentic originals in the English language with each party receiving one original copy.

Done at on this.....day of 2018 in three originals, in the English language.

The Ministry of Labour, Immigration and Population (MoLIP),

The United Nations Development Programme (UNDP)

The Office of the United Nations High Commissioner for Refugees (UNHCR)
