

Statement of the Special Rapporteur on the Situation of Human Rights in Myanmar

By Tomas Ojea Quintana,

5 February 2012, Yangon International Airport, Myanmar

UNDP (Myanmar)

I have just concluded my six-day mission to Myanmar - my fifth visit to the country since I was appointed Special Rapporteur in March 2008. I would like to express my appreciation to the Government of Myanmar for its invitation and hospitality, and for the cooperation and flexibility shown during my visit.

During the mission, I met with the Minister of Home Affairs, the Minister of Defence, the Minister of Border Affairs, the Attorney-General, the Chief Justice of the Supreme Court, the Union Election Commission, the Deputy Minister of Foreign Affairs, the Deputy Minister of Information, the Deputy Minister of Education, the Deputy Minister of Labour, as well as the Speaker and several members of the Pyi Thu Hluttaw. During my meetings in Nay Pyi Taw, I also met with some of the Presidential Advisors and representatives of the Ministry of Social Welfare, Relief and Resettlement, as well as with members of the various Government and Parliamentary peacemaking groups, including the Minister of Rail Transportation.

In Yangon, I had another fruitful exchange of views with Daw Aung San Suu Kyi. I met with members of the recently-established National Human Rights Commission and discussed a range of human rights issues. Additionally, I met with three prisoners of conscience in Insein Prison, as well as with released prisoners of conscience, including members of the 88 Generation Students Group, some of whom I had previously addressed in my reports or had visited in prison. Also in Yangon, I met with representatives of civil society organizations and ethnic parties, as well as members of the United Nations Country Team. I thank the Resident Coordinator and the Country Team for the support provided to me during my mission. I also travelled to Kayin and Mon States where I met with the respective Chief Ministers and representatives of state government, as well as ethnic parties in state parliaments. At the conclusion of my mission, I briefed the diplomatic community.

Since my last visit in August 2011, there has been a continuing wave of reforms in Myanmar, the speed and breadth of which has surprised many international observers and many in the country. The impact of these reforms on the country and on its people is immediately perceptible. During my mission, Parliament was meeting in its third regular session and was discussing a number of important issues, including, for the first time, the country's budget. Legislative reforms were underway, including a new draft media law which I was told would abolish censorship and provide some guarantees for the freedom of opinion and expression. Campaigning for the by-elections scheduled on 1 April had begun in earnest and Daw Aung San Suu Kyi's activities and statements were covered in the national media. An initial agreement was reached with another armed ethnic group and negotiations continued with others. It was therefore important to assess the human rights situation in light of these developments and at this key moment in Myanmar's history. My report containing my assessment will be presented to the Human Rights Council in March 2012.

Of great importance is the release of many prisoners of conscience, including a significant number in January this year, as well as many prominent figures over the past few months. I welcomed their release in all my meetings and commended the Government for taking this bold step. I stressed that

they, and all people of Myanmar, should be allowed to play an active role in political and public life. In my meeting with released prisoners of conscience, I received a clear signal of their intention to engage constructively in the political process and their commitment to further democratic transition. Our discussion also addressed ongoing human rights concerns, including continuing limitations on the freedoms of association and assembly, and of opinion and expression, the continuing conflict in ethnic border areas, particularly in Kachin State, and the need to address longstanding social and economic development challenges. I am, however, concerned by information received that some of those released were being monitored or followed. I therefore urge that any restrictions on their exercise and full enjoyment of human rights should immediately be removed.

I also met with three prisoners of conscience at Insein Prison, one of whom I had previously met during my mission last year. While I was informed that prison conditions had generally improved, I also received allegations of continuing ill-treatment by prison officials and the continuing transfers of prisoners to prisons in remote areas, often without their prior notification and without proper notification of family members.

Of particular concern is the information I received of remaining prisoners of conscience being held not only in Insein but also in other prisons; information which was also conveyed during my meeting with released prisoners. I therefore reiterate that the Government should release all remaining prisoners of conscience without conditions and without delay. This is a central and necessary step towards national reconciliation and would greatly benefit Myanmar's efforts towards democracy. I am keenly aware that there are continuing discrepancies in the numbers of remaining prisoners of conscience from different sources. A comprehensive and thorough investigation is needed to clarify records and determine accurate numbers. I therefore encourage the Government to consider this issue urgently, including with the assistance of the international community as necessary.

Also of significance are the many legislative reforms that have been undertaken or are underway, including the adoption of the Labour Organizations Law and the Peaceful Demonstration and Gathering Law, as well as the amendment to the Political Party Registration Law. In this respect, I am encouraged that the Parliament has been active in this legislative reform process. During my mission, I was informed that the process of drafting a revised Prisons Act, a new media law – the Printing Press and Publications Law, and a new social security law, among others, were currently underway. At the same time, I note concerns regarding some of the provisions in the newly-adopted legislation, particularly the Peaceful Demonstration and Gathering Law, and in draft laws, particularly the Printing Press and Publications Law, which I will elaborate upon more fully in my upcoming report. I also note concerns regarding the lack of adequate consultation with relevant stakeholders, including civil society, on some of the draft laws being prepared. Another concern is the insufficient attention being paid to ensure the effective implementation of the newly-promulgated and reformed laws. This can be attributed to, among other factors, the slow pace in establishing the necessary implementing regulations and procedures, and the lack of corresponding capacity of institutions to implement.

There is also a lack of clarity and progress on reviewing and reforming the laws that I have previously identified as not in full compliance with international human rights standards, such as the State Protection Law, the Electronic Transactions Law and the Unlawful Associations Act. These laws impinge upon a broad range of human rights and have been used to convict prisoners of conscience. During my mission, I addressed this issue with the Attorney General. While I welcome the assurances given that the Government is taking serious and gradual steps to reform these laws, I reiterate that this process should be accelerated.

Regardless of efforts made to reform legislation, an independent, impartial and effective judiciary within the powers of the Constitution is needed to uphold the rule of law and act as a last guarantor for safeguarding fundamental freedoms and human rights in Myanmar. The judiciary is also essential for Myanmar's transition to democracy and should play an important role in ensuring checks and balances on the executive and the legislative. I have previously expressed concerns regarding the judiciary, and I remain concerned with its lack of independence and impartiality. In my meeting with the Chief Justice and other justices of the Supreme Court, there was little acknowledgement of any challenges and gaps, and a lack of willingness to address my previous recommendations. I therefore strongly call on the judiciary to take a proactive approach to apply laws in a way that would safeguard and guarantee fundamental freedoms and human rights in line with the Constitution and with international human rights standards. In this regard, I urge the judiciary to seek technical assistance from the international community, particularly the Office of the United Nations High Commissioner for Human Rights (OHCHR) and other organizations.

During the mission, I also had the opportunity to engage with members of the National Human Rights Commission for the first time since its establishment by Presidential Decree in September last year. I was informed of some actions undertaken by the Commission, including prison visits, visits to internally displaced persons (IDPs) in Kachin State, and the receipt and review of complaints from citizens. I was encouraged to hear that the resources available to the Commission may be increased significantly, including an increase in the number of staff supporting its work.

Despite these positive developments, I am concerned that there are no indications as yet that the Commission is fully independent and effective in compliance with the Paris Principles. At present, it seems that the Commission cannot fully guarantee human rights protection for all in Myanmar. I was informed that the Commission's draft rules of procedure were being examined by the judiciary, and were awaiting the approval of the Council of Ministers. This sends the wrong signal that the Commission is not fully independent from the Government. Also, I was informed that its prison visits were dependent on presidential authorization. Moreover, while the President appointed Commission members representing different ethnic minority groups, the vast majority of the Commissioners are retired government civil servants. And some informed me that they were neither consulted nor informed in advance of their appointment. There also doesn't seem to be clarity on its procedures, including for handling complaints and conducting prison visits. In this respect, I was informed that interviews were conducted in the presence of prison officials.

There is clearly a strong need to enhance the technical and substantive capacity of the Commissioners and its staff on human rights issues. I welcome the willingness of the Commission to seek training and technical assistance from OHCHR and the international community as a whole on the Paris Principles and other important substantive areas, such as handling human rights complaints and prison monitoring.

I have stated previously and continue to believe that the upcoming by-elections on 1 April will be a key test of how far the Government has progressed in its process of reform. It is therefore essential that they are truly free, fair, inclusive and transparent. During my meeting with the Union Election Commission, I noted that developments, such as the easing of media restrictions and the revision of the Political Party Registration Law, resulting in the re-registration of a number of political parties, including the National League for Democracy, and the decision of some to contest the by-elections, may allow for the organization of more credible elections. And I was informed that the use of international observers was under consideration.

While I was given assurances by the Chair of the Union Election Commission that the by-elections will be free and fair, I must stress that the credibility of the elections will not be determined solely on the day of the vote, but on the basis of the entire process leading up to and following election day. Thus, reports I received of campaign irregularities and restrictions on the ability of political parties to carry out campaign activities should be addressed seriously by the Union Election Commission. Additionally, lessons should be learned from the 2010 elections, and problems such as the high cost of registration, the use of advance votes, and the procedures and costs for filing a complaint should be addressed as a matter of priority. Further, respect for the freedoms of expression, assembly and association should be ensured.

Also during my mission, I was informed about the various measures undertaken to address Myanmar's longstanding development challenges, including economic and financial reforms, and initiatives such as the conference on development policy options organized by the Government and the United Nations Country Team. Parliament was also discussing the budget, which proposes to increase spending in health and education. While I welcome the Government's commitment to socio-economic development and poverty reduction, many challenges remain and the situation is still dire. Concerns regarding the availability and accessibility of education and health care were specifically highlighted, as well as the need for the teaching of ethnic minority languages in schools in minority areas. Concerns regarding land confiscations and land grabbing, often without meaningful consultation of affected communities and any or adequate compensation, as well as the granting of economic concessions for energy or infrastructure projects without adequate environmental assessments done, were also brought to my attention. In this regard, I renew my call on the Government to ensure not only the realization, but also the protection of basic economic, social and cultural rights. These are fundamental rights that are equally essential to Myanmar's democratic transition, national reconciliation and its long-term stability.

Concerns regarding the ongoing tensions and conflict with armed ethnic groups in border areas, particularly in Kachin State, were consistently raised during my mission. I received continuing allegations of serious human rights violations committed during conflict, including attacks against civilian populations, extrajudicial killings, sexual violence, internal displacement, land confiscations, the use of human shields, the recruitment of child soldiers, as well as forced labour and portering. And I must emphasize that I received reports of violations being committed by all parties to the conflict. While I welcome the Government's commitment to peace talks and the progress made in this regard, such as the agreements reached with various groups, including most recently, the Mon, it is vital that these allegations and reports be urgently addressed. I was informed that action had been taken on some cases involving military personnel, but much more needs to be done. It is also vital that the authorities and all armed groups ensure the protection of civilians in conflict-affected areas.

I must also emphasize that the needs of those displaced and affected by the conflict must be addressed as a matter of priority. In this regard, it is important that the United Nations and its humanitarian partners have regular, independent and predictable access to all individuals, in particular IDPs, in need of humanitarian assistance, regardless of whether they are in Government or non-Government controlled areas. Further, delivery of humanitarian assistance under the United Nations umbrella cannot be linked to ongoing negotiations between the Government and armed groups or be made conditional to the Government's assistance to people in non-Government controlled areas.

More broadly, efforts towards finding a durable political solution to the conflict must be accelerated and are essential for broader national reconciliation. These must address the root causes of the conflict, including systematic discrimination, displacement and economic deprivation affecting ethnic minorities. I therefore renew my call to the Government to develop a comprehensive plan to officially

engage ethnic minority groups in serious and inclusive dialogue to resolve long-standing grievances and deep-rooted concerns. The Government should ensure that ethnic minorities are granted fundamental rights. This includes the Rohingya community.

Finally, I remain of the firm conviction that justice and accountability measures, as well as measures to ensure access to the truth, are fundamental for Myanmar to move forward towards national reconciliation. During my mission, I made a careful assessment as to whether the National Human Rights Commission could play a role in this regard. However, considering the lack of independence and the limited capacity of the Commission, it is crucially important that the Government of Myanmar involve stakeholders, including victims of human rights violations, in order to get their advice and views on how and when to establish truth, justice and accountability measures. It is also important to learn lessons from other countries that have experience in these processes.

I heard from many interlocutors about the importance of moving forward. But I must stress that moving forward cannot ignore or whitewash what happened in the past. Thus, facing Myanmar's own recent history and acknowledging the violations that people have suffered, will be necessary to ensure national reconciliation and to prevent future violations from occurring.

To conclude, I have previously stated that the steps taken by the Government had the potential to bring about an improvement in the human rights situation in Myanmar and deepen its transition to democracy. My mission confirmed that a positive impact has been made; however serious challenges remain and must be addressed. There is also a risk of backtracking on the progress achieved thus far. Therefore, at this crucial moment in the country's history, further and sustained action should be taken to bring about further change. Prior to its assumption of the Chairpersonship of ASEAN in 2014, I would encourage Myanmar to demonstrate concrete progress in improving its human rights situation. The international community should remain engaged and should support and assist the Government during this important time.

I want to again thank the Government of Myanmar for its invitation and cooperation. I look forward to another visit to the country before my next report to the General Assembly in October 2012. I reaffirm my willingness to work constructively and cooperatively with Myanmar to improve the human rights situation of its people.

ENDS