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Situation of human rights in Myanmar

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, in accordance with paragraph 31 of General Assembly resolution 64/238.

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Report of the Special Rapporteur on the situation of human rights in Myanmar

Summary

The present report is submitted pursuant to Human Rights Council resolution 13/25 and General Assembly resolution 64/238 and covers human rights developments in Myanmar since the Special Rapporteur's report to the Human Rights Council in March 2010 (A/HRC/13/48).

On 13 August 2010, the Government of Myanmar announced the long-awaited date for national elections for 7 November 2010. The present report focuses on human rights in relation to elections, and the issue of justice and accountability. Conditions for genuine elections are limited under the current circumstances, and the potential for these elections to bring meaningful change and improvement to the human rights situation in Myanmar remains uncertain.

Regarding the issue of justice and accountability, the Special Rapporteur notes that while it is foremost the responsibility of the Government of Myanmar to address the problem of gross and systematic human rights violations by all parties, that responsibility falls to the international community if the Government fails to assume it.

The Special Rapporteur recommends that the Government of Myanmar respect freedom of expression and opinion and freedom of assembly and association in the context of the national elections; release all prisoners of conscience; address justice and accountability; implement the four core human rights elements, as detailed in his previous reports; and facilitate access for humanitarian assistance and continue developing cooperation with the international human rights system.

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I. Introduction

1. The mandate of the Special Rapporteur on the situation of human rights in Myanmar was established by Commission on Human Rights resolution 1992/58 and extended most recently by Human Rights Council resolution 13/25. The current Special Rapporteur, Tomás Ojea Quintana (Argentina), officially assumed the function on 1 May 2008.

2. The present report is submitted pursuant to Human Rights Council resolution 13/25 and General Assembly resolution 64/238 and covers human rights developments in Myanmar since the Special Rapporteur's third report to the Human Rights Council in March 2010 (A/HRC/13/48) and his report to the General Assembly in August 2009 (A/64/318).

3. On 13 August 2010, the Myanmar Government announced the long-awaited date for national elections, part of its seven-step road map to democracy, for 7 November 2010, with submission of candidate lists between 16 and 30 August. However, at the time of the announcement, some parties were still waiting for their registration applications to be approved.

4. Despite calls by various United Nations bodies and officials including the Security Council, the General Assembly, the Human Rights Council, the Secretary-General and the Working Group on Arbitrary Detention, and by regional bodies, particularly the Association of Southeast Asian Nations (ASEAN), for the release of all political prisoners, especially Daw Aung San Suu Kyi, the Government of Myanmar has not taken this important step to establish an environment for credible, inclusive elections. The Special Rapporteur would like to thank the Office of the United Nations High Commissioner for Human Rights, in particular the staff at Geneva, Bangkok and New York, for assisting him in discharging his mandate.

II. Methodology and activities of the Special Rapporteur

5. Since taking up his mandate, the Special Rapporteur has adopted an open and clear approach to working towards the promotion and protection of human rights in Myanmar. It remains his intention to work in a cooperative manner with the Government to assist in the realization of the human rights of the people of Myanmar.

6. The Special Rapporteur reports annually to the Human Rights Council and the General Assembly. He conducts country visits twice a year and seeks to meet with the authorities of Myanmar not only in-country but also in New York and Geneva. During the reporting period, the Special Rapporteur met with Myanmar's Ambassador in Geneva on 11 March 2010 and 1 July 2010. In order to keep apprised of the human rights situation in Myanmar and to maintain an impartial and balanced approach, the Special Rapporteur also maintains contact with all those working on Myanmar — individuals, non-governmental organizations, international bodies and diplomatic missions. The Special Rapporteur consults with countries in the region, especially ASEAN members, given the important role they play in relation to Myanmar.

7. Throughout the year, the Special Rapporteur regularly communicates with the Government on specific issues. Between 1 February and 30 August 2010, the

Special Rapporteur sent four communications to the Government of Myanmar regarding particular cases of alleged human rights violations. He sent those letters of allegation and urgent appeals jointly with other special procedures mandate holders. The Government responded to four letters, including an urgent appeal for Kyaw Zaw Lwin, on 8 February 2010.

8. In addition to communications, the Special Rapporteur occasionally makes public statements. On 17 June 2010, the Special Rapporteur released a statement urging the Government of Myanmar to heed the call for the immediate release of Daw Aung San Suu Kyi made by the Working Group on Arbitrary Detention in its sixth Opinion on her detention. As in its previous five Opinions, the Working Group found that the continuous deprivation of Daw Aung San Suu Kyi's liberty is arbitrary, and requested the Government of Myanmar to implement its previous recommendations and to remedy the situation in order for Myanmar to be in conformity with the norms and principles set forth in the Universal Declaration of Human Rights. The Special Rapporteur also called upon the Government of Myanmar to release all prisoners of conscience in order to create the conditions for an inclusive election process and to demonstrate that it intends to take a more serious and sincere approach to its international obligations to uphold human rights.

9. On 5 May 2010, the eve of the deadline for party re-registration, the Special Rapporteur released a statement calling for the Government of Myanmar to ensure that upcoming elections would be credible, noting that a more inclusive process could still be possible under the current election laws, despite their inherent flaws, if all prisoners of conscience were released immediately and unconditionally.

10. On 11 June 2010, the Special Rapporteur requested a fourth country visit. During his meeting with Myanmar's Ambassador in Geneva on 1 July, he was informed that the visit would not be feasible, as all relevant authorities were currently involved in election preparations. Subsequently, the Special Rapporteur sent a letter to the Ambassador on 19 August requesting information for the present report. A reply was received on 2 September 2010.

11. In order to update his understanding of the human rights situation in Myanmar, the Special Rapporteur chose to undertake a mission to the region from 3 to 11 August 2010. During this mission he travelled to Bangkok, Mae Sot and Chiang Mai in Thailand and to Jakarta, Indonesia. He met with Government officials, non-governmental organizations, representatives of international agencies, diplomats, individual victims of human rights abuses and other relevant stakeholders.

12. The Special Rapporteur conducted his previous country visits from 15 to 19 February 2010, from 14 to 19 February 2009 and from 3 to 7 August 2008.

III. Human rights issues

13. In the present report the Special Rapporteur focuses particularly on human rights in relation to elections, and the issue of justice and accountability. Owing to space limitations, he does not cover many issues that remain of serious concern, including the ongoing deprivation of economic, social and cultural rights, which will be addressed in the future.

A. Developments in the election context

14. According to the Universal Declaration of Human Rights, “the will of the people shall be the basis for the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures”. Genuine elections according to international standards, or what many observers have been characterizing as credible elections, would have to be transparent, inclusive, participatory, free and fair.

15. Essential conditions for credible elections include the freedom of expression and freedom of assembly and association. However, despite consistent calls for the Government to guarantee these rights, the electoral framework and its implementation by authorities appear to have further restricted these fundamental freedoms.

16. On 8 March 2010, the Government of Myanmar released the long-awaited election laws. They are the Law of the Union Election Commission, the Political Party Law Registration, Law of the Election of Pyithu Hluttaw, Law of the Election of Amyothar Hluttaw and Law of the Election of Regional or State Hluttaw. It has been noted that the Political Party Registration Law departs significantly from the 1988 party registration law. Particularly problematic has been the restriction on “persons currently serving a prison sentence” joining or remaining members of political parties, as many opposition figures and activists remain imprisoned after being tried by flawed courts. This provision, in effect, poses a limitation to the right to freedom of peaceful assembly and association.

17. While new parties did not face any registration deadline, existing parties were required to apply to the Election Commission by 7 May 2010 in order to continue their registration. Both the National League for Democracy (NLD) under Aung San Suu Kyi, which won the overwhelming majority of legislative seats in the 1990 election (392 of 492), and the next largest winner of parliamentary seats, the Shan Nationalities League for Democracy (23 seats), whose key leaders — Chairman Khun Tun Oo and Secretary Sai Nyunt Lwin — as well as numerous members are also in prison, were automatically deregistered after choosing not to continue their registration on condition of removing their leadership.

18. The Special Rapporteur has highlighted in previous reports that prisoners of conscience who were convicted in a court of law in Myanmar did not enjoy a fair and public trial by an independent and impartial tribunal as required by the Universal Declaration of Human Rights. In fact, their trials were conducted in a manner inconsistent with Myanmar’s own laws. According to the Government’s letter of 2 September 2010, “The judicial principles prescribed in section 2 of the Judicial Law (2000) and article 19 of the Constitution of the Republic of the Union of Myanmar (2008) stipulated to administer justice independently according to law, to dispense justice in open court unless otherwise prohibited by law, and to guarantee in all cases the right of defence and the right of appeal under law”. However, in the cases of prisoners of conscience, their trials are often closed-door hearings within prison compounds, without legal representation or in circumstances where access by their defence lawyers has been obstructed.

19. In his previous reports, the Special Rapporteur indicated several domestic laws that restrict the principles of freedom of association and assembly, most importantly,

the Unlawful Association Act (1908), the State Protection Act (1975) and sections 143, 145, 152, 505, 505(b) and 295(A) of the Penal Code. With regard to freedom of opinion and expression, the Television and Video Law (1985), the Motion Picture Law (1996), the Computer Science Development Law (1996), the Electronic Transactions Law (2004) and the Printers and Publishers Registration Act (1962) have been used to prevent freedom of expression. The Special Rapporteur has noted that these laws are in contravention of international law, including articles 19 and 20 of the Universal Declaration of Human Rights, articles 13 and 15 of the Convention on the Rights of the Child and International Labour Organization (ILO) Convention No. 87, which explicitly calls upon Governments to ensure the full enjoyment of freedom of expression and association. As a State party to these conventions and a State Member of the United Nations, Myanmar should have ensured compliance of its domestic laws with its international obligations, according to the principles of the Vienna Convention on the Law of Treaties.

20. In his 19 August 2010 letter to the Government, the Special Rapporteur asked the Government about its progress on his recommendation to implement the four core human rights elements, including the review of national legislation to ensure its compliance with international obligations. The Government replied: “Concerning the revision of domestic laws, article 446 of the Constitution states that existing laws shall remain in operation insofar as they are not contrary to the Constitution until and unless they are repealed or amended by the Pyidaungsu Hluttaw, and those laws which are contrary to the Constitution will cease to exist. The ministries concerned are now reviewing all domestic laws including the 11 laws that you had recommended in the report and have made progress and will continue to do so.” The Special Rapporteur commends the Government on its reported progress in this important task. However, he would like to encourage the Government to ensure that the revision of laws be in accordance with international standards and not only in adherence to the Constitution. The Special Rapporteur also recommends that the Government abstain from operationalizing these laws while such revision is in process.

21. In addition to these long-standing restrictions on the freedoms of expression, assembly and association, new election regulations further hamper the enjoyment of these fundamental human rights. According to new election laws and directives, electoral crimes are punishable by a year in prison and a fine. Citizens were recently reminded that the 1996 “Law Protecting the Peaceful and Systematic Transfer of State Responsibility” is still in force. The law provides for 5 to 20 years in prison for anyone who “incites, delivers speech or makes oral or written statements that undermine the stability of the State, community peace and tranquillity and prevalence of law and order”. Any organization that violates the law can be suspended.

22. On 20 July 2010, the Press Scrutiny and Registration Board administered by the Ministry of Information issued a directive calling for the “correct and complete quoting of the Constitution, electoral laws and [their] rules” at penalty of loss of publishing licences. The directive reportedly has had a chilling effect on journalists, who are now afraid to address matters related to the Constitution and elections.

23. Genuine elections, as mandated by the Universal Declaration of Human Rights, require an independent electoral authority to supervise the electoral process and to ensure that it is conducted fairly and impartially. However, the 17 members

of the Union Election Commission were appointed by the Government without any public consultation. Moreover, the decisions of the Commission cannot be appealed to any court. While, according to the Union Electoral Commission Law, the Commission has the duty and power to form election tribunals to enable examination of election-related disputes, the same law states: "The decisions and performances of the Commission relating to the following matters shall be final and conclusive: (a) works relating to election; (b) appeals and revisions relating to the decisions and orders of the election tribunals; (c) performances under the Political Party Registration Law".

24. On 21 June 2010, the Union Election Commission issued directive 2/2010, which requires a party to seek permission for any gathering outside its headquarters seven days in advance, a provision more restrictive than regulations in 1990 which only required permission for gatherings of over 50 persons in public spaces; requires the party to include, in its application for permission, the planned place, date, estimated starting and finishing time, number of estimated attendees and names of speakers with their addresses and national registration card numbers; and prohibits parties from marching to the designated gathering point and venue holding flags or marching and chanting slogans in procession. Other directives, including one on the publication and distribution of written materials, were also issued. At the time the election date and candidate registration deadline were announced, 47 parties had applied to register and 41 were approved.

25. Numerous political parties have complained of official harassment and intimidation. According to the Rakhine Nationalities Development Party, it sent letters of complaint to the Union Election Commission and its state branch office on 20 August 2010 that since early August local, Special Branch and anti-crime police had questioned party leaders' families and had been monitoring the party by taking photos of party statements and slogans on the notice board of party headquarters. On 28 July, it was reported that the Democratic Party submitted the list of its 1,400 members to the Election Commission which then passed the list to the Special Branch Police. The party complained to the Election Commission of official intimidation after Special Branch officers visited party offices and members' homes in Yangon's Hlaing and Kyeemyindaing Townships and asked for curricula vitae and photographs.

26. Despite the absence of any restriction on former prisoners of conscience in the election laws, four members of the National Democratic Force (NDF) were ordered by the Election Commission in July to submit letters of appeal seeking permission to participate in the elections owing to their prior convictions on treason. On 7 August 2010, they were told that their appeals were incomplete and a second appeal would be necessary with the inclusion of pledges that they would protect the 2008 Constitution, would not oppose the Government and would make no contact with illegal associations. One of the four, party leader Khin Maung Swe, said: "Since the Commission said it would report to 'superiors' about our appeal letters, this shows that the Commission itself is not independent." On 25 August 2010, Khin Maung Swe announced that he was withdrawing from the election.

27. Prohibitive costs and time pressure to register members and field candidates appear to be restricting parties' ability to contest elections. There are significant non-refundable costs to registration — approximately US$ 300 per party and US$ 500 per candidate — which are not deposits but fees that pose an economic

barrier to participation and real hardship given the impoverished state of most people in Myanmar, where the average income per person is only US$ 459 a year. In essence, these conditions resulting from the electoral framework and their implementation amount to a limitation of the citizen's right to take part in the government of his or her country, directly or through freely chosen representatives, as required by international human rights standards.

28. Political parties have complained that, owing to the short period allowed for candidate registration and their lack of funding, they will be able to compete for only a limited number of the 498 seats in the national parliament and 665 at the State or regional level. One quarter of the seats in all the legislatures are reserved for members of the military to be appointed by the commander-in-chief. The election laws stipulate: "If there is only a single Hluttaw candidate in a constituency, election for such constituency shall not be held, and the relevant region or State subcommission shall declare such candidate to be the Hluttaw representative".

29. The Chair of the Union Democratic Party, Phyo Min Thein, resigned on 5 August 2010 on grounds that the elections would not be free or fair. According to Khin Maung Swe of NDF, the party had to cut back on the number of constituencies in which it will field candidates. Although the Union Kayin League reportedly had intended to field candidates throughout the country, the party had difficulty meeting its membership quota of 1,000 members by presentation of their signatures to the Election Commission by the deadline of 21 August 2010, 90 days after its registration was approved. It is reported that on 10 August the party submitted its list of 1,500 party members to the Election Commission office in Naypyidaw, but many of the names were rejected for having incomplete forms. As a consequence, the party was only able to resubmit a list with just over 500 members and thus is considered a regional party able to run only in Irrawaddy Division.

30. Although the Election Commission will formally approve candidates on 10 September 2010, preliminary reports following the 30 August 2010 deadline to register candidates show that the pro-Government Union Solidarity and Development Party (USDP) and National Unity Party (NUP) are together fielding some 77 per cent of candidates: USDP has over 1,000 candidates and NUP, 990. In contrast, NDF has initially registered only 161 candidates, the Shan Nationalities Democratic Party only 157 and the Union Democratic Party only 50.

31. Genuine elections require a fair playing field. However, there have been questions raised about USDP adherence to election laws. In April, the Prime Minister, Thein Sein, and 26 other senior generals with ministerial portfolios resigned from the military and registered with the new party. As civil servants are not allowed to form parties, some have questioned whether this was legal despite the Government ruling that ministers are in fact not civil servants.

32. The Union Solidarity and Development Association (USDA) was established in 1993 as a mass social organization with the junta leader, Senior General Than Shwe, as its patron. According to reports, USDA had some 20 million members with compulsory membership by civil servants. In July 2010, USDA was dissolved and its funds were transferred to USDP. Some observers argue that these assets are government property. The party was also reported earlier to be spending public money in townships in Yangon Division through such means as building roads, bridges and health clinics in order to gain political advantage. There are also reports of agricultural loans to farmers in Kungyangone Township at the rate of 50,000 kyat

(about US$ 50) per acre by USDP, apparently conditional upon their signing a statement vowing to join and vote for the party, a practice allegedly being used in other areas as well.

33. The Special Rapporteur recalls that while the Universal Declaration of Human Rights recognizes the right to freedom of peaceful assembly and association, at the same time, it stipulates that no one may be compelled to belong to an association.

B. Prisoners of conscience

34. The Special Rapporteur has consistently urged the Government of Myanmar to release all prisoners of conscience. He regrets that the same large number of prisoners of conscience, currently estimated to be over 2,100, today languish in prisons across the country. The Special Rapporteur acknowledges the Government's position repeated in its letter of 2 September: "Myanmar has repeatedly stated that there is no prisoner of conscience in the country and individuals who are serving prison terms are those who had violated the existing laws". The Special Rapporteur reiterates his position that individuals imprisoned for the exercise of basic freedoms and rights enshrined in the Universal Declaration of Human Rights are prisoners of conscience. Some have already spent most of the past two decades imprisoned, and many have received excessively long sentences for their involvement in calling for democratic transition in Myanmar, such as the leaders of the 88 Generation students' group, currently serving 65-year prison sentences. The Special Rapporteur recalls that he has met some of these women and men — student leaders, monks, political party leaders and ethnic minority leaders — during prison visits. They have continued to advocate for peaceful, democratic transition and national reconciliation for their country. These people have a legitimate role to play in these historic elections. An immediate unconditional release of all prisoners of conscience is necessary for the elections to be credible.

35. When asked about plans for any release of prisoners, the Government replied on 2 September 2010 that it "has a plan to grant amnesty to prisoners after taking into account various situations in line with section 401 (1) of the Civil Procedures Code". The Special Rapporteur again urges the Government to release all prisoners of conscience as soon as possible given the late stage already reached in the elections.

36. The Special Rapporteur notes that the election date was announced for 7 November 2010, which appears to be one week before the expected end of Daw Aung San Suu Kyi's current sentence of house arrest. The Home Minister, Major General Maung Oo, told a meeting of local officials in Kyaukpadaung on 21 January 2010, with several hundred people attending, that Daw Aung San Suu Kyi would be released in November.

37. In his previous reports, the Special Rapporteur has expressed concern over the conditions of detention of prisoners of conscience. There are currently 138 prisoners of conscience in need of medical care who are essentially being denied their fundamental right to health including U Tin Yu and Ko Mya Aye. U Tin Yu, a member of NLD, who was charged on 3 March 2009 along with nine other people for obstructing officials in Insein prison court after shouting "obtaining human rights is our cause" in the courtroom, suffers from a fistula and pain in urination. Family members were unable to attend his trial as the door to the courtroom was

blocked by police. Most of these prisoners have been transferred to prisons in remote areas away from their families where they are unable to receive visits or packages of essential medicine and supplemental food.

38. On 8 July 2010, the Government replied to an urgent appeal about Ma Khin Khin Nu and Ko Mya Aye sent by the Special Rapporteur jointly with the Special Rapporteurs on right to health and on torture. Ma Khin Khin Nu, who was born in Myanmar and is Rohingya, was sentenced to 17 years of imprisonment under the 1982 Citizenship Act on charges of lying about her ethnicity and falsely obtaining citizenship in 2005 after her father U Kyaw Min joined other elected members of Parliament in calling for the legislature to be allowed to sit. Ma Khin Khin Nu reportedly fell ill in Insein prison and was given medication that worsened her condition but she was not provided with further medical care or allowed outside to seek it. According to the Government, doctors at Insein prison have "constantly rendered proper medical treatment to her", and no investigation has been made into the allegations as no complaints were lodged by or on behalf of the alleged victim.

39. Ko Mya Aye appears to be suffering from unstable angina with a high risk of heart attack as well as a peptic ulcer. The Government said that he had been moved from Loikaw prison to Taungyi prison in order to receive proper medical care. However, in Taungyi prison it is reported that a local doctor visits prisoners approximately once every two months when he checks blood pressure and prescribes medicines which are not provided by the prison authorities but have to be purchased and brought by family members. Taungyi has neither a heart specialist nor the equipment for the heart scan Ko Mya Aye was told he needs by the doctor he saw in Loikaw. Ko Mya Aye's family lives in Yangon, where he could have access to both. Instead, his wife must travel 24 hours and bear substantial costs to visit him, which she is able to do only once every two or three months.

40. The Special Rapporteur has repeatedly reminded the Government of its responsibility to ensure the protection and proper treatment of those put in detention, including providing adequate food and medical care in accordance with universally accepted standards and the principles contained in international human rights instruments.

41. General Sao Hso Ten, 74 years old, a Shan ethnic politician, is currently serving a 106-year prison sentence for treason and violation of the Unlawful Associations Act after participating in a private meeting of senior political representatives. He suffers from heart problems, diabetes and cataracts. According to information received by the Special Rapporteur, prison authorities have repeatedly denied him adequate medical care. During the first week of August, General Hso Ten was transferred to three different prisons in one week: from Khamti prison to Mandalay prison, from Mandalay prison to Insein prison, and finally from Insein prison to Sittwe prison. When his daughter, Nang Kham Paung, visited him on 11 August 2010, she learned that he had been shackled during the train journey from Mandalay to Insein which resulted in his dislocating his arm, for which he has not received medical treatment and continues to suffer pain. The Special Rapporteur urges the Government to provide General Hso Ten with proper medical care.

42. The Special Rapporteur notes that the death of Ko Kyaw Soe, 39 years old, in Myingyan prison on 19 May 2010 raises the count of prisoners of conscience to die in prison since 1988 to 144. Ko Kyaw Soe, a member of the Human Rights

Defenders and Promoters Network, was sentenced to 10 years of imprisonment on 11 November 2008 under three charges: article 17 (1) of the Unlawful Associations Act, article 13 (1) of the Immigration Act and article 505 (B) of the Penal Code. He was tortured during interrogation, and was reportedly beaten, burnt with cigarettes and electrocuted. Ko Kyaw Soe suffered from respiratory disease and stomach problems, but his family's requests to the Myingyan prison authorities to provide appropriate medicine were not met. The Special Rapporteur requests authorities to ensure that proper investigations are conducted of all deaths in prison, and that family members are duly informed of the findings.

43. The Special Rapporteur has repeatedly noted his concern about the use of torture during interrogation and detention of prisoners of conscience as well as other prisoners. According to reports and direct testimonies, there are systematic patterns of abuse — physical, psychological and sexual — and torture of detainees by Myanmar's authorities. For example, Phyo Wai Aung was arrested on 22 April 2010 for suspected involvement in the 15 April bombing in Yangon that killed 10 and injured 168. According to information that the Special Rapporteur has received, Phyo Wai Aung was taken to Aung Thabyay interrogation centre and tortured over a six-day period until he confessed to the crime which he did not commit. Since then, he has been held in solitary confinement in Insein prison, and during the first two months of confinement he was not allowed outside at all. The Special Rapporteur would like to remind the Government of its obligation to protect the right to physical and mental integrity of all persons as set forth in the Universal Declaration of Human Rights.

44. During Phyo Wai Aung's trial, which was held behind closed doors in Insein prison, it is reported that he was not allowed to see his case file and the confidentiality of his meetings with his lawyers was reportedly breached by police. Almost two months before his trial, on 6 May 2010, the Police Chief held a press conference during which time he called the suspect a "terrorist and murderer". The Special Rapporteur again draws the attention of the Myanmar authorities to the existence of a body of internationally accepted standards and principles in the area of human rights in the administration of justice, including the treatment of prisoners, role of lawyers, role of prosecutors, independence of the judiciary and conduct of law enforcement officials, which must guide the authorities to ensure fair trials and due process of law.

45. The Special Rapporteur has received information that Than Myint Aung was brutally tortured for almost one month during interrogation about a bombing in Yangon on 3 March 2009. After the police transferred Than Myint Aung to a local station, he was taken to hospital where it was found that his skull was fractured, an injury sustained during torture. Although Than Myint Aung appears to have signed documents under duress, and no evidence was found linking him to the bombing, he was charged with other crimes under the Unlawful Associations Act, the Immigration Act and the Electronics Act, on the basis of a confession obtained through torture without supporting evidence or any prosecution witnesses.

46. On 27 July 2010, the Myanmar military authorities arrested the well-known Rakhine historian monk Ashion Pyinya Sara in Sittwe on several accusations, including sexual relations with a woman; bringing disgrace to the religion; endangering State security, which covers political offences such as being in possession of subversive documents; and gaining personal benefit from religious

property. He appears to have been tortured while in police detention, according to a source close to the monastery. Many local people suggest the case is part of a plan by local authorities to undermine Ashion Pyinya Sara's authority, since the abbot is well respected by the local community.

47. The Special Rapporteur would like to highlight paragraph 6 (a) of Human Rights Council resolution 8/8 (2008), in which the Council urges States to "take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold those who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture". Moreover, in paragraph 6 (c), the Council urges States to "ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made".

C. Ethnic parties and protection of civilians

48. The Special Rapporteur is deeply troubled by not only the lack of progress in resolving conflict in the ethnic areas but what appear to be increasing tensions along the border. Many groups have documented the ongoing human rights violations in eastern Myanmar, with the presence of the military leading to vulnerability of the civilian population. In areas of ongoing conflict, military patrols target civilians, most likely as a means of undermining the opposition, while land confiscation and extortion may result from the military's "self-reliance" policy by which regional commanders meet basic logistical needs locally.

49. Large State-sponsored development initiatives, including natural gas and hydroelectric dams, have generally undermined livelihoods and engendered human rights abuses. Humanitarian and human rights groups have documented the destruction and forced relocation of over 3,500 villages and hiding sites in eastern Myanmar since 1996. The destruction detailed in field reports may be corroborated by high-resolution commercial satellite imagery of villages before and after the displacement occurred.

50. In eastern Myanmar, areas are either insurgent-controlled, Government-controlled or mixed administration, where conflict still occurs between Government and non-State armed groups. On 5 March 2010, the Government of Myanmar replied to an earlier allegation of extrajudicial killing of two men, Saw Win Thein and Doung Nyo. The Government noted that those two individuals had been killed during a "skirmish" in Kayin State, explaining that "in Kayin State areas where insurgents still exist are designated as grey areas". Insurgent-controlled areas — characterized as "free-fire zones" by observers as the military attack with foreknowledge of civilian presence without efforts to distinguish combatants from civilians — are home to substantial numbers of civilians. Various groups have estimated that at least 111,000 people remain in hiding and are at risk of being shot on sight by the military. They will not be able to participate in elections.

51. The Union Election Commission Law states that the duties and powers of the Election Commission include "postponing and cancelling the elections in constituencies in which free and fair elections could not be held due to natural disaster or situation of regional security". This provision empowers the Election Commission to cancel or postpone elections not only in insurgent-controlled areas but also in areas currently under ceasefire agreements where ethnic minorities live and would be willing to participate in the elections.

52. Observers have noted that the Election Commission chose not to designate any Shan State Hluttaw constituencies for four out of six townships that comprise the Wa Self-Administered Division, and named the town of Hopang as the seat of the division rather than Pangsang, the current headquarters of the United Wa State Army. As the Election Commission could postpone elections in those townships under the elections laws, it appears likely that those townships could be declared "Union territories" under direct administration of the President for reasons of national security, preventing the United Wa State Army from exercising any official role in the governance of its area.

53. The Special Rapporteur notes that around 60 per cent of the registered political parties are ethnic parties — parties that seek to represent a single ethnic minority group, or a geographic area dominated by a single ethnic group. The general barriers to participation by parties that are not pro-Government are addressed earlier in the present report. Three Kachin political parties were still waiting for a decision on their application for registration at the time of the start of the candidate registration period. The Kachin State Progressive Party explained that the long delay in response to the party's application, which was submitted in April, had handicapped party activities such as campaigning and collecting funds, which can only be undertaken when a party has successfully registered.

54. Among the changes in the 2010 Political Party Registration Law relative to the 1988 version (see para. 16 above) is that parties may be deregistered for having "direct or indirect contacts with armed insurgent groups, terrorists or unlawful associations". Ceasefire groups that refuse to transform into border guard forces could still be declared illegal organizations. Any political party having direct or indirect links with those organizations could then be deregistered.

55. While the Government has hailed its seven-step road map to democracy as the way to national reconciliation, the Special Rapporteur repeats that such a process must be inclusive not only of prisoners of conscience but also of ethnic minorities. Genuine elections call for broad participation. With armed conflict ongoing and deeper political issues over the governance of Myanmar remaining to be resolved, the protection of civilians must not be overlooked. The Special Rapporteur urges the Government to undertake meaningful dialogue with ethnic groups as well as leading opposition political figures for true national reconciliation. The Government needs to take active measures now to maximize the opportunity presented by the election of new regional parliaments to ensure appropriate participation.

56. On 19 April 2010, the Special Rapporteur together with the Special Rapporteur on extrajudicial, summary or arbitrary executions sent a letter to the Government of Myanmar on the killings of Naw La Pwey, Naw Paw Bo and Saw Hta Pla Htoo by soldiers of the 369th Myanmar Light Infantry Battalion (Military Operations Command 10). On 22 March 2010, Naw Pah Lah, a villager from Ko Lu, was travelling in the company of Naw Paw Bow, her 5-year-old daughter and Saw Hta

Pla Htoo, her 5-month-old son. As she neared Kaw Hta village, soldiers attacked them. Naw Paw Bo was shot in the head and died immediately. Her mother, shot in the back, fled from the scene to save her life and that of her son who was shot in the thigh and died hours later. The daughter's body was later found in the bushes with the trail of her blood partially covered with dry leaves. During the attack a woman named Naw La Pwey was also shot and killed. The soldiers burned down about 11 houses in the village, part of a pattern of ongoing attacks in that area since January 2010 that has left over 3,000 people displaced. No reply on this case has been received.

57. During his mission in August 2010 (see para. 11 above), the Special Rapporteur met with four victims of forced displacement from Kayin State. Saw Skay Hla, 40 years old, from Gkaw Thay Der village, fled to Thailand in February 2008 with his three children after being subjected to forced labour by the military from the age of 15 and watching a fellow villager die from stepping on a landmine. Naw S'the La Htoo, 45 years of age, from Hee Daw Kaw village, arrived in Thailand in December 2008 with her three children after her village was shelled then burned by the military and the family had to hide in the forest despite many hardships particularly for the vulnerable children. Naw Plo Gay, 48 years old, from Ker Wen village, who was also subject to forced labour and relocation to a Government-controlled camp, came to Thailand in March 2006 with her four children during a major military offensive in the region. Saw Gkleh Say Htoo, 62 years old, from Pwey Baw Der village, also fled to the forest for many months following the burning of his village and came to Thailand in March 2006. Their testimonies reflect the reports of forced displacement and hazardous conditions for ethnic minorities living in border areas consistently received by the Special Rapporteur.

58. Pressure on ceasefire groups to transform into border guard forces has already resulted in the resumption of hostilities in the Kokang region of Shan State, and raised fears about military deployments into other border areas including along the Thai-Myanmar border where some Democratic Karen Buddhist Alliance (DKBA) forces have ended cooperation with the Government. In late July 2010 several hundred people, fearing renewed fighting between the DKBA fifth battalion and Government forces, fled to Thailand where they remained for several days before returning to Myanmar after receiving assurances from the Government of Thailand that they would be allowed refuge should active fighting resume.

59. The Special Rapporteur has repeatedly urged the Government and all armed groups to ensure the protection of civilians, in particular children and women, during armed conflict. He calls upon the Government to abide by international humanitarian law, especially the four Geneva Conventions to which Myanmar is a party. In particular, common article 3 of the Geneva Conventions of 1949 provides minimum standards for the proper treatment of persons within a warring party's control, namely civilians and wounded and captured combatants.

60. The Special Rapporteur has consistently raised the issue of landmines, which both the Myanmar military and non-State armed groups have been using for many years. While the Special Rapporteur notes that the military's use of landmines may have decreased significantly in eastern Myanmar in 2009 and 2010 as the level of conflict has waned, he is concerned that previously laid mines remain largely in place. Although fewer non-State armed groups continue to use landmines today,

there are reports of renewed use by some groups in the context of increasing tensions around negotiations over border guard force conversion. Civilians continue to constitute the majority of reported mine victims, particularly along the Thai-Myanmar border where displaced people have been returned. The Special Rapporteur encourages the Government of Myanmar to work with the United Nations country team and humanitarian partners to develop a framework to improve the situation, starting with the granting of permission to local humanitarian agencies to carry out mine risk education, provide victim assistance and improve the mapping of mine-affected areas. The Special Rapporteur urges Myanmar to ratify the 1997 Mine Ban Treaty, which an overwhelming number of Member States have already done. He further recommends that the Government consider ratifying the Convention on the Rights of Persons with Disabilities.

D. Justice and accountability

61. The Universal Declaration of Human Rights reaffirms in its preamble that "disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind" and that "it is essential ... that human rights should be protected by the rule of law". Consequently, according to international human rights standards, all States have the obligation to investigate violations of human rights; to take appropriate measures with respect to the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished; to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations.

62. In the Special Rapporteur's report of March 2010 to the Human Rights Council (A/HRC/13/48), he noted: "Given the gross and systematic nature of human rights violations in Myanmar over a period of many years, and the lack of accountability, there is an indication that those human rights violations are the result of a state policy that involves authorities in the executive, military and judiciary at all levels. According to consistent reports, the possibility exists that some of these human rights violations may entail categories of crimes against humanity or war crimes under the terms of the Statute of the International Criminal Court. The mere existence of this possibility obliges the Government of Myanmar to take prompt and effective measures to investigate these facts. There have clearly been cases where it has been necessary to establish responsibility, but this has not been done. Given this lack of accountability, United Nations institutions may consider the possibility to establish a commission of inquiry with a specific fact finding mandate to address the question of international crimes."

63. Under the Rome Statute of the International Criminal Court, adopted in 1998 and in force since 2002, certain acts are defined as crimes against humanity "when committed as part of a widespread or systematic attack directed against any civilian population" (article 7.1). There are a number of human rights violations in Myanmar that could constitute crimes against humanity. These include forced labour, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; enforced disappearances; and persecution against any identifiable group or collectivity on political, racial, national ethnic, cultural, religious, gender or other grounds. Among those that have been well

documented are forced displacement, extrajudicial killings and torture. Forced displacement of persons refers to expulsion or other coercive acts from the area in which they are lawfully present when the reason is not the security needs of the population. According to numerous reports from reliable sources, these crimes are both widespread and systematic. They are committed by representatives of the Government or others supported by the Government, and the reported violations are perpetrated within a culture of impunity.

64. There is also evidence of serious abuses committed by non-State armed groups, including extrajudicial killings, forced labour, recruitment of child soldiers and use of anti-personnel mines.

65. The General Assembly, as well as other United Nations entities including the Commission on Human Rights, the Human Rights Council, ILO, the Committee on the Elimination of Discrimination against Women and previous Special Rapporteurs on the situation of human rights in Myanmar, have all characterized the abuses committed against the people of Myanmar as both widespread and systematic. For example, the former Special Rapporteur, Rajsoomer Lallah, stated in 1998 that "these violations have been so numerous and consistent over the past years as to suggest that they are not simply isolated or the acts of individual misbehaviour by middle- and lower-rank officers but are rather the result of policy at the highest level, entailing political and legal responsibility" (A/53/364, para. 59).

66. In addition to the United Nations, numerous credible sources have reported similarly on gross and systematic human rights violations. In June 2007 the International Committee of the Red Cross issued a statement: "The Myanmar armed forces have committed repeated abuses against men, women and children living in communities affected by armed conflict along the Thai-Myanmar border … including murder, and subjected them to arbitrary arrest and detention. The repeated abuses … violate many provisions of international humanitarian law." Many non-governmental organizations collect detailed information about these abuses from inside Myanmar using various systems of verification.

67. It is foremost the responsibility of the Government of Myanmar to address the problem of gross and systematic human rights violations by all parties, and to end impunity. Myanmar is a party to the four Geneva Conventions, and has a responsibility to exert its influence to stop violations of international humanitarian law. Investigating and prosecuting individuals responsible for serious violations of international human rights and humanitarian law is not only an obligation, but would deter future violations and provide avenues of redress for victims.

68. If the Government fails to assume this responsibility, then the responsibility falls to the international community. In this respect, of particular concern is article 445 of the 2008 Constitution, which may impede the Government from effectively addressing justice and accountability in the future. With the possibility of impunity enshrined in the Constitution, the United Nations can establish a commission of inquiry into crimes against humanity through resolutions adopted by the Human Rights Council, the General Assembly or the Security Council, or the Secretary-General could establish it on his own initiative. Justice and accountability are the very foundation of the United Nations system rooted in the Universal Declaration of Human Rights which calls for an international order in which the rights and freedoms set out in the Declaration can be fully realized. Failing to act on

accountability in Myanmar will embolden the perpetrators of international crimes and further postpone long-overdue justice.

69. In its letter of 2 September (see para. 10 above), the Government stated that the Human Rights Body under the chairmanship of the Minister of Home Affairs had established an investigation team to investigate human rights violations whenever they were lodged by citizens and to take punitive action against violators. However, the Government reported that the Human Rights Body had not received any complaints to date regarding crimes against humanity or war crimes. Further, the Government stated: "Concerning allegations of committing crimes against humanity and war crimes, there is no occurrence of such crimes in Myanmar." Given this position, the Special Rapporteur encourages the Government to invite an international commission of inquiry on crimes against humanity to confirm whether this is indeed the case.

70. The Special Rapporteur notes that the effects of ongoing instability in Myanmar do have spillover effects both in the region and internationally. Human rights violations in Myanmar lead to problems in migration and trafficking throughout South-East Asia. Tensions along the border not only lead to flows of refugees into neighboring countries but have economic impacts. Since 18 July 2010, the closure of the border crossing between Myawaddy, Myanmar, and Mae Sot, Thailand, has had a hefty cost for both countries. Thailand has lost about 88 million baht (US$ 2.7 million) per day. The dispute appears to concern a Thai construction project to shore up the bank of the Moei River, although there are reports that security concerns related to tensions over the border guard force plan are also cause for the ongoing closure.

71. The Special Rapporteur recalls that ILO established a commission of inquiry to investigate forced labour in Myanmar in March 1997. In its report, issued in July 1998, the Commission concluded that the use of forced labour was "widespread and systematic", with "utter disregard by the authorities for the safety and health as well as the basic needs of the people performing forced or compulsory labour". While the Government of Myanmar refused the Commission's request to visit the country as part of its investigation and rejected its conclusions, it is important to note that the Government continued to cooperate with ILO.

72. A commission of inquiry into crimes against humanity or war crimes could conduct a broad analysis of the human rights situation, covering human rights violations committed throughout the country over the past decades, or a more narrow analysis focusing on a specific geographic area and time period such as the major military offensive targeting civilians in eastern Myanmar from 2005 to 2008. The scope of analysis would depend on the commission's mandate and terms of reference. Some observers have also suggested that a commission of inquiry could address crackdowns against demonstrators in urban areas in 1988, 1996 and 2007, or military campaigns that targeted civilians in Shan State, particularly from 1996 to 1998. Others have considered strategies for limiting investigations to events that occurred after 2002, when the Rome Statute came into force. The Special Rapporteur notes that it is important that any commission of inquiry look into actions by all parties.

73. Another focus could be the situation of the Rohingyas. While this issue has been covered by numerous reports over the years, a new one recently became available that was prepared with the participation of a professional criminal

investigator. The Special Rapporteur addressed the endemic problem of discrimination in his previous report (A/64/318, sect. III.C). However, it is important to understand that discrimination against the Rohingyas leads to increased forced labour, exacerbated by their location along the border where there is a strong military presence including NaSaKa, the Myanmar border security force. Discrimination also leads to forced deportation and restriction of movement owing to the enduring condition of statelessness which is the result of the Rohingyas' historic difficulty in obtaining citizenship, particularly following the enactment of the 1982 Citizenship Act. Acts of land confiscation, forced relocation and eviction through violent means also appear to be widespread and systematic. Finally, discrimination leads to persecution, which can be defined as intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.

74. The process leading to justice and accountability is difficult and multifaceted and may take different forms depending on different countries' circumstances. It may bring up questions of peace, reconciliation, truth and transition to democracy. It may bring up questions of convenience and opportunity. It may value forgetting and forgiveness. But, in the end, it is a process that sooner or later all communities must undergo, because justice is at the core of human dignity, as the States Members of the United Nations affirmed in 1948 when they approved the Universal Declaration of Human Rights.

75. At this particular stage in Myanmar's history, the State faces this critical assignment which must be addressed by the current Government, by a newly elected Government or by the international community. Decades of human suffering do not allow further delay.

E. Developing cooperation in the context of human rights

76. The Special Rapporteur appreciates the cooperation of the Government in respect of his mandate, including the willingness of Myanmar's ambassadors to regularly meet with him and to communicate in writing on specific cases and in response to his request for information for the present report. The Special Rapporteur hopes that he will be invited to visit Myanmar after the elections so that he may assess the situation of human rights in Myanmar for his report to the Human Rights Council in March 2011.

77. The Special Rapporteur commends the Government for its cooperation with the international human rights system, including its participation in preparations for its universal periodic review in the Human Rights Council in January 2011. The Special Rapporteur notes that Myanmar hosted a regional workshop by the Office of the High Commissioner for Human Rights on the universal periodic review on 10 and 11 May 2010 in Nay Pyi Taw. The Special Rapporteur would like to encourage the Government to build on this cooperation and consider ratifying the core human rights treaties and extending invitations to special procedures for country visits, including the Special Rapporteur on the independence of judges and lawyers, as he has suggested in the past.

78. In its 2 September letter, the Government noted the work of the high-level Committee for the Prevention of Military Recruitment of Underage Children, established in 2004, as well as the formation in 2007 of two working groups on

monitoring and reporting and reintegration and rehabilitation, whose work is conducted in cooperation with United Nations agencies including the United Nations Children's Fund (UNICEF). The Government reports that 374 underage soldiers have been discharged and handed over to their parents or guardians since 2002. The Government also reports that punitive actions have been taken against a total of 108 military officers and soldiers of other ranks involved in improper recruitment processes.

79. International partners have acknowledged the Government's increased commitment to addressing the issue of recruitment of child soldiers through both the training of military personnel and the prosecution and disciplining of persons deemed responsible for permitting underage recruitment. The prospect of receiving a prison sentence for breaking the law will inevitably have an impact on behaviour. Unfortunately, however, the long-awaited joint action plan under Security Council resolution 1612 (2005) (on children in armed conflict) has not yet been signed. As a consequence, the Government is seen to be largely in a reactive position of responding to complaints rather than adopting a more systematic proactive stance in identifying and releasing serving minors. Access to the ceasefire groups and non-State armed groups is reported to remain a problem for both the Committee for the Prevention of Military Recruitment of Underage Children and ILO.

80. The Special Rapporteur was also informed by the Government that Myo Win, whom he met in Insein prison during his February 2010 mission to Myanmar, who had been convicted for desertion from military service and sentenced to seven years in prison, was granted unconditional amnesty after authorities ascertained that he had been underage when enlisted in the military in the first place, and handed over to his parents on 30 June 2010. The Special Rapporteur lauds this precedent and would like to encourage the Government to implement a systematic mechanism to consider the cases of any other former child soldiers who are subsequently arrested for desertion in a similar manner so that they cannot be held guilty of the crime of desertion even after they are no longer underage.

81. The use of forced labour in Myanmar continues to be a problem. Following the launching of the ILO complaint mechanism in 2007, there are reports that the incidence of use of forced labour by civilian Government authorities may be falling. However, ILO continues to receive complaints of forced labour. The imposition of forced labour by military personnel continues with no evidence of any change in behaviour. Apparently, civil perpetrators are penalized for their actions while the military continues to have effective impunity from prosecution in this area.

82. Since February 2007, the ILO forced labour complaint mechanism has received 451 complaints. In the beginning, the number of complaints was low owing to lack of knowledge about the law and the right to complain. However, an increase in stories about forced labour in the media and the circulation of a brochure outlining the applicable laws, the procedure for filing a complaint and measures to protect complainants, have led to an increase in the number of complaints filed, particularly in respect of underage recruitment. To date, 103 underage recruits have been discharged back to their families under this process while seven persons have been released from prison with their desertion charges remitted following the lodging of complaints. The Special Rapporteur notes the positive progress and urges the Government to continue its work in eradicating forced labour and the use of child soldiers and cooperating with ILO to these ends.

83. In June 2010, northern Rakhine State experienced heavy flooding and landslides from continuous heavy rains, which killed at least 68 people and caused severe damage to infrastructure and livelihoods. More than 28,000 families were affected by the floods and over 800 houses were completely destroyed as well as major roads and bridges in the area. Access was severely disrupted and humanitarian relief activities were hindered. The Government and the humanitarian partners present in northern Rakhine State responded to the situation by swiftly dispatching emergency relief supplies to the affected areas. The Deputy Minister of Home Affairs came on site, followed by the Minister of Social Welfare, Relief and Resettlement and the Prime Minister soon thereafter. The Government has taken the lead in coordination efforts and organized meetings in the field and briefings in Yangon to report on the situation and the response, welcoming the support of humanitarian partners and donors and facilitating their work, providing a positive example of the constructive approach that can prevail during emergencies.

84. On 31 July 2010, the Tripartite Core Group comprising the United Nations, Myanmar and ASEAN, which coordinated all post-cyclone relief operations, was brought to an end and the Ministry of Social Welfare, Relief and Resettlement took over the functions. In August, the Government announced that it would "mainstream recovery into development", requiring aid agencies to sign cooperation agreements with individual ministries. Visas for foreign aid workers will be issued only after such an agreement is signed. This seems counter to the three-year Post-Nargis Recovery and Preparedness Plan which was approved by the Government in 2008. Some observers have expressed concern that it has taken four months to two years to obtain a cooperation agreement with a ministry and another five months to be granted a visa. The United Nations is appealing for an interim period with extensions of agreements and visas, during which time the agencies can apply for their new memorandums of understanding. The Special Rapporteur encourages the Government to follow the good practices set by the experience of the Tripartite Core Group and to continue its positive cooperation to allow humanitarian assistance to reach those still in need.

85. In his past reports, the Special Rapporteur has noted the dire situation of economic, social and cultural rights in Myanmar. Although the international community has an obligation to provide humanitarian assistance to this impoverished nation, he has equally noted that the Government must facilitate these measures with access. The Government must also take measures to end the armed conflicts that continue along the various border areas and avoid a resumption of fighting in ceasefire areas.

86. The Government stated in its letter of 2 September 2010 that a total of 35 seminars and workshops for Government officials and staff from the military, police and prisons to raise awareness on human rights had been conducted to date. The Government also noted the establishment by the Human Rights Body of an investigation team not only to investigate complaints lodged by citizens but also to take punitive actions against violators. The Special Rapporteur is encouraged that the Government has undertaken these initiatives but would like to request further information. On the human rights seminars and workshops, he would like to know more about the content, methodology, participants and any follow-up to the courses. On the Human Rights Body, he would like to know what legislation authorizes it to undertake the investigative and punitive functions; what procedure is available for citizens to file complaints; whether there are any protection measures for citizens

who might file complaints against officials or others in positions of power who could retaliate against them; whether this function of the Human Rights Body has been publicized, and if so, how; and finally, when the Human Rights Body took up this investigation function. The Special Rapporteur hopes that the Government will soon provide the opportunity to discuss these initiatives in more depth through face-to-face meetings with relevant officials in Myanmar.

87. In addition, the Government noted that in 2000, it "had released a notification to the people through newspapers about citizens' right to lodge a complaint to respective ministries relating to alleged injustices and grievances that may breach their rights". According to the Government, many people had lodged complaints of violation of their rights and a mechanism existed to deal with the complaints. The Special Rapporteur would like to request further information about this mechanism, including any available data and the role of prosecutors and the judiciary. The Special Rapporteur also suggests that the Government consider cooperation with international agencies or non-governmental organizations that specialize in human rights and justice to further develop this mechanism.

88. In October 2009, ASEAN launched the ASEAN Intergovernmental Commission for Human Rights (AICHR) with a mandate to uphold international human rights standards. According to its terms of reference, the purpose of AICHR is to enhance regional cooperation with a view to complementing national and international efforts for the promotion and protection of human rights. As both regional and international actors need to cooperate, the Special Rapporteur began engaging AICHR to exchange ideas about how the international community can best support progress on human rights in Myanmar. On 22 July 2010, he requested a meeting with the Chair of AICHR. During his mission to the region in August 2010, he held informal discussions with the representatives of Thailand and Indonesia. On 30 August, the Ministry of Foreign Affairs of Viet Nam, responding on behalf of Do Ngoc Son, Chair of AICHR, to the Special Rapporteur's request for a meeting, informed him that following a thorough discussion among all representatives to AICHR, "AICHR has come to the conclusion that discussion of the situation in an ASEAN member State is beyond the mandate of AICHR, as stipulated in the AICHR terms of reference". The Special Rapporteur encourages AICHR to consider its function of obtaining information from ASEAN member States on the situation of human rights according to its own terms of reference as a potentially important tool to be used by AICHR to help improve human rights in Myanmar at this critical time.

IV. Conclusions

89. **The Government of Myanmar has decided to hold national elections for the first time in more than 20 years, after more than 40 years of military governance. During this period, the situation of human rights and economic and social development in the country has seriously deteriorated. It has become clear that Myanmar needs change. According to the Special Rapporteur's assessment, conditions for genuine elections are limited under the current circumstances, and the potential for these elections to bring meaningful change and improvement to the human rights situation remains uncertain.**

90. **Myanmar faces a critical stage in its history. Ultimately, the people of Myanmar will decide how the difficult processes of democratic transition and**

national reconciliation proceed. The pursuit of justice and accountability will require tremendous effort. The international community must stand ready to help and support the people of Myanmar as they undertake these steps.

V. Recommendations

91. **The Special Rapporteur recommends that the Government of Myanmar:**

(a) **Respect freedom of expression and opinion and freedom of assembly and association in the context of the national elections;**

(b) **Release all prisoners of conscience;**

(c) **Address justice and accountability;**

(d) **Implement the four core human rights elements detailed in the Special Rapporteur's previous report to the General Assembly (A/63/341);**

(e) **Facilitate access for humanitarian assistance and continue developing cooperation with the international human rights system.**

Annex

Responses of the Government of Myanmar to the report of the Special Rapporteur on the situation of human rights in Myanmar

Response to paragraph 8 of the report

1. In Myanmar, there are no prisoners of conscience (political prisoners). Those who are serving prison terms are individuals who have been convicted of violating existing laws. Since 1989, the Government has granted amnesties 15 times and 115,000 prisoners have been released for good conduct in accordance with section 401 (1) of the Code of Criminal Procedure. In this regard, there may be similar amnesties, depending on circumstances.

Response to paragraph 18 of the report

2. There are no prisoners of conscience in Myanmar. Judicial principles, including the independent administration of justice according to law, the dispensing of justice in open court, unless otherwise prohibited by law, and the guaranteeing, in all cases, of the right to defence and the right of appeal under law are stipulated in section 2 of the judiciary law of 2000 and article 19 of the Constitution of the Republic of the Union of Myanmar of 2008. These judicial principles are followed at all different levels of courts in Myanmar. The courts prosecute offenders and pronounce appropriate sentences after the holding of hearings in accordance with existing laws. In criminal proceedings, defendants have the right to hire defence lawyers of their choice. According to section 457 of the Myanmar Courts Manual of 1946, in cases punishable by the death penalty, courts can appoint lawyers at government expenses (dock brief) for those who cannot afford to hire one. During trials, legal provisions, including cross-examination according to law, the right to present witnesses and the right to appeal are provided according to law. Sentences are decided only after the plaintiff has submitted irrefutable evidence against the defendant. Myanmar is not yet a party to the International Covenant on Civil and Political Rights. Under article 14 (1) of the Covenant, public hearings can be restricted in accordance with the domestic laws in the interest of public safety and national security that are required of in a democratic society. Under section 10 of the judiciary law of 2000 and sections 178 and 352 of the proviso to the Code of Criminal Procedure of 1898, special court hearings are convened for crimes that harm the State and public security. This practice is in line with international laws. Article 14 (1) of the International Covenant, section 10 of the judiciary law, sections 178 and 352 of the proviso to the Code of Criminal Procedure and paragraph 457 of the Courts Manual provide further reference on this matter (see enclosure).

3. However, the Special Rapporteur, without carefully studying the domestic judicial process of Myanmar, made the accusation that trials were conducted in a manner inconsistent with Myanmar's own laws. This is an act of intervention in the sovereignty of the country. Article 2 (7) of the Charter of the United Nations states that the United Nations shall not intervene in matters which are essentially within the domestic jurisdiction of any State. The Special Rapporteur's report does not conform to the purpose of that Article.

Response to paragraphs 14 and 20 of the report

4. According to article 446 of the State Constitution, existing laws shall remain in operation insofar as they are not contrary to the Constitution and until and unless they are repealed or amended by the *Pyidaungsu Hluttaw*. Laws that contradict the Constitution automatically cease to exist. The Government ministries concerned are currently reviewing entire domestic laws, including the 11 laws that the Special Rapporteur has recommended for review. Progress has been made in this regard, and the review process will continue. Human rights provisions are enshrined in chapter 8, "Citizenship, Fundamental Rights and Duties of Citizens", of the new State Constitution in conformity with international norms and standards.

Response to paragraphs 21 and 22 of the report

5. The Union Election Commission has issued notification No. 91/2010, dated l8 August 2010, allowing candidates of political parties and other independent candidates to assemble, campaign and distribute publications presenting their policies, positions and programmes. Even before the said notification was issued, contesting political parties were found campaigning already.

Response to paragraphs 27 and 28 of the report

6. The Union Election Commission has not officially received any complaints from political parties alleging that the authorities are exerting pressure on members of political parties and their families. Three political parties have submitted complaints about insufficient funds and the time constraints for registration. There is no complaint whatsoever from the other 34 political parties. All 37 political parties continue to carry out their activities as per the notifications issued by the Commission.

Response to paragraph 49 of the report

7. The Armed Forces of Myanmar abide by the 60 codes of conduct, in line with the Geneva Conventions of 1949. In cases where there is evidence that they are breaking the rules and regulations, actions are taken according to the law. For example, following the incident that took place between some military personnel and local youths in Bago on 5 September 2010, which led to the death of two local people, the Armed Forces is taking effective action through a special court-martial, in accordance with the rules of military discipline in the presence of the public. Since the Armed Forces is an organization that safeguards the interests of the people of Myanmar, including national minorities, allegations of human rights abuses by military personnel are fabricated by anti-Government groups and are, therefore, baseless. In the case of special development projects, considering the humanitarian perspective, measures are taken with the sole aim of protecting the local population from any possible hazards and providing them with better living standards.

Response to paragraphs 51, 52, 53, 54 and 55 of the report

8. It is not necessary to respond to the above paragraphs since the Special Rapporteur has exceeded his mandate by prejudging and levelling criticism at the yet-to-be-established *Hluttaws* (Parliaments). This is an act of intervention in the sovereignty of Myanmar.

Response to paragraphs 56, 62 and 67 of the report

9. Actions are taken in accordance with the existing rules and laws against those, whether they be military personnel or civilians, who commit forced relocation, extrajudicial killings and torture. Myanmar is a country inhabited by over 100 national minorities. The solidarity of the national races is of paramount concern to the country. It is improper for the Special Rapporteur to carelessly echo accusations of crimes against humanity. These unfounded accusations were fabricated by opposite elements with the ulterior motive of disintegrating the national solidarity. With regard to the accusations of the violation of human rights, if there be complaints, the competent authorities will investigate and take the necessary measures to enforce the law. For instance, between 1 January and 31 August 2010, the Ministry of Home Affairs received 503 complaints. Among them, 72 letters of complaint were addressed at the State level and 431 to the Minister for Home Affairs. Of the 300 letters of complaint examined, 101 were dismissed as false complaints and 199 were found to be genuine, and remedial measures have therefore been taken. The remaining 203 complaints are still under investigation. In the Armed Forces, from 1990 to April 2010, based on the investigations of military officers and reports filed by the people concerned, severe action was taken according to military law against a total of 210 military personnel: 104 military personnel on murder charges; 102 military personnel on rape charges; and 4 military personnel on rape and murder charges. There is, therefore, no grounds whatsoever for the international community to conduct an enquiry.

Response to the Special Rapporteur's conclusions

10. In order to hold free and fair elections, in 2010 the Union Election Commission issued: Notification No. 1/2010, on 18 March 2010, granting permission to set up and register political parties; Notification No. 2/2010, dated 21 June 2010, allowing registered political parties to recruit and organize their party members; Declaration No. 90/2010, dated 13 August 2010, setting timelines for submission of candidatures for respective *Hluttaw* constituencies; and Declaration No. 91/2010, dated 18 August 2010, allowing political parties to campaign and distribute publications to present their policies, positions and programmes respectively. All the registered political parties are permitted to carry out campaigning via radio and television between 14 September and 31 October 2010.

Position of the Government of Myanmar on the report of the Special Rapporteur

11. Based on the information mentioned above, it is obvious that the Special Rapporteur has exceeded his mandate and the code of conduct for special procedures mandate-holders of the Human Rights Council by interfering in Myanmar's domestic politics and also prejudging the upcoming election from a negative perspective. The baseless reports of human rights abuses mentioned in the report are based on fabricated information received from anti-Government groups and armed insurgent groups. The report does not reflect the objective and comprehensive information provided to him by the concerned officials of the Government of Myanmar during his visits to the country. Nor does it reflect the responses made to his queries. Myanmar therefore categorically rejects the entire report and dissociates itself from it.

Enclosure

International Covenant on Civil and Political Rights
Article 14

"l. All persons shall be equal before the court and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (order public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interest of justice: but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial dispute or the guardianship of children."

Judiciary law, 2000
State Peace and Development Council Law No. 5/2000

"10. The Supreme Court may direct that cases in the State or Divisional Courts, the District Courts and the Township Courts be heard and adjudicated by a bench consisting of more than one judge."

Code of Criminal Procedure

"178. Notwithstanding anything contained in section 177, the President of the Union may direct that any cases or class of cases committed for trial in any district may be tried in any sessions division:

> "Provided that such direction is not repugnant to any direction previously issued by the High Court under this Code, section 526.
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> ...

"352.The place in which any criminal court is held for the purpose of inquiring into or trying any offence shall be deemed an open court, to which the public generally may have access, so far as the same can conveniently contain them:

> "Provided that the presiding judge or magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the court."

The Courts Manual

"457. (1) In every case in which a person is accused of an offence punishable by death, the committing Magistrate, before forwarding the committal record to the District Magistrate, will record in the diary-sheet whether the accused was represented by an advocate or a pleader in the proceedings before him. He will also record his opinion whether the accused or his family can afford to engage legal assistance for his trial in the Court of Session, or the High Court, as the case may be, giving the reasons of his opinion. The District Magistrate, on receipt of the report for the committing Magistrate, unless he considered that the accused or his family can afford to engage legal assistance, will proceed to engage an advocate or a

pleader to appear for the accused in the Court of Session, or in the High Court, as the case may be, offering a fee at the rate of remuneration prescribed in rule (6). The District Magistrate, before forwarding the record to the Session Judge, or to the High Court, will note in the diary-sheet therein whether or not he has engaged an advocate or a pleader, stating the reasons for his action. Even when the Magistrate has found that the accused and his family has means enough, it is open to the High Court or the Court of Session to request the District Magistrate when a further enquiry has been directed under section 375 of the Code of Criminal Procedure, or when a trial has been ordered upon a charge of an offence punishable with death. The District Magistrate will, in like manner, provide legal assistance for such poor persons who are accused of offences punishable with death before other Courts and Tribunals empowered to try such offences and to pass a sentence of death. When, an advocate or pleader is briefed, he is briefed for the whole case, that is, until the final determination of the case by the trial Court. A person sent up for trial on a capital charge should be defended throughout the trial by the advocate or pleader engaged at Government expense, even if those charged may be tried for an offence which is not punishable by death.”