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Report of the Special Rapporteur on the situation of human rights in Myanmar, Paulo Sérgio Pinheiro*

* This report was submitted after the deadline so as to include the most recent developments, including within the Human Rights Council.

Summary

The mandate of the Special Rapporteur on the situation of human rights in Myanmar was established by the Commission on Human Rights in its resolution 1992/58 and extended most recently by the Human Rights Council, in its decision 1/102, in which the Council decided to extend, exceptionally for one year, the mandates and mandate holders of the special procedures of the Commission on Human Rights.

The third holder of the mandate on Myanmar, Paulo Sérgio Pinheiro was appointed in December 2000 and has fulfilled his mandate to the best of his ability for the last six years, despite having been denied access to the country since November 2003.

The Special Rapporteur, in the present, final report on the situation of human rights in Myanmar to the Human Rights Council, reiterates the findings contained in his last report to the sixty-first session of the General Assembly (A/61/369 and Corr.1).

During the course of the mandate of the Special Rapporteur, the reform process proposed in the "seven-point road map for national reconciliation and democratic transition", after showing some readiness to become open to various relevant actors, has been further strictly limited and delineated. As a result, the political space has been redefined in narrower terms. In addition, obstructions in the past couple of years have held back the pace and inclusiveness of the reforms that are required for democratization. The work of the National Convention has been adversely affected by this development.

Over the decades, the space for the establishment of civilian and democratic institutions has been seriously curtailed. The exercise of fundamental freedoms has been severely restricted. The house arrest of Aung Sang Suu Kyi, which was further prolonged for one year on 27 May 2006, illustrates well this state of affairs. As of 16 December 2006, the number of political prisoners was estimated to be 1,201. The Special Rapporteur has consistently indicated that national reconciliation requires meaningful and inclusive dialogue with and between political representatives. He firmly believes that the national reconciliation and the stability of Myanmar are not well served by the arrest and detention of several political leaders or by the severe and sustained restrictions on fundamental freedoms. The persecution of members of political parties in the opposition and human rights defenders shows that today, the road map for democracy faces too many obstacles to bring about a genuine transition. In the past, the Special Rapporteur has acknowledged that the road map could play a positive role in the political transition. Sadly, the positive momentum of the early years of his mandate has apparently stalled.

The capacity of law enforcement institutions and the independence and impartiality of the judiciary have been hampered by sustained impunity. This situation has contributed to reinforcing inequality and has increased the gap between the poorest and the richest.

The Special Rapporteur remains particularly concerned about impunity, which has become systematic and must be urgently addressed by the Government of Myanmar. It has become increasingly clear that impunity stems not only from a lack of institutional capacity. Impunity has allowed those who have oppressed voices that question existing policies and practices to avoid being held accountable. Several individuals and groups responsible for

committing serious violations of human rights, in particular members of the military, have not been prosecuted. There is also little evidence that these serious crimes have been investigated by relevant authorities.

Grave human rights violations are committed by persons within the established structures of the State Peace and Development Council and are not only perpetrated with impunity but authorized by law. In that respect, the Special Rapporteur is also very concerned about the continued misuse of the legal system, which denies the rule of law and represents a major obstacle to securing the effective and meaningful exercise of fundamental freedoms by citizens. He considers the criminalization of the exercise of fundamental freedoms by political opponents, human rights defenders and victims of human rights abuses to be a matter of particular concern.

During the course of his mandate, the Special Rapporteur has been very concerned about the 10 years of intensified military campaigns in ethnic areas of eastern Myanmar and its impact on the humanitarian and human rights situation, especially on civilians who have been targeted during the attacks. The situation should be considered in connection with the widespread practice of land confiscation throughout the country, which is seemingly aimed at anchoring military control, especially in ethnic areas. It has led to numerous forced evictions, relocations and resettlements, forced migration and internal displacement. Given the scale of the current military campaign, the situation may lead to a humanitarian crisis if it is not addressed immediately. The Special Rapporteur therefore welcomes the recent appointment of the Resident Coordinator as Humanitarian Coordinator. He believes that the formal engagement of the humanitarian sector of the United Nations Secretariat will provide stronger, essential support in ensuring the integrity and independence of ongoing efforts.

The Special Rapporteur takes note with great satisfaction of the recent release of political prisoners, including the five “88 generation” student leaders arrested last September. He expresses the hope that other prominent political prisoners will benefit from the amnesty granted in early January 2007. He therefore welcomes the statement made by the Secretary-General on 8 January 2007 on this issue and commends the work done by the United Nations within the “good offices” mission.

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I. INTRODUCTION

1. The mandate of the Special Rapporteur on the situation of human rights in Myanmar was established by the Commission on Human Rights in its resolution 1992/58 of 3 March 1992 and extended in resolution 2005/10. By its decision 1/102, the Human Rights Council decided to extend all mandates and mechanisms transferred to it by the Commission on Human Rights pursuant to resolution 60/251 of the General Assembly.

2. During the course of his mandate, which started in December 2000, the Special Rapporteur was authorized by the Government of Myanmar to visit the country on six occasions. However, the Special Rapporteur has not been allowed to conduct a fact-finding mission to Myanmar since November 2003. While he has not been granted access to the country during the period covered by this report, he has continued to fulfil his mandate to the best of his ability based on information collected from a variety of independent and reliable sources.

3. Throughout the six-year period of the Special Rapporteur's mandate, substantiated reports of grave human rights violations continued to be received on an ongoing basis. With the vast majority of his communications to the authorities not receiving a response, little evidence was available to the Special Rapporteur of a commitment by the Government to respond to these human rights violations.

4. The Special Rapporteur, however, takes note of recent replies by the Government to official communications by the special procedures of the Council. He finds this development encouraging and urges the Government to continue its dialogue with the Special Rapporteur and other special procedures.

5. Building on the Special Rapporteur's last report to the General Assembly (A/61/369 and Corr.1), the present and final report of the Special Rapporteur focuses on the main pattern of human rights violations he has identified in the course of his mandate. The report covers the period from February 2006 to 10 January 2007.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

6. In view of the fact that he continued to be prevented from visiting Myanmar, the Special Rapporteur visited neighbouring countries in the region where he received the support of all United Nations country teams. From 11 to 26 February 2006, the Special Rapporteur visited India, Malaysia, Indonesia and Thailand where he conducted consultations with representatives of the Ministries of Foreign Affairs, diplomats, parliamentarians (in India), the Inter-Parliamentary Caucus of the Association of Southeast Asian Nations (ASEAN), as well as non-governmental actors.

7. In Jakarta, the Special Rapporteur held meetings with the Secretariat of ASEAN, the former Minister of Foreign Affairs of Indonesia and scholars. In Kuala Lumpur, he held a meeting with the former Special Envoy of the Secretary-General to Myanmar. In Bangkok,

consultations were also conducted with representatives of United Nations agencies operating in Myanmar and Thailand, members of the diplomatic community, and non-governmental organizations operating in Myanmar, Thailand, and on the Thai-Myanmar border.

8. In May 2006, the Special Rapporteur met with the United Nations High Commissioner for Refugees in Geneva and staff members from his Office.

9. The Special Rapporteur presented his report (E/CN.4/2006/34) to the Human Rights Council in September 2006. While in Geneva, he met with representatives of the Permanent Mission of Myanmar and held consultations with representatives of Member States, officials of United Nations agencies, representatives of civil society organizations and members of the academic community.

10. At the request of the Special Rapporteur, the desk officer for Myanmar of the Office of the High Commissioner for Human Rights (OHCHR), who assists the mandate, conducted a mission to the region from 22 August to 3 September 2006 to collect updated information, with the support of the OHCHR Regional Office, United Nations agencies, civil society organizations and experts.

11. In September 2006, the Special Rapporteur met with the officials of the European Union (EU) in Brussels. He had consultations in Strasbourg, France, with representatives of the member States of the Council of Europe and the Deputy Secretary-General of the Council and addressed the Committee of Ministers. He also had a discussion with directors of the EU Council Working Party on Human Rights (COHOM) and made a presentation to the EU Asia-Oceania Working Party (COASI).

12. The Special Rapporteur presented his last report to the General Assembly on 21 October 2006. While in the United States, he met representatives of the Government of Myanmar and held consultations with representatives of States Members of the United Nations and of ASEAN, officials of United Nations agencies, civil society organizations and members of the academic community.

13. During the reporting period, the Special Rapporteur continued to have regular contacts with the Permanent Mission of Myanmar to the United Nations Office at Geneva. He also continued to share his findings with the High Commissioner for Human Rights in Geneva, the Executive Office of the Secretary-General, the Department of Political Affairs of the Secretariat and the Special Adviser to the Secretary-General on the Prevention of Genocide and his team.

14. Following the submission of this report, the Special Rapporteur, after the one-year extension of his mandate until June 2007, will be stepping down, in accordance with the six-year term limit. He wishes to thank very warmly all the Member States, resident coordinators and United Nations country teams, in particular the United Nations Country Team in Myanmar, civil society organizations and scholars who have supported his mandate and shared with him their observations on the situation of human rights in Myanmar.

III. OVERVIEW OF THE SIX-YEAR MANDATE OF THE SPECIAL RAPPORTEUR

15. The Special Rapporteur in his previous report to the Human Rights Council (E/CN.4/2006/34, paras. 9-22) presented an overview of his activities during his six-year term which he does not wish to reiterate in the present report. In this last precious opportunity to address the Council as Special Rapporteur on the situation of human rights in Myanmar, he prefers to share some reflections on his experiences during the last six years.

16. At the time he was appointed in December 2000, the Special Rapporteur decided to propose to the Government that he undertake a three-day visit to prepare his first official mission. This was somewhat unconventional, but the political situation in the country was already very tense. For five years, his predecessor, Rajsoomer Lallah, had not been allowed to visit the country, and the Special Rapporteur thought that this would be a way to engage with the Government in a new form of dialogue on human rights.

17. The Government of Myanmar has affirmed - and the Special Rapporteur agrees - that the five missions which followed that first visit were an important indicator of its cooperation with the Commission on Human Rights. The Special Rapporteur regrets that the same kind cooperation has not taken place during the last three years and two months, seriously curtailing his ability to report. The Special Rapporteur has tried to explain to the Government of Myanmar that official visits would give an opportunity to the Special Rapporteur to verify allegations of human rights violations and would allow the Government to have its views reflected in the report. Since his last mission to Myanmar in November 2003, the Special Rapporteur has written on many occasions to the Government seeking an invitation to visit the country, without success. He has not even received a written reply.

18. During the course of his mandate, the Special Rapporteur has maintained regular contacts with representatives of Myanmar in Geneva and New York, and with its ambassadors in many capitals. The Special Rapporteur has made every effort, particularly in the last three years, to convince the Government of Myanmar to work towards the protection and promotion of human rights and to fulfil its international obligation of cooperation in the field of human rights. The representatives of Myanmar - despite their urbane treatment of the Special Rapporteur, which it is only fair to acknowledge - have preferred to denounce the Special Rapporteur's findings as inaccurate, biased or politically motivated instead of simply investigating the allegations reported by the Special Rapporteur.

19. The Special Rapporteur reaffirms that he has maintained his independence, impartiality and objectivity in weighing the information provided by various sources. During his 11 years of association with the United Nations human rights mechanisms, the Special Rapporteur has done his best to report honestly on the progress made and obstacles faced by Governments in promoting and protecting human rights. At this end of his endeavours, the Special Rapporteur is distressed to conclude that the Government of Myanmar has decided to refuse to cooperate with the mandate and with the Human Rights Council.

20. The duties of the Special Rapporteur include analysing problems and trying to find solutions. Constructive criticism is more easily accepted than tongue-lashing, especially when such criticism is accompanied by concrete gestures of cooperation. Achieving progress in a

particular human rights situation requires that responsibility be shared between the special rapporteur, the Government, opposition forces and civil society. Special rapporteurs expect reciprocal cooperation, openness, and a serious commitment manifested by deeds and not merely words; special rapporteurs can only report progress backed by hard evidence.

21. Throughout the six years of his mandate, the Special Rapporteur has maintained a constant dialogue within the diplomatic community. In Asia, he has systematically sought the views of Myanmar's neighbours in order to verify his own impressions and analyses. He has reflected on their perspectives in his reports, having held consultations in Bangkok, Beijing, Jakarta, Kuala Lumpur, Singapore and Tokyo with Governments, parliamentarians, the Secretariat of ASEAN, research centres and civil society organizations.

IV. MAJOR DEVELOPMENTS AND HUMAN RIGHTS ISSUES OF CONCERN

A. Political developments

22. In the past two years, the reform process proposed in the "seven-point road map for national reconciliation and democratic transition" - whose potential for political transition the Special Rapporteur had recognized at the outset - has been strictly limited and delineated. The work of the National Convention has been adversely affected by this development. First convened in 1993, the National Convention was adjourned in May 1996 until it was reconvened for an eight-week period from 17 May to 9 July 2004. Having again been suspended for a further nine months following its 17 February-31 March 2005 session, the National Convention reconvened on 5 December 2005. On 31 January 2006, after having met for nearly two months without significant progress, the National Convention adjourned once more. It resumed its activities on 10 October and recessed on 29 December 2006 after more than 10 weeks of deliberations which were not genuinely open to all political parties and ethnic groups. The Special Rapporteur remains convinced that the announcement of a timetable for the implementation of the road map would be a clear demonstration of a commitment to the realization of a political transition.

23. The Special Rapporteur regrettably notes that the recommendations put forward on several occasions by the General Assembly and the Commission on Human Rights calling for the National Convention to be placed on a solid democratic foundation have been disregarded by the Government. The National League for Democracy (NLD) and ethnic parties have not been effectively and meaningfully associated with the National Convention. The drafting process of the Constitution has been marked by a lack of transparency.

24. In that regard, the Special Rapporteur takes note of the resolution adopted by consensus on 18 October 2006 at the 179th session of the Inter-Parliamentary Union Governing Council convened in Geneva, which stated: "the National Convention, in its present form, is designed to prolong and legitimize military rule against the will of the people as expressed in the 1990 elections, and that any transition towards democracy will fail so long as it is not genuinely free, transparent and reflective of the people's will, and preceded by the unconditional release of all political prisoners and the lifting of all restrictions on human rights and political activity".

25. Persecution and harassment of members of NLD continue. On 16 December 2006, the number of political prisoners was estimated to be 1,201, a figure that does not include prisoners reportedly detained in ethnic areas and secret jails. The Special Rapporteur took note with satisfaction of the decision by the Government of Myanmar on 3 January 2007 to grant amnesty to 2,831 prisoners and, further, of the release of more than 40 political prisoners the same month, including the 5 "88 generation" student leaders (Min Kop Naing, Ko Ko Gyi, Pyone Cho, Min Zeya and Htay Kywe) who were arbitrarily arrested last September. On 10 January 2007, the Special Rapporteur requested the Government to provide a detailed list of prisoners who had been released following this announcement.

26. The house arrest of NLD Secretary-General Aung Sang Suu Kyi was further prolonged by 12 months on 27 May 2006 in spite of various appeals. The terms of detention of other prominent NLD leaders, including Tin Oo, Than Nyein and May Win Myint, were also extended. Several leaders of ethnic political parties, including the Chairperson of the Shan State NLD, have been detained and given extraordinarily severe prison terms of 100 years or more. A report, "Eight Seconds of Silence", released in May 2006 by the Assistance Association of Political Prisoners documents allegations of the deaths of 127 democracy advocates and human rights defenders since 1988 while in detention or shortly after their release.

27. While NLD members in Myanmar had been subjected to serious harassment, the Union Solidarity and Development Association (USDA), established by the State Peace and Development Council (SPDC) in 1993, recently announced its intention to become a political party and field candidates in the next election. The Special Rapporteur believes this development to be a matter of grave concern. Over the years, the Special Rapporteur has received various allegations of involvement by USDA in acts of political and criminal violence. There is a perception among many observers that USDA may be used to legitimize a transition from a military regime to a civilian Government which could be not genuine. These allegations also seriously question the political will of the Government to work towards a legitimate democratization process in Myanmar.

28. In spite of the severe restrictions imposed on communities and their representatives, the Special Rapporteur has noted with great appreciation the strong democratic aspirations among various groups who continue to struggle to exercise their fundamental freedoms. For example, last December, the "88 generation" student group initiated a new campaign to urge the people of Myanmar to speak up about the political and social problems facing the nation. The campaign, called "Open Heart", is scheduled to run from 4 January to 4 February and will call on all citizens of Myanmar to write to their government leaders urging reform in politics, the economy and social affairs.

29. Some countries of the region have reacted to the current state of the political process and human rights situation in Myanmar. Unprecedented pressure from ASEAN compelled Myanmar to decline its first opportunity to chair ASEAN in 2006. When the ASEAN envoy was finally authorized to visit the country in March 2006, he interrupted his mission when the Government refused to allow him to meet with Aung San Suu Kyi. Several ASEAN members afterwards issued very critical public statements highlighting the significant absence of progress in terms of democracy and human rights.

30. In May and November 2006, the United Nations Under-Secretary-General for Political Affairs, Mr. Ibrahim Gambari, visited Myanmar as an emissary of the Secretary-General within the context of the "good offices" mission entrusted to him by the General Assembly and at the invitation of the Government. Democratization and human rights were part of the terms of reference of his mission. He briefed the Secretary-General and the Security Council three times on the outcome of his two visits, which were seen as a positive step for the resumption of a dialogue with Myanmar. The Special Rapporteur commends the important work of the Under-Secretary-General within the framework of the Secretary-General's "good offices" mission.

31. In early September, the United States formally requested the Security Council to put Myanmar on its agenda. On 15 September, the Council voted, by 10 votes in favour, 4 against and 1 abstention, to do so. The Special Rapporteur viewed this decision as a step that may allow Security Council members, individually or collectively, to formally discuss the issue of Myanmar and to request regular reports on the situation in the country from the United Nations Secretariat, including from OHCHR.

32. On 12 January 2007 a draft resolution on the situation of human and political rights in Myanmar (S/2007/14) was tabled by the United States of America and the United Kingdom of Great Britain and Northern Ireland.

33. The Special Rapporteur hopes that the debate on Myanmar in the Security Council will provide an opportunity to facilitate the transition process towards democracy. It can contribute to finding ways to promote convergence among the different approaches of the members of the Council towards the country, building an effective and authentic partnership with the countries of the region, tackling protection issues while improving the level of humanitarian action, including humanitarian access, and ensuring the realization of economic, social and cultural rights.

34. The Special Rapporteur takes note that at its 297th session, held in November 2006, the Governing Body of the International Labour Organization (ILO), as a result of the lack of political commitment by the Government of Myanmar to comply with its international obligations, stated in its Conclusions that "the Myanmar authorities should, as a matter of utmost urgency and in good faith, conclude with the [International Labour Office] an agreement on a mechanism to deal with complaints of forced labour". In addition, the Governing Body said that a specific item would be placed on the agenda of its March 2007 session to enable it to move on legal options, which would include requesting an advisory opinion from the International Court of Justice. The Special Rapporteur would like to commend this decision as an important step towards fighting the culture of impunity in Myanmar.

35. In November 2006 the Special Rapporteur welcomed some progress in the area of forced labour. He noted that three cases concerning people who had been arrested after filing complaints of forced labour practices were recently resolved by the Government in collaboration with ILO. He also welcomed as a positive development the six-month moratorium declared by the Government on prosecuting people who lodge complaints of forced labour. The Special Rapporteur was informed by representatives of Myanmar that further negotiations with ILO were in progress with a view to establishing a mechanism in the area of forced labour and that a new ILO mission was being considered for the near future.

B. Systematic human rights violations and impunity

36. In his last report to the General Assembly, the Special Rapporteur noted that "the culture of impunity remains the main obstacle to the efforts in view to safeguarding and securing respect for human rights in Myanmar and creating a favourable environment for their realization" (A/61/369, para. 27).

37. During the course of his mandate, the Special Rapporteur has received reports of widespread and systematic human rights violations, including summary executions, torture, forced labour practices, sexual violence and recruitment of child soldiers. These violations have not been investigated and their authors have not been prosecuted. Victims have not been in a position to assert their rights and receive a fair and effective remedy.

38. The Special Rapporteur regrets that in the discussions in the Commission on Human Rights and in the General Assembly the Myanmar authorities have preferred to deny the allegations and to denounce the accuracy of the Special Rapporteur's findings. As the Government has not invited the Special Rapporteur to visit Myanmar, he cannot be blamed for not having been able to verify the accuracy of these allegations.

39. As the Special Rapporteur noted: "The mob attack targeting Aung San Suu Kyi in November 1996 and the brutal Depayin massacre in May 2003 are striking examples of the culture of impunity prevailing in the country. In spite of several appeals, including by the Special Rapporteur, the Government of Myanmar did not investigate these cases and have not brought those responsible to justice" (ibid., para. 28).

40. Under international law, Myanmar has an obligation to thoroughly investigate grave violations of human rights, to prosecute those responsible for their perpetration and, if their guilt is established, to punish them. This means that those responsible for human rights violations must stand trial and that victims must obtain reparations.

41. Another noteworthy illustration of the consistent and continuing pattern of impunity is the high number of allegations of sexual violence against women and girls committed by members of the military that have been regularly documented since 2002. In 2006, the Special Rapporteur received information about 30 cases of rape of Chin women. In late November 2006, he received additional reports of abuses by the military, including sexual abuses, and their impact in Kayin State. As noted by the Special Rapporteur: "This trend of sexual violence is particularly alarming, bearing in mind that the figures provided are likely to be far lower than the reality as many women do not report incidents of sexual violence because of the trauma attached to it. Moreover, some reports may also not have reached the Special Rapporteur, as information on human rights abuses in these areas is mainly collected from refugees arriving at the Thai-Myanmar border" (ibid., para. 30). The Special Rapporteur is not aware of any initiatives by the Government of Myanmar to look into these serious human rights abuses with a view to identifying the perpetrators and bringing them to justice. The failure to investigate, prosecute and punish those responsible for rape and sexual violence has contributed to an environment conducive to the perpetuation of violence against women and girls in Myanmar. As the Government has denied the Special Rapporteur access to Myanmar, he was not in a position to verify these allegations.

42. Cases of forced labour represent another manifestation of the culture of impunity. The Government of Myanmar has acceded to the ILO Forced Labour Convention, 1930 (No. 29) and in 2000 it issued an order outlawing the practice. However, there have been serious shortcomings when it comes to effective implementation.

43. Following a damning 1998 report on forced labour in Myanmar by an ILO Commission of Inquiry, a process of dialogue commenced between ILO and the Myanmar authorities in 2000 on ways to address the problem. This led to a visit by a high-level team to the country in 2001 to provide a detailed assessment of recent developments on the ground and of the obstacles to the elimination of forced labour - the first time such an assessment was able to be carried out on the territory of Myanmar (the Commission of Inquiry having been denied access to the country). Two key recommendations of the team were the establishment of a permanent ILO presence in the country and the development of a mechanism for credibly and effectively dealing with complaints from victims of forced labour. In 2002 the Myanmar authorities agreed to the appointment of an ILO liaison officer in Yangon. Discussions then began on a concrete plan of action to address forced labour, including the establishment of a complaint mechanism for victims. Although negotiations initially made reasonable progress, there were a number of obstacles which prevented the plan of action from being implemented, including death sentences pronounced against three people for alleged contacts with ILO (all were eventually released). Following the removal from office of then Prime Minister Khin Nyunt together with a number of key ministers, with whom the plan of action had been negotiated, the Myanmar authorities indicated that they would no longer consider the plan. Despite intensive negotiations since that time, the Myanmar authorities have demonstrated little concrete cooperation with ILO, and have not so far agreed to any alternative formulations. This has led ILO to resort increasingly to other measures to try to secure Myanmar's compliance with its obligations, including calls for ILO members to review their relations with Myanmar, as well as various international legal measures.

44. As regards developments in the practice of forced labour, the assessment of the high-level team and subsequent evaluations by the ILO liaison officer have been that there has been only a very moderate positive evolution in the situation since the Commission of Inquiry. The main significant development has been that the authorities are apparently no longer requisitioning labour for major national infrastructure projects. However, forced labour continues to be widely imposed by local authorities for smaller-scale infrastructure work. The situation remains most serious in border areas, where there is ongoing insecurity and a large Army presence. In these areas, the Army continues to impose forced labour on a widespread and systematic basis for a range of military and infrastructure-related purposes, including the use of civilians as porters for the Army during patrols and military operations. In addition to the very dangerous and arduous nature of the tasks, forced labour imposed by the Army is routinely accompanied by other forms of serious human rights abuse. Major obstacles to the elimination of forced labour include the apparent lack of political will to seriously address the problem or to develop acceptable alternatives, and the continued impunity for the government officials and Army officers responsible.

45. In 2005 the Government announced a policy of prosecuting people who lodged what it considered to be "false complaints" of forced labour, leading to a situation where it is the victims rather than the perpetrators who are punished. The State-controlled press has also published articles attacking the ILO. The effect of this has been to strengthen the impunity enjoyed by those government officials who continue to impose forced labour.

46. The recruitment of child soldiers is another human rights abuse committed within the culture of impunity. The Special Rapporteur has received various reports of the Army continuing to recruit child soldiers at an alarming rate. These reports allege that child recruitment continues even after the Government created a high-level committee that promised to address the problem. The Committee for Prevention of Military Recruitment of Under-Age Children was formed in January 2004 after the Secretary-General reported to the Security Council that Myanmar was violating international law prohibiting the recruitment and use of children as soldiers. The report of the Secretary-General on children and armed conflict confirms this development. It says that "there are reliable reports of continued forcible recruitment and training of children for the Government armed forces (Tatmadaw Kyi) and non-State armed groups. However, owing to access limitations, the United Nations country team has not been able to systematically verify these allegations". (A/61/529-S/2006/826, para. 57).

47. As noted by the Special Rapporteur in his previous reports, the serious human rights violations described above have been widespread and systematic over the last decade, suggesting that they are not simply isolated acts of individual misconduct of middle- or low-ranking officers, but rather the result of a system under which individuals and groups have been allowed to breach the law and violate human rights without being called to account.

48. The Special Rapporteur also believes that impunity is one of the main underlying causes of the degrading economic and social conditions of rural farmers, who represent the majority of the population of Myanmar. The militarization of rural areas has created a vicious circle of impoverishment of villagers. The military rely on local labour and other resources as the result of the incapacity of the Government to deliver any form of support for their activities (the self-reliance policy). The Special Rapporteur has received many allegations of villagers being severely punished outside the framework of the law because they refused to perform forced labour and of the unlawful appropriation of their land, livestock, harvest and other property. While Myanmar has increased the number of its battalions nationwide since 1988, the implementation of self-reliance policies by the local military during the past decade has contributed to undermining the rule of law and damaging the livelihoods of local communities.

49. Grave human rights violations meet with impunity and are even authorized by law. In that respect, the Special Rapporteur is seriously concerned at the continued misuse of the legal system, which denies the rule of law and represents a major obstacle to securing the effective and meaningful exercise of fundamental freedoms. The Special Rapporteur regrets to observe that the lack of independence of the judiciary has provided a "legal" basis for abuses of power, arbitrary decision-making and exonerating those responsible for serious human rights violations. The Special Rapporteur has also repeatedly expressed concern to the Government of Myanmar about the abuse of due process in political trials and the denial of basic rights in detention. For the last six years, the Special Rapporteur has received numerous reports concerning arbitrary arrests without warrants, incommunicado detention, torture or ill-treatment in pretrial detention, deaths in custody and very poor conditions of detention without access to adequate food and medical treatment. He has also received reports of defendants who have been denied the right to legal counsel and reports of political trials often being held in camera.

50. The Special Rapporteur considers the criminalization of the exercise of fundamental freedoms by political opponents, human rights defenders and victims of human rights abuses to be a matter of especially grave concern.

51. The authorities have continued to impose severe restrictions on freedom of movement, freedom of expression, freedom of association and freedom of assembly. The Special Rapporteur has received several reports alleging the Government's involvement in crackdowns on several initiatives by people to organize themselves even for non-political purposes, such as fighting HIV/AIDS.

52. The Special Rapporteur has also received reports of allegations concerning the prosecution of individuals who have communicated information that should belong in the public domain to organizations and individuals inside and outside the country.

53. The Special Rapporteur is also very much concerned about the strict restrictions on freedom of movement that prevail in general in the country, and in particular about those imposed on specific groups, such as the Muslim minority.

C. Military operations in ethnic areas

54. Since 1948, millions of people have been uprooted and thousands have died every year, mostly from preventable diseases, in the country's conflict areas. The situation has become critical. The Army has approximately doubled the number of battalions deployed across eastern Myanmar since 1995. The attacks on villages in ethnic areas have led to extensive forced displacements. This is true for Kayin State but also other ethnic states in eastern Myanmar (Mon, Shan and Kaya) and in northern Rakhine State. Reliable and independent sources estimate that between 1996 and 2006, 3,077 separate incidents of destruction, relocation or abandonment of villages have been documented in eastern Myanmar. Over a million people are understood to have been displaced from their homes during this time. As of November 2006, the total number of internally displaced persons (IDPs) who have been forced or obliged to leave their homes and have not been able to return or resettle and reintegrate into society is estimated to be at least 500,000. The Government does not recognize the existence of IDPs within its borders and severely restricts access to them by United Nations agencies and other humanitarian actors.

55. Widespread violence continued to spiral upwards during the last year in mountain areas outside of military control in the Toungoo, Nyaunglebin and Papun Districts of Kayin State and in eastern Bago Division. For many independent and reliable observers, this is the worst humanitarian situation since the 1996-1997 military campaign.

56. Among the most appalling features of the military campaign in ethnic areas is the disproportionate effect on civilian populations. In addition to the heightened risks posed by the widespread availability of small arms and light weapons and anti-personnel mines, the killing, terrorizing or displacement of civilians is often part of a deliberate strategy to separate ethnic armed groups from their civilian populations. It has been considered by various observers to be a concerted policy aimed at denying people their livelihoods and food or forcing them to risk their lives when they attempt to return to their villages after having been forcibly evicted.

57. The Special Rapporteur has received reports from reliable and independent sources alleging that the militarization of refugee camps at the border has put the safety of civilians at

risk. In that regard, the Special Rapporteur would like to welcome the opening of legal assistance centres for promoting legal awareness and providing legal services to refugees in camps along the Thai-Myanmar border.

58. Violence against unarmed civilians by the Myanmar military is a very serious concern. The Government of Myanmar has a positive obligation under international humanitarian law to protect civilians from the effects of armed conflict and, therefore, needs to take the appropriate measures to end the targeting of civilians during military operations.

59. In western Myanmar, the Muslim minority has long been discriminated against, and is denied citizenship under the 1982 Citizenship Law. Muslim minority asylum-seekers continue to flee to Bangladesh. They are subject to serious abuses, especially forced labour (e.g. construction of roads, bridges, model villages and military facilities, camp maintenance, portering) and arbitrary taxation. They also suffer skyrocketing rice prices. Since January 2006, the government-imposed policy of cultivating physic nut plantations is causing new hardships, including forced labour, extortion and land confiscation. New developments have been observed in recent months, including increased restrictions on movement as it became very difficult to obtain a travel pass after the new village-level administration was put in place, and the closing of a number of mosques which had been repaired or enlarged without permission. The Special Rapporteur praises the international humanitarian organizations and their expatriate staff in northern Rakhine State who have been very helpful in protecting the Muslim minority from the Myanmar military and border security forces.

D. Land confiscation

60. Access to and control over land and natural resources has long been central to the political economy of Myanmar. In many ethnic minority-populated areas, repeated incidents of forced displacement - interspersed with occasional periods of relative stability - have been a fact of life for generations. Some 75 per cent of the population is engaged in agriculture (including fisheries, forestry and livestock), which accounts for 40 per cent of the gross domestic product. Land and natural resource issues therefore lie at the heart of livelihoods in Myanmar.

61. A large-scale and effectively arbitrary land confiscation policy prevails throughout the country. These confiscations appear to have several aims, including relocating civilian populations deemed to be sympathetic to the armed opposition; anchoring a military presence in disputed areas through the deployment or support of new Army battalions; opening the way for infrastructure development projects, including the Lawpita dam, the three proposed Salween dams and the Day Loh dam in Toungoo District; the extraction of natural resources, notably offshore gas; and providing various interest groups, including the military and foreign groups, with business opportunities, e.g. economic concessions, including for logging and mining. This policy has led to numerous forced evictions, relocations and resettlements, especially in rural areas but also in urban areas, most notably in connection with the move of the capital from Yangon to Pyinmana.

62. The Land Nationalization Act of 26 October 1953 confers land ownership on the State. Legal practice in Myanmar today generally refers to this Law, which recognizes some private ownership of agricultural land, although it restricts land sales or transfers. However, the Law

allows the State to confiscate land that is left fallow. The current legislation on land offers little protection to farmers. In addition, victims of land confiscations are not likely to lodge complaints because of fear of reprisals and lack of confidence in the judiciary.

63. The Special Rapporteur is not aware of any specific provisions of the draft Constitution which would provide for secure land and housing rights of citizens, protect the rights to fair and just compensation as a result of legal or illegal land or property expropriation, or guarantee traditional practices of ethnic minorities in relation to land and natural resource management, such as collective property rights and swidden agriculture (an important element of sustainable livelihood strategies).

64. The Special Rapporteur views the ongoing large-scale confiscation of land as a matter of grave concern that will continue to impact dramatically on the political and economic stability of the country if it is not addressed. The Special Rapporteur notes the increasing recognition among human rights, humanitarian and development groups of the need to document issues related to land and natural resource management in Myanmar.

65. The Special Rapporteur believes there is a need to recognize that Myanmar's ethnic nationalities enjoy a special relationship with the land. The issue of housing, land and property rights in Myanmar is inextricably linked to the struggle for justice and democracy in the country. For ethnic minorities, this includes the right to reside on their ancestral land and to participate in decisions regarding its use.

66. Protection from land confiscation depends on settlement of the conflicts which have wracked the country for more than half a century. Unfortunately, efforts at conflict resolution have thus far met with only very limited success. Nevertheless, some inspiring projects have been implemented by civil society groups in Myanmar. These examples show that it is not necessary to wait for fundamental democratic reform before addressing the issue of land confiscation and paving the way to transitional justice.

E. Humanitarian situation

67. According to numerous and consistent reports, there have been marked signs of deterioration in the economic and social sectors, which could aggravate the humanitarian situation. Even if the International Monetary Fund estimates that the Myanmar economy has grown 7 per cent in 2006, owing largely to rising revenues from exports of offshore gas fields, the hardships that the population have to face continue to be very serious. There is a need to address, adequately and urgently, the needs of the population.

68. Myanmar's ranking in the 2005 United Nations Development Programme (UNDP) Human Development Index was 129 out of 159 countries. Maternal mortality in Myanmar is among the highest in South-East Asia, and only 40 per cent of children complete five years of primary education (considerably fewer in conflict-affected border areas). Rates of HIV/AIDS and tuberculosis infection remain amongst the highest in Asia. Malaria is the leading cause of morbidity and mortality, and most commonly affects the poor and other groups at risk. The potential threat of a pandemic of H5N1 avian influenza remains of serious concern following the March/April 2006 outbreak, although there have been no human cases of H5N1 thus far in Myanmar.

69. Since 2005, new restrictions have been placed on actors in the humanitarian field. These restrictions, in the context of the complicated environment and pressure from outside lobbyists, have been used as a pretext for the withdrawal of the Global Fund to Fight AIDS, Tuberculosis and Malaria, which has been deeply deplored by the Special Rapporteur and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The withdrawal of Médecins Sans Frontières (France) at the end of 2005, owing to access restrictions, has further complicated the humanitarian situation.

70. The Government of Myanmar in late November ordered the International Committee of the Red Cross (ICRC) to close its five field offices in the country. While the Government is reconsidering its decision to close the offices, ICRC is still not in a position to operate according to its standard modalities.

71. The restrictive guidelines for United Nations agencies and international organizations announced by the Government in February 2006 added to the current difficulty for humanitarian workers seeking access to project areas and to operate independently, in accordance with internationally accepted standards. Although the Special Rapporteur recently received information about some positive signs of progress, there is still an urgent need for the Government of Myanmar to demonstrate some flexibility. In that regard, the Special Rapporteur encourages the Government to ensure that humanitarian agencies can operate in a mutually agreeable environment, in accordance with the guiding principles provided by the United Nations Country Team on 7 March 2006.

72. The Special Rapporteur welcomes the launching of the Three-Disease Fund,[1] which will provide funding roughly equivalent to that of the Global Fund that should soon start flowing to implementing agencies. This shows that donors still have an important commitment to humanitarian aid in Myanmar. The Special Rapporteur encourages the provision of humanitarian assistance to Myanmar. He also believes that there must be transparency and accountability in the monitoring of the provision of humanitarian assistance to ensure that it is not misused for personal and individual gains. In addition, Myanmar nationals employed by agencies working in the country must be afforded protection from any form of threats and intimidation for their work on humanitarian assistance and development programmes.

73. The Special Rapporteur welcomed the recent appointment of the Resident Coordinator as Humanitarian Coordinator. He believes that the formal engagement of the humanitarian sector of the United Nations Secretariat will provide stronger essential support in ensuring the integrity and independence of ongoing efforts.

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[1] See “Myanmar plans to launch substitute fund to fight TB, Malaria, HIV/AIDS after global fund grants suspended”, June 2006, at http://www.medicalnewstoday.com.

F. Myanmar's international human rights and humanitarian obligations

74. The Government of Myanmar has an obligation to cooperate for the advancement of human rights under the Charter of the United Nations, which provides for the promotion of "universal respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion".

75. Myanmar is party to the four Geneva Conventions of 1949, the Convention on the Prevention and Punishment of the Crime of Genocide, the Slavery Convention, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the United Nations Convention against Transnational Organized Crime and the Convention Concerning the Protection of the World Cultural and Natural Heritage. It has not signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and the United Nations Convention against Corruption.

76. Myanmar submitted its initial report to the Committee on the Elimination of Discrimination against Women (CEDAW) in 1999, but its second periodic report has been overdue since August 2002. The Special Rapporteur believes that the Government of Myanmar would benefit from a dialogue with CEDAW in view of the widespread sexual violence against women and girls that prevails in the country. The initial and second periodic reports under the Convention on the Rights of the Child were submitted to the Committee on the Rights of the Child (CRC) and its next report, the combined third and fourth periodic report, is due in August 2008. The Special Rapporteur believes that this represents an opportunity for the Government of Myanmar, working with civil society, the United Nations system and CRC, to engage in a discussion on sexual violence against girls and on the recruitment of child soldiers with a view to submitting its report in the best possible conditions.

77. CEDAW and CRC have examined Myanmar's reports and issued recommendations and concluding observations providing guidance to the Government on how to fulfil its international human rights obligations. The Special Rapporteur would like to reiterate that recommendations made by treaty bodies for protecting and promoting human rights in Myanmar represent an important tool for policymakers and development practitioners. It is therefore important for the Government of Myanmar and its partners to follow up on these recommendations. They will help to measure political will, obstacles encountered and progress made, to identify new trends, and to complement the efforts made by the Government towards the protection and promotion of human rights.

78. Myanmar also acceded to a number of ILO conventions, including, as noted above, the Forced Labour Convention, 1930 (No. 29) and the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), which are of particular importance from a human rights perspective. In June 2006, the ILO Committee of Experts on the Application of Conventions and Recommendations observed that the Government of Myanmar had been strongly criticized by various ILO bodies regarding the implementation of Convention No. 29.

The major focus of the criticisms related to the outcome of the 1997 Commission of Inquiry appointed by the Governing Body of ILO, which concluded that the Convention had been violated in national law and in practice "in a widespread and systematic manner". The report of the Committee of Experts refers to material that purported to be from nearly every state and division of the country on several hundred cases of forced labour, including forced portering, repair and maintenance of army camps and villages for displaced people, cultivation of paddy and other fields, road construction, clearing of jungle areas, "human minesweeping", patrolling and sentry duty.[2] The Special Rapporteur believes that the implementation by Myanmar of the important conclusions of the Committee published last June would help to prevent forced labour to a significant extent, as they identified practical steps that are required to put an end to these abuses.

V. CONCLUDING REMARKS

79. The human rights concerns enumerated in the present report are largely the same as those highlighted by the Special Rapporteur in his reports since 2001. The Special Rapporteur deplores the fact that, despite early indications from the Government that it was willing to address these problems when the Special Rapporteur first took up his mandate six years ago, this willingness has disappeared.

80. The current administration has not yet demonstrated any willingness to concede any space for a political opening of the kind that occurred during similar transitions in several countries in Asia, nor for the promised move towards democratization. Any voice questioning existing policies and practices has been harshly suppressed. Moreover, most individuals and groups responsible for committing serious violations, in particular members of the State apparatus, are not being arrested or prosecuted. Impunity has also impaired progress in the social and economic development of Myanmar for the benefit of the majority of the people.

81. Recommendations formulated by the General Assembly, the Commission on Human Rights, the Secretary-General of the United Nations and his former Special Envoy, as well as those advocated by the Special Rapporteur and relevant human rights treaty bodies, have not been implemented.

82. From the outset of his work on Myanmar, the Special Rapporteur has made a point of visiting and reporting regularly on the plight of political prisoners. Nothing is more revealing about the situation of human rights in a country than the existence of political prisoners. Moreover, the manner in which such persons are treated is a reflection of how a Government regards its own people. At least 1,201 citizens of Myanmar are behind bars without access to the guarantees of due process for the exercise of their political rights.

83. The Special Rapporteur has constantly repeated, to no avail, to the Government of Myanmar and its partners that Daw Aung San Su Kyi's house arrest and her lack of access to NLD colleagues run counter to the spirit of national reconciliation. The release of the other

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[2] Report of the ILO Committee of Experts on the Application of Conventions and Recommendations: Individual Observation concerning Convention No. 29, Forced Labour, 1930, Myanmar, June 2006, para. 6.

1,200 political prisoners and intellectuals, such as Win Tin, the 76-year-old poet and journalist who has been in prison since 4 July 1989, would also become assets for a meaningful political transition. As Nelson Mandela so eloquently said, "Only free men can negotiate; prisoners cannot enter into contracts. Your freedom and mine cannot be separated."

84. The Special Rapporteur takes note with great satisfaction of the recent release of political prisoners, including the five "88 generation" student leaders arrested last September. He expresses the hope that other prominent political prisoners will benefit from the amnesty granted in early January 2007.

85. After six years serving this mandate, the Special Rapporteur believes it is important for Member States to support effective initiatives to deal with common concerns of society in Myanmar and in the region. Joint initiatives on issues of common concern such as the environment, economic growth and development, educational modernization, medical research and engineering and technology which could prove to be paths to progress should be explored. All these initiatives must have as their goals to encourage an effective democratic transition and to promote the improvement of the standards of living and the protection of human rights of the people of Myanmar.

86. The Special Rapporteur would like to conclude by reaffirming what he said to the Human Rights Council in September: humanitarian assistance cannot be made hostage to politics. Any decision on humanitarian assistance must be guided solely by the best interests of children, women, people living with disabilities, those affected by diseases and minority groups. It would be a terrible mistake to wait for the political normalization of Myanmar to help the population and to empower communities and their representatives.

VI. RECOMMENDATIONS

87. **The Special Rapporteur's recommendations made in earlier sections of the present report, as well as in his previous reports, remain valid in view of the prevailing situation in Myanmar. For the last time, the Special Rapporteur would like:**

(a) To appeal to the Government of Myanmar to free all political prisoners and put an end to harassment and persecution of NLD members and representatives of ethnic groups;

(b) To encourage the Government of Myanmar to resume, without further delay, dialogue with all political actors, including NLD and representatives of ethnic groups, to complete the drafting of the Constitution;

(c) To recommend that, given the magnitude of human rights abuses, the Government of Myanmar subject all officials who commit these acts to strict disciplinary control and punishment and put an end to the culture of impunity that prevails throughout the country;

(d) To call upon the Government of Myanmar to put an end to the criminalization of the peaceful exercise of fundamental freedoms by human rights defenders, victims of human rights abuses and their representatives;

(e) To encourage the Government of Myanmar to seek international technical assistance with a view to establishing an independent and impartial judiciary that is consistent with international standards and principles;

(f) To urge the Government of Myanmar to take steps to improve conditions of detention;

(g) To urge the United Nations and the international community to respond to the situation of armed conflict in eastern Myanmar, where civilians are being targeted and where humanitarian assistance to civilians is being deliberately obstructed;

(h) To call on the Government of Myanmar to authorize access to the affected areas by the United Nations and associated personnel, as well as personnel of humanitarian organizations, and guarantee their safety, security and freedom of movement;

(i) To encourage the Government of Myanmar to ensure a mutually agreeable operating environment for humanitarian agencies in accordance with the guiding principles provided by the United Nations Country Team on 7 March 2006;

(j) To call on the Government of Myanmar to end illegal land confiscation in Myanmar and to urge the Government to ensure that land use and ownership issues are addressed in the Constitution;

(k) To call upon the Government of Myanmar to respect its obligation under international humanitarian law to protect civilians from armed conflicts;

(l) To urge the Government of Myanmar to implement ILO recommendations with a view to implementing practical measures to end forced labour;

(m) To encourage the Government of Myanmar to put an end to the recruitment of child soldiers;

(n) To encourage the Government of Myanmar to take steps to finalize its second periodic report to the Committee on the Elimination of Discrimination against Women that was due on 21 August 2002, and to work with civil society, the United Nations system and the Committee on the Rights of Child for the submission of its third and fourth periodic reports under the Convention on the Rights of the Child;

(o) To further encourage the Government of Myanmar to follow up on the recommendations and concluding observations adopted by the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child; and

(p) To urge the Government of Myanmar to continue to collaborate with the Secretary-General to support the exercise of his "good offices" mission.