

Comments on reports of the Special Rapporteur on the situation of human rights in Myanmar contained in UN documents A/HRC/7/18 and A/HRC/7/24

I. Comments on the Report contained in document A/HRC/7/18

1. The Special Rapporteur submits two reports to the seventh session of the Human Rights Council. The Government of the Union of Myanmar finds that both reports are highly intrusive and strident. In this connection, the Government of Myanmar would like to make comments on his reports which would, otherwise, create the international community to misunderstand Myanmar.

The National Convention, the State Constitution and National Referendum

2. The emergence of a new enduring State Constitution for all national races is the most important priority for the Government of the Union of Myanmar. Therefore, the National Convention was convened in 1993 to consider basic principles of new State Constitution with the participation of all national races and all political parties including the National League for Democracy (NLD).

3. Due to the NLD's unilateral withdrawal from the Convention in November 1995, it was adjourned in 1996. The Government of the Union of Myanmar had patiently waited for 8 years. During that period, the Government of Myanmar has made concerted efforts for the all round developments of the nation as well as to restore peace and tranquility and the rule of law throughout the country. The Government has adopted the seven-step road map to democracy on 30 August 2003 and as the first step the National Convention was reconvened on 17 May 2004. The holding of the National Convention is not only the first step of the seven-step road map but also the most crucial one. The NLD was invited to participate in the resumed session of the National Convention. It first agreed to participate, but only two days before the meeting the NLD once again decided not to attend the National Convention.

4. The National Convention was participated by the representatives from the following eight strata of society:

- a. delegates of political parties
- b. delegates of representatives-elect
- c. delegates of national races
- d. delegates of peasants
- e. delegates of workers
- f. delegates of intellectuals and intelligentsia
- g. delegates of State service personnel
- h. other invited delegates (including delegates representing the 17 major armed groups who returned to the legal fold)

5. The National Convention is, therefore, a truly all-inclusive forum representing the whole cross-section of the country and successfully completed on 3 September 2007.

6. On 18 October 2007, the Commission for Drafting the State Constitution comprising 54 members has been formed. The Commission drafted the draft Constitution based on the basic principles and detailed basic principles adopted by the National Convention. The draft was successfully completed on 19 February 2008.

7. On 9 February 2008, the State Peace and Development Council issued Announcement No.1/2008 concerning the National Referendum to seek the approval of the State Constitution to be held in May 2008 and Announcement No.2/2008 concerning the holding of the multi-party democracy general elections to be held in 2010. These two Announcements are the 4th and 5th step of the seven-step road map.

8. The Government of Myanmar is currently proceeding to hold National Referendum in May 2008 of which Myanmar people will express their wish on the draft

State Constitution. Once it is approved, the multi-party democracy elections will be held in 2010.

9. The Government has enacted the Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar on 26 February 2008. The Government also formed the Commission on Convening of National Referendum composed of 45 members on the same date.

10. The Minister for Relations to liaise with Daw Aung San Suu Kyi was appointed on 18 October 2007. Since the assignment, the Minister for Relations has held meeting with Daw Aung San Suu Kyi five times as of 30 January 2008.

11. Thus, Myanmar is moving step by step toward the new democratic society. It is a process based on the objective conditions in the country and the aspiration of the entire people of all national races.

12. Myanmar Government is vigorously implementing the seven-step road map which represents the way toward a brighter future of the whole country.

13. Despite these achievements, the Special Rapporteur made harsh criticism on Myanmar's seven step road map and political progress. In doing so, he has acted beyond his mandate.

14. The Government has formed the National Human Rights Body as a preliminary step with a view to establishing the National Human Rights Commission in conformity with the international norms in future.

Government's Endeavours for Economic and Social Development

15. Development of infrastructure that includes construction of new roads, railways, bridges and dams has been carried out according to the National Development Plans. As a result, the country is more integrated than had been in the past, thereby uplifting the standards of living of the entire people.

16. Moreover, the Government has established heavy industries and encouraged private-owned industries by setting up industrial zones in order to transform the agricultural country into an agro based industrialized one.

17. To bring about market-oriented economic system as aspired by the people, efforts have been made hand in hand with the people for development of internal and external trade.

18. Border areas and national races development projects were implemented for ensuring region-wise development in the country while infrastructures were built for better transportation to overcome natural barriers in order that national people will make closer contacts in amity.

19. To narrow down the gap in human resource development as much as possible in the nation, 24 special development regions were designated and universities, institutions and schools were opened. Similarly, to uplift health and fitness of the entire people, specialist hospitals, hospitals and rural hospitals were constructed and upgraded.

Health and Education

20. In Myanmar, only 10% of population falls below the food poverty line. According to the National Nutrition Survey of the Ministry of Health, the prevalence of underweight children under five years of age was 31.8% in 2003, which is on downwards trend in compared to 38.6% in 1997. Underweight is not merely due to food shortage, but also affected by other factors such as genetic factor, eating habits, food choices, etc are also led to turn out a child under-weight. All malnourished children are under-weight but not all under-weight children are malnourished while the underweight (Weight for

Age) indicator reflects body mass related to chronological age. The prevalence rate of underweight in Myanmar is same as in other developing countries of WHO South East Asia Region. Ministry of Health is striving to improve the nutritional status of children under-five through its momentous effort in collaboration with UN organizations, international as well as national NGOs. Therefore, the allegation and data regarding the malnutrition is factually incorrect.

21. Myanmar is implementing border area development activities including health care since 1989. It has expanded Rural Development Plan including health care up to remote and hard-to-reach areas. Myanmar is implementing HIV/AIDS, TB and malaria control measures to achieve the MDG goal 6 within the time frame of 2015. Based on the HIV/AIDS projection and demographic impact analysis workshop conducted in August 2007, it was noted that adult HIV prevalence in Myanmar has reached peak in the year 2000 with 0.94% and gradually declined to 0.67% in 2007. This rate is the standard rate of all 11 South East Asian countries including Myanmar. Moreover, Myanmar is carrying out collaborative health activities at out-of-reach and border areas with Myanmar-Thailand, Myanmar-China and Greater-Mekong Sub-region in collaboration with financial and technical assistance of UN agencies and other stakeholders.

22. Ministry of Health is practicing cost sharing for drugs and laboratory investigations for those who can afford. Services and facilities costs are not charged. But for those who can't afford were treated free for all illnesses including HIV/AIDS. HIV/AIDS care in Yangon Infectious Hospital (Wai Bar Gi) also apply the above stated principle. The reference concerning NLD affiliated welfare group was not correct. Ministry of Health is working in collaboration with INGOs for care and support of AIDS patients.

23. With regard to the allegation of the Coordination Meeting between Department of Health (DOH) and INGOs, it is totally incorrect. In reality, representatives from INGOs were not summoned, but being invited to attend the meeting at Nay Pyi Taw where DOH exists and the meeting was attended by 23 representatives from INGOs. Likewise, they were not warned but being informed and explained about the existing rules and guidelines laid down by the responsible Department of Foreign Economic Relations in February 2006. That was the open forum and views from both sides were exchanged in order to facilitate the smooth progress of effective coalition. During the meeting, reports (not confined to the field reports) were purposely requested to submit quarterly and annually aiming to help their work being in line with their respective MOUs, to ensure better understanding and cooperation with the department counterparts at all levels and to comprehend the financial and technical input of INGOs into Myanmar in a holistic view as a crucial matter in planning process for the national health development. Most of the representatives from INGOs have shown their appreciation for being invited and also requested for similar meeting on regular basis. Although health departments are not over-staffed, INGO's application for travel permit and request of liaison was never being rejected, for instance nearly 700 field trips were arranged to be accompanied by liaisons in 2007. Visas have been granted lavishly for international staff from UN agencies and INGOs while visas for Myanmar citizens were rejected by some Western countries. Travel permits for international aid workers for INGOs to work in the field is issued for three months as before. It is not the new tightened rules but a regular procedure for the foreigners working for INGOs to be accompanied by a liaison officer since many years ago, aiming at facilitating the communication as well as coordination at field level.

24. The food assistance activities by World Food Program(WFP) has been operated in Shan (North), Northern Rakhine States and Magwe Division covering a few townships in each State and Division. Those townships are hard to reach areas and supplementation of blended food to vulnerable age groups particularly for pregnant mothers and under five children is provided. However, people residing in these townships are never suffered from chronic food shortages.

25. Child health care with emphasis on newborn care, under-one and under-five children has been accorded priority aiming at the National Health Plan (2006-2011). Although vital rates vary with study design, method and coverage applied, all sources

show that the child mortality rate is on declining trend. Infant Mortality Rate has declined from 98 per 1,000 LB in 1990 to 49.7/1000 LB in 2003 and Under Five Mortality Rate has reduced from 130 per 1, 000 LB in 1990 to 66.1/1000 LB in 2003. It reflects the annual reduction rate of 3.5 percent, which has shown its status of being on track to achieve the MDG target by or even before 2015. The achievements thus far have been attained relying on its available resources. Myanmar is and will be cooperating and collaborating with multinational organization to promote the health development of the country as well as to strengthen regional and international understanding and collaboration. Therefore, the allegation and data stated in the report is factually incorrect.

26. The allegation regarding completion of the primary school by less than 50% children is factually incorrect. In fact in 2006, 2007, 70.48% of children have completed their primary education.

27. The Special Rapporteur's finding concerning the attendance of primary age children is untrue. The data provided in the report is not accurate. According to the official statistics of Myanmar Government 1,193,558 children enrolled in primary school and 23,752 are not able to attend to the primary school in 2006-2007. Therefore, 98.01% of primary school age attend the school.

28. The Government has introduced human rights education in the curriculum of middle and high schools.

29. The Special Rapporteur does not appreciate what Myanmar Government and Myanmar NGOs have done for Myanmar People. Instead he gave credit to NGOs and insurgents outside Myanmar.

Forced labour

30. There has been a continuing trend of constructive engagement between the Government of Myanmar and the ILO. Myanmar-ILO joint mechanism to address cases of forced labour has been established in accordance with the Supplementary Understanding signed between Myanmar and the ILO on 26 February 2007. The ILO delegation led by Mr. Kari Tapiola, the Executive Director of the International Labour Office visited Myanmar from 25 to 28 February 2008. During the visit, the Supplementary Understanding has been renewed for another one year to handle the issues in a positive manner.

31. The renewal of this Understanding shows Myanmar's willingness and seriousness to cooperate with the ILO in eradication of forced labour in the country. Accordingly, all the allegations regarding the issue of forced labour contained in the report are factually incorrect.

32. The orders regarding the prohibition of the requisition of forced labour have been translated into the languages of all national races. The Government also ensured that these orders and translations are given wide publicity including the villages located in the remote areas.

33. In addition, Myanmar Government has accepted an additional international staff to the ILO Liaison Officer with a view to fulfilling the request contained in the conclusions of the 96th International Labour Conference.

34. The Government formed the high-level Committee for the Prevention of Military Recruitment of Under-age Children to handle the issue of child soldier and maintain its cooperation with the UNICEF and the Special Representative of the UN Secretary-General for Children and Armed Conflict.

Freedom of Association and Freedom of Expression

35. In reality the workers' associations have been allowed to form in respective industrial zones with a view to protecting the rights of workers. Freedom of association, freedom of expression, freedom of assembly are allowed so long as their

activities do not constitute threat to the three main national causes namely, non-disintegration of the Union, non-disintegration of the National Solidarity and Perpetuation of the Sovereignty. In this connection, 5 daily Newspapers, 191 weekly Journals, 220 monthly Magazines have been given permission to publish independently. Therefore allegation regarding severe restrictions on the above- mentioned freedoms is untrue.

Judiciary System

36. Regarding the allegation of the lack of independence in the judiciary system, in Myanmar various levels of courts strictly observe the existing laws, procedural code, orders and directives. The administration of justice in Myanmar is based on the principles of administering justice independently according to law, protecting and safeguarding the interests of the people and aiding in the restoration of law and order and peace and tranquility, educating the people to understand and abide by the law and cultivating the people the habit of abiding by the law . Therefore, the above allegation is groundless.

Sexual violence against women

37. The Myanmar Military have been falsely accused of gang rape based on the report issued by the exiles and insurgents. Rape, gang rape is regarded by Myanmar people and Government as the most dastardly crime. The insurgents and anti-government elements have been consistently making unfounded allegation against the Government. Whenever rape is committed, the Government makes sure that the perpetrators are brought to the justice and prosecuted and sentenced in accordance with existing laws of Myanmar.

38. The allegation regarding sexual violence against ethnic women and children are baseless and aimed at discrediting the Government of Myanmar and Myanmar Military. It has never been the policy of the Government to allow or condone sexual violence against women regardless of whoever commits such a crime. Strong action has always and consistently been taken against perpetrators. In addition, enquiry team led by the Deputy Minister of the Ministry of Home Affairs has investigated above mentioned allegation and found out that these are not true. Thereafter, clarifications have been made to the diplomats and reporters in Myanmar. Moreover, the Government offered the Special Rapporteur to see the place where the alleged sexual violence took place during one of his visits. However, he did not visit the place.

39. The Government has ensured that all prisoners receive a proper medical treatment in the prison. Therefore, clinics, hospitals equipped with doctors, nurses and adequate medicines are provided to the prison. If the prisoner requires special medical attention, he or she will be transferred to the relevant specialized hospital for further treatment. Therefore, the allegation of the female inmate's health condition is baseless and totally incorrect.

40. The Myanmar Women's Affairs Federation, a voluntary non-governmental organization implements the 12 areas of concerns of the Beijing Platform for Action down to the grassroots level and other organizations such as the Myanmar Maternal and Child Welfare Association, the Myanmar Women Entrepreneurs' Association and the Myanmar Women's Sport Federation are actively working for the all-round development of Myanmar women including the girl child.

41. As a State Party to the CEDAW, the Government of Myanmar has submitted the combined second and third national report to the CEDAW Committee in June 2007.

Refugees and internally displaced persons

42. Myanmar also rejects the allegation of the presence of a large number of internally displaced persons because Myanmar is not a country in armed conflict.

43. With regard to the description about refugees in the Myanmar-Thai border, they are by and large illegal economic migrants. The rest are insurgents and their families who fled across the border having failed in their armed insurrection.

44. The allegation regarding the repression of the returnees is factually untrue. This could incite discord between the religious communities in Myanmar. In fact, the Government of Myanmar has fully cooperated with the UNHCR to reintegrate the returnees into the mainstream of the community. Programmes have been instituted for the returnees, such as Myanmar language training for the adults, population registration, income generation assistance and the initiative to empower women and girls aiming at the promotion of basic social and economic rights. The total number of returnees between 22 September 1992 to 30 September 2007 are 236,495 persons.

45. Regarding the returnees in Northern Rakhine State, the matter has been resolved between Myanmar and Bangladesh in a friendly and amicable manner. Myanmar has been cooperating with Bangladesh and the UNHCR since 1992 and 1993 respectively. The allegations of discrimination and harassment on the returnees are not true. "Rohingyas" do not exist in the Union of Myanmar and are not one of Myanmar's indigenous national races.

Allegations of forced evictions, relocations, resettlement and forced migrations

46. Allegations of forced evictions, relocations, resettlement and forced migrations are untrue. Resettlement of some local people in those areas are absolutely voluntary for the purpose of border area development and for their own welfare and benefits.

47. The return of 17 out of 18 major armed groups to the legal fold has led to the establishment of peace and stability in the country, including in the border areas where the insurgents used to operate. Only the Kayin National Union (KNU) and the remnants of the former narcotic trafficking armed groups are fighting the Government. Counter insurgency campaigns are conducted only against those insurgents that are engaged in acts of terrorism. Conducting counter-terrorist activities against terrorist groups cannot be regarded as violating the humanitarian law. The allegation of the worst humanitarian situation is baseless accusation.

48. Therefore, allegations of the maltreatment of members of national races and military campaign in border areas are totally incorrect. The Government of Myanmar has been carrying out border area development in an unprecedented scale, and this programme has contributed to the attainment of higher living standards and better quality of life of national races.

49. Regarding the Special Rapporteur's question on land and housing rights of citizens, the relevant provision is included in the draft Constitution in the chapter relating to the fundamental rights and duties of citizens.

ICRC

50. The Government of Myanmar has constantly been engaging a dialogue with ICRC in Geneva as well as in Myanmar. Moreover, the Government agreed to receive ICRC delegation in the near future. Therefore, the allegation regarding the dialogue with ICRC is baseless and incorrect.

II. Comments on the Report contained in document A/HRC/7/24

51. The allegation regarding the closure of the monasteries, surrounding of the security forces are totally untrue. As the monk in charge and junior monks residing in the Maggin Monastery have been taken legal action for violation of the existing law by inciting violence to impair peace and stability of the State. Therefore no one is available to assume fully charge of the Monastery and it has temporarily been closed. The State Sangha Maha Nayaka (the highest body of the monks) will make appropriate decision.

52. Since the special session on the situation of human rights in Myanmar had been convened, the Special Rapporteur visited Myanmar from 11 to 15 November 2007 and then submitted his report to the Human Rights Council on 12 December 2007.

53. Although the Government of Myanmar felt that the special session was politically motivated attempt, the Government fully cooperated with the United Nations and the Human Rights Council. The Government of Myanmar furnished all information requested by the Special Rapporteur. The Special Rapporteur had the opportunity to see that the Government had been able to restore the peace and stability in the country.

54. The Government of Myanmar had already explained in resumed sixth session that there were only 10 deaths during the September event and 5 persons later died as a result of their illness prior to their custody. Therefore, allegation of another 16 death is untrue.

55. The allegation regarding cremating the death bodies at Ye Way Cemetery is groundless accusation. All 15 people died in the event were cremated at Hteinbin Cemetery where the Special Rapporteur visited.

56. Regarding the Special Rapporteur's alleged list of disappearances, the Government does not have any information as these people might have fled to the border areas or neighbouring countries.

57. In September event, the Government detained 2927 persons and legal action have been taken against 80 persons for violation of laws. The rest have been freed.

58. The Government established the Investigation Body chaired by the Minister for Home Affairs on 31 October 2007 in order to investigate violations of fundamental human rights during the September event. The death, arrest and disappearance in connection with the September event have been officially confirmed by the Minister for Home Affairs during the Special Rapporteur's visit in November 2007.

59. Regarding the so- called political prisoners, the fact is that the prisoners referred in the report are the offenders who are serving their respective sentences for their infringement of the existing laws and not for their political beliefs or activities. Accordingly, the allegation of arrest and prosecuting of so-called political prisoners are totally untrue.

60. In the Union of Myanmar, arrest or detention of a person, prosecution, trial of cases and sentencing are made in accordance with the provisions contained in the Code of Criminal Procedure, Manual and Directives which are in conformity with the international practice. If anyone fails to observe the above mentioned provisions, legal action will be taken against them.

61. Administering of justice independently, the right of accused to engage a lawyer for his / her defence, the right to defend and appeal are provided in Criminal Procedure Code and Judiciary Law. Even in cases where a person is accused of an offence punishable with death or transportation for life and he or she can not afford to get a lawyer, the State will provide the lawyer for the accused with the expense of the State. The special court is formed and empowered to administer the case for the security reason.

62. Regarding the recommendations made by the Special Rapporteurs report, the Government of Myanmar has taken the steps as follows:

(a) For immediate measures

- for **i, ii, iii, iv, viii** Myanmar has been taking appropriate measures;
- for **v**, it has been taken into consideration to take appropriate measures

- for **vi, vii** measures has been taken in accordance with the existing laws of Myanmar
- for **ix** it is the internal matter of Myanmar
- for **x** has been engaging as appropriate
- for **xi** the high level investigation body has been established in Myanmar and it has been conducting the necessary investigation. Accordingly, it is not necessary to invite international commission of inquiry or fact finding mission.

(b) For transitional measures

- for **xiii** As the peace and stability and law and order has been restored in the country, it is not necessary.
- for **xiv** As there is no political prisoners, it is not necessary to take the measure.
- for **xv** The Government of Myanmar has been engaging a dialogue.
- for **xvi** The necessary measure will be taken in accordance with the State Constitution which will seek the approval of the people of Myanmar at the National Referendum to be held in May 2008.
- for **xvii** Appropriate measures have been taken as may be necessary.

Conclusion

63. The Government of Myanmar finds that both reports are neither balanced nor objective. It is intrusive, highly politicized and contains many unfounded allegations originated from insurgents and anti-government groups. Therefore, the Government totally rejects all the allegations contained in the reports.
