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HUMAN RIGHTS SITUATIONS THAT REQUIRE THE COUNCIL'S ATTENTION

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

Summary

In its resolution 1992/58, the Commission on Human Rights established the mandate of the Special Rapporteur on the situation of human rights in Myanmar, which was extended by the Human Rights Council in its decision 1/102 and resolution 5/1. In March 2008, when the 7-year term of the Special Rapporteur expires the mandate will be reviewed by the Council.

The present report focuses on the main patterns of human rights violations committed in Myanmar from February 2007 to February 2008. Subsequent to Council resolution 6/33, the Special Rapporteur has submitted a follow-up mission report (A/HRC/7/24).

* The present report was submitted late in order to include the most recent information.

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I. INTRODUCTION

1. The Special Rapporteur's mandate on the situation of human rights in Myanmar was established in 1992 by the Commission on Human Rights in its resolution 1992/581 and extended in resolution 2005/10.
2. The mandate of the Special Rapporteur is expected to be reviewed by the Human Rights Council at its seventh session. The present report, submitted in accordance with Council resolution 5/1, covers the period from February 2007 to February 2008.
3. Since his nomination in December 2000, the Special Rapporteur has been authorized by the Government of Myanmar to visit the country seven times. Between November 2003 and November 2007, the Government did not allow the Special Rapporteur to conduct missions to Myanmar. Following the special session of the Council on 2 October 2007, the Special Rapporteur was invited by the Government to conduct a 5-day fact-finding mission to Myanmar in November 2007. His findings were reported to the Council (A/HRC/6/14).
4. The Special Rapporteur regrets that he was not permitted to return to Myanmar for a follow-up mission, as was requested by the Council.
5. The Special Rapporteur continued to discharge his mandate to the best of his ability on the basis of information on grave violations of human rights collected from a variety of independent, reliable sources. The Special Rapporteur acknowledges receipt of the responses concerning the situation of a number of detainees. He would also like to point out that the absence of substantive responses to the majority of his and other special procedures mandate-holders' communications makes it difficult for him to discern a genuine commitment on the part of the Government to address these human rights violations.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

6. The Special Rapporteur continued to have regular contacts with the Permanent Missions of Myanmar to the United Nations at Geneva and New York. He held consultations with representatives of Member States, officials of United Nations agencies and programmes, representatives of civil society organizations and members of the academic community. He presented his annual report (A/62/223) to the General Assembly in New York on 14 October 2007. He also shared his findings and had regular contacts with the United Nations High Commissioner for Human Rights, the Executive Office of the Secretary-General, the Department of Political Affairs, the Special Adviser to the Secretary-General on Myanmar, Ibrahim Gambari, and the Special Representative of the Secretary-General on Children and Armed Conflict, Radhika Coomaraswamy. The Special Rapporteur also welcomes the appointment of the special envoy on Myanmar of the European Union, Piero Fassino, with whom he met following his appointment.
7. From 11 to 15 November 2007, the Special Rapporteur visited Myanmar at the invitation of the Government, pursuant to Council resolution S-5/1. His report on that visit (A/HRC/6/14) was submitted separately to the Council in November 2007. On 16 and 17 November 2007,

the Special Rapporteur held consultations in Bangkok with, inter alia, the Minister for Foreign Affairs of Thailand, representatives of the diplomatic community and non-governmental organizations operating in Myanmar, Thailand and on the Thai-Myanmar border.

8. Pursuant to Council resolution 6/33, in his letter of 30 January 2008, the Special Rapporteur communicated to the Government his wish to conduct a follow-up mission prior to the seventh session of the Council in March. The Special Rapporteur regrets that he has not been granted access to the country for a follow-up mission as requested by the Council.

9. The Special Rapporteur would like to express his gratitude to the Office of the United Nations High Commissioner for Human Rights (OHCHR), in particular to its Regional Office for South-East Asia for the support provided in the implementation of his mandate. He would like also to praise the collaboration with United Nations Resident Coordinator and Humanitarian Coordinator, Charles Petrie, and the entire United Nations country team in Myanmar.

III. RECENT DEVELOPMENTS

10. Changes are taking place in the country as a result of political and economic developments, including the future adoption of a new constitution that will redefine the political structures of the country as well as a number of ongoing development projects. Whether these changes will be positive depends on the ease of the political transition and the involvement of the international community. Lack of access to conflict areas by United Nations human rights mechanisms and other relevant international agencies exacerbates an already difficult human rights situation.

11. The establishment by the Secretary-General of a Group of Friends of Myanmar, whose first informal format meeting was held on 19 December 2007, is an important effort by the international community to continue calling for immediate action to improve the human rights situation of the people of Myanmar.

12. The Special Rapporteur has observed with satisfaction that the United Nations system has established mechanisms to facilitate communication among the political, humanitarian and human rights sectors to address the situation in Myanmar. In this context, the Special Rapporteur supports the good offices of the Special Adviser to the Secretary-General on Myanmar and welcomes the announcement on 21 February of his forthcoming visit scheduled for early March 2008. The Special Rapporteur urges the Government of Myanmar and all relevant parties to the national reconciliation process to continue to cooperate with the Special Adviser in the discharge of his good offices.

A. National convention and way forward

13. The reform process proposed in the 7-step road map for national reconciliation and democratic transition, after some initial signs of openness and inclusiveness, has been further limited and delineated. In addition, the delays and the obstacles preventing the participation of all sectors observed in the past few years have held back the pace of the reforms required for democratization. The Special Rapporteur notes that the process is already 14 years old and is open-ended.

14. On 18 October, the State Peace and Development Council formed a 54-member Commission for drafting the State Constitution under announcement No. 2/2007. On 19 February, the Government announced the finalization of the draft constitution.

15. During his mission in November 2007, the Special Rapporteur met with Brigadier General Kyaw Hsan, Minister for Information, who informed him of the formation of the constitution drafting commission, the third step in the road map for national reconciliation, culminating in the finalization of the draft constitution. The Minister stated that the fourth step would be completed when the majority of the people approved the constitution through a national referendum. During the fifth step, which is holding general elections, the Minister informed the Special Rapporteur that everyone would have the right to vote and to be elected, including those described by the Minister as opposing the 7-step road map. They would also have the right to establish political parties and launch election campaigns at the appropriate time. As the sixth step, a new *Hluttaw* or Government would be formed. The Minister described the seventh step as a continuing process to build a new democratic State.

16. The Minister informed the Special Rapporteur that the national convention had managed to adopt the fundamental principles and detailed basic principles that would guide the drafting of the future constitution. These principles, according to the Minister, guaranteed justice, freedom and equality in the country for all citizens to enjoy equal rights before the law; non-discrimination based on race, gender or wealth; and freedom of faith. The Minister also pointed out that, in accordance with the law, every citizen would have the right to freedom of speech, expression, peaceful assembly and association. The rights of the ethnic nationalities to preserve and develop their languages, literature, art and culture were also guaranteed in the principles. In the new constitution, the State would be made up of seven regions, seven states (Kachin, Kayah, Kayin, Shan, Chin, Mon and Rakhine), one self-administered division for Wa nationals and five self-administered zones for Pa-o, Danu, Palaung, Kokang and Naga nationals. Additional measures would be taken to ensure the enjoyment of the rights of the minorities, whose populations would lack a self-administered division or a self-administered zone. Those minorities whose populations represent at least 0.01 per cent of the nation's total population would get one seat at their respective region or state *Hluttaw*.

17. The Government announced on 9 February 2008 that it would hold a referendum on the new constitution in May 2008 and multiparty democratic elections in 2010. The Special Rapporteur would like to join the Secretary-General in his call to the Myanmar authorities to engage without delay in a substantive and time-bound dialogue with Daw Aung San Suu Kyi and other relevant parties to the national reconciliation process. The Special Rapporteur reiterates that, for democracy to be sustainable, any draft constitution must be broadly representative of the views of all the people of Myanmar. He deeply regrets that, despite the above-mentioned declaration of good intentions, the detention of political opposition leaders continues. On 13 February, the Special Rapporteur was dismayed to learn that the house arrest of Tin Oo, 80 years of age and deputy to the General Secretary of the National League for Democracy (NLD), had been extended for an additional year and that legal provisions in the new constitution might prevent the General Secretary of NLD, Aung San Suu Kyi, from being a candidate in the proposed general elections. In October 2007, the Special Rapporteur also received allegations of the use of force on citizens to participate in pro-Government rallies in support of the constitutional process.

18. The Special Rapporteur expressed concerns regarding the role of the Union Solidarity and Development Association, established by the State Peace and Development Council in 1993 as a political party in the future elections. Over the years, the Special Rapporteur has received allegations of the Association's involvement in acts of political and criminal violence, the latest being the violent crackdown on demonstrators following the fuel crisis, as documented in his report to the Council at its sixth session. Many observers believe that the Association may be used to legitimize a transition from a military regime to a civilian Government.

B. Establishment of a national human rights body

19. In November 2007, Major General Maung Oo, Minister for Home Affairs, informed the Special Rapporteur that a 20-member national human rights group had been established. The group, chaired by the Minister for Home Affairs, includes representatives from the Ministry of Foreign Affairs, the Judge Advocate's Office and the Chief Justice's Office. The body divides its work among nine thematic subgroups focusing on a wide range of human rights issues. During his meeting with 18 male and 2 female members of the group in November, the Special Rapporteur was informed that it was hoped that the group would become the future national human rights institution.

20. While expressing concerns that the group was composed almost entirely of Government representatives, the Special Rapporteur would like to acknowledge the importance of the establishment of a specific national body addressing human rights situation in the country. In his view, national human rights institutions are the best mechanism at the country level to ensure the implementation of international human rights norms. However, to be effective, they must comply fully with the Paris Principles, particularly in terms of their independence.

C. ASEAN charter and other political efforts

21. The ASEAN charter was signed by Heads of State at the thirteenth ASEAN summit on 20 November 2007, in Singapore.

22. The Special Rapporteur welcomes the adoption of the ASEAN charter, in particular the commitment to establish an ASEAN human rights body, as stated in article 14 of the charter, which would provide for a stronger regional framework to address the human rights situation in Member States, including Myanmar. The Special Rapporteur believes that this process provides a vehicle for ASEAN Member States and their partners to further encourage the Government of Myanmar to speed up democratic reforms with due respect for human rights.

23. The Special Rapporteur welcomes the ASEAN Chairperson's statement of September 2007 and consequent statements by Member States highlighting the absence of progress in democracy and human rights in Myanmar. He also notes with satisfaction that China supports continuing efforts on the part of the Government of Myanmar aiming at inclusive dialogue and national reconciliation and commends the latest efforts made by other countries, such as India, to ensure the continued collaboration of Myanmar with the United Nations.

IV. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. Right to health, education and food

24. According to reports, there have been marked signs of deterioration in the economic and social sectors, which could aggravate the humanitarian situation. According to a poverty profile published by the Government in June 2007, food expenditure represents 73 per cent of all consumption expenditure. According to United Nations agencies present in the country, one child in three under the age of 5 suffers from malnutrition, and less than 50 per cent of children are able to complete their primary education.

25. The burdens of communicable diseases in Myanmar remain very high, but with assistance from United Nations agencies, such as the World Health Organization (WHO), the United Nations Children's Fund (UNICEF) and the Joint United Nations Programme on HIV/AIDS (UNAIDS), and non-governmental organizations, the public health sector has seen progress in combating malaria, tuberculosis and HIV/AIDS. However, the delivery of disease-control services, particularly in remote, hard-to-reach townships, including those in the border areas, remains a serious challenge owing to several factors, such as insufficient resources for health, limitations to access to these areas and high turnover of staff.

26. The latest estimates from WHO and UNAIDS indicated that, in 2007, a total of 242,000 people in Myanmar lived with HIV/AIDS, one of the worst epidemics in Asia. According to the United Nations, 75,000 people, including 2,000 children, were in need of anti-retroviral treatment in 2007. By December 2007, only 10,500 were reported to have started such treatment. Non-governmental organizations reportedly provide 85 per cent of treatment. The Special Rapporteur expresses his concern following the announcement made by the Government-run Yangon Infectious Diseases Hospital (Wai Bar Gi) that new regulations introduced in January 2008 stopped free medical services, such as clinical and laboratory services, from being provided to persons living with HIV/AIDS. These services had formerly been supported by a non-governmental organization and were not continued by the Government after that support had to be ended. Most people living with HIV/AIDS who come to the hospital for testing or treatment can only afford transportation, food and basic living costs. The NLD-affiliated welfare group has traditionally provided support for a number of people living with HIV/AIDS who would not otherwise have access to services. Following the crackdown on the demonstrations, it is reported that much of that assistance was discontinued, leaving an unknown number of people living with HIV/AIDS without services.

27. The Special Rapporteur takes the opportunity to commend the important work of the Mae Tao Health Centre in Mae Sot, Thailand, which, since 1988, provides free health care to refugees, migrant workers and other individuals who cross the border into Thailand.

28. The Special Rapporteur received information that, in January 2008, officials from the Ministry of Health had summoned aid workers from international non-governmental organizations to the new capital Naypyidaw, warning them to follow strictly the rules and to report details of their field trips to the Government. Travel permits for international aid workers for international non-governmental organizations to work in the field are now issued for

one month only, as opposed to the previous period of three months. The new tightened rules also require foreigners working for those organizations to be accompanied by a ministry liaison officer when travelling around the country. The new rules prohibit the collection of information other than that related to public health.

29. The Special Rapporteur also denounces the serious violations of medical neutrality brought to his attention since the establishment of the mandate. Late in 2007, two health workers were reportedly kept by the State Peace and Development Council and the community that the doctors were servicing had to pay for their release. One doctor in charge of a clinic was allegedly killed by soldiers of the State Peace and Development Council in October 2007 near Bu Thaw Plaw clinic. Seven health workers have died since 1998.

30. The Special Rapporteur takes notes of the positive news issued in January 2008 by World Food Programme (WFP) that its food assistance activities in the country would expand in 2008. At the end of the first year of its 3-year programme, WFP has reached 500,000 beneficiaries, thereby allowing vulnerable communities to overcome chronic food shortages. The Special Rapporteur noted with satisfaction that the Government of Myanmar facilitates the work of WFP by granting access to several of the most marginalized areas of the country. Recently, in North Rakhine, the authorities eased procedures to help speed up the delivery of food to returned communities. It is hoped that this initiative will be replicated elsewhere and that the Government will also address restrictions imposed on some categories of the population in Rakhine State, such as the restriction of movement outside their village tract, which affects food security in the area as well as being a violation of the basic human rights.

B. Forced labour

31. The Government of Myanmar has acceded to a number of International Labour Organization (ILO) conventions, including the Forced Labour Convention, 1930 (No. 29) and the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87). Although the Government issued in 2000 an order outlawing the practice of forced labour, there have been serious shortcomings when it comes to effectively enforcing it.

32. The Special Rapporteur welcomes the conclusion, in February 2007, of a supplementary understanding between ILO and the Government to establish a mechanism for victims of forced labour to seek redress. He noted that some of the cases had been resolved successfully, demonstrating the value of the complaint mechanism. While the Special Rapporteur is aware of the current limitations of the mechanism in the present context, he strongly encourages the Government to collaborate with the liaison officer to strengthen its effectiveness. He notes with satisfaction the agreement reached on 26 February 2008 to extend the supplementary Understanding for a further 12-month trial period subject to its submission to the ILO Governing Body at its March meeting.

33. One major development is that the authorities are apparently no longer requisitioning labour for national infrastructure projects. Nonetheless, forced labour continues to be widely imposed by local authorities for public infrastructure and services work. The situation remains most serious in border areas, where 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. 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 of the Government officials and army officers responsible. Another problem is the lack of public information on, and awareness of, the Government's orders, which prohibit the use of forced labour and the mechanisms which exist to seek redress.

C. Freedom of expression, movement and peaceful assembly

34. The authorities have continued to impose severe restrictions on the freedoms of movement, expression, association and assembly. The Special Rapporteur has received several reports alleging that the Government is involved in crackdowns on initiatives by individuals; even those for non-political purposes, such as the fight against HIV/AIDS. He has also received allegations concerning the prosecution of individuals who have conveyed public information to organizations and individuals inside and outside the country. The Special Rapporteur remains concerned at the severe restrictions on freedom of movement that prevail in general in the country, and in particular at those imposed on specific minority groups.

35. The established legal framework is used to silence the voices of opposition. The Press Scrutiny and Registration Division of the Ministry of Information examines every publication for anything perceived to be anti-regime. Similar censorship boards exercise tight control over art, music, film and all other forms of artistic expression. All authors, publishers, journalists and poets must submit a personal biography to the board of literary censorship. The board then investigates whether these individuals have any association with opposition political parties or connections to other people or groups deemed threatening by the regime. Anyone proved or suspected of having undesirable connections is placed on a blacklist and their work is not allowed to be published.

36. Reporters Sans Frontières placed Myanmar 164 on its press freedom index, five places from the bottom, and the Committee to Protect Journalists ranked Myanmar second on its list of 10 most censored countries. While a number of new publishing licences have reportedly been granted in recent years, very few of them have resulted in the establishment of viable publications because of the excessive restrictions and bureaucratic demands of the Government. In order to have access to information on what is really happening in their country and the rest of the world, many citizens are forced to rely on sources of information such as Myanmar-language radio broadcasts from abroad, which are prohibited by the national authorities. Meanwhile, the Government continues to crack down on other forms of outside communication. The military allegedly raided a number of areas across Myanmar as part of a campaign to confiscate cheap mobile phones smuggled in from neighbouring countries. The Internet also continued to be censored and extensive efforts are made to block e-mail services.

37. The freedoms of assembly and association are also significantly curtailed by the Government. The Unlawful Associations Act of 1908 (later amended) prohibiting unauthorized outdoor assemblies of more than five people is enforced selectively. Despite obligations under domestic law and international treaties to recognize and respect the rights of workers, the authorities have banned trade unions and labour organizations in Myanmar.

38. The Special Rapporteur notes that, in 1955, the Government ratified ILO Convention No. 87 on Freedom of Association and the Right to Organize. The Government has not fulfilled its obligations under that Convention. A complaint against the Government regarding six people recently sentenced to lengthy terms of imprisonment for organizing a meeting of workers is currently being considered by the ILO Freedom of Association Committee. He also notes that ILO has already called on the Government to review and revoke the convictions and release the people concerned.

39. The political parties and social organizations that are allowed to exist have been denied the ability to operate freely and securely. In particular, the regime has targeted its political opponents. The Government has continued to pressure members of NLD and the Shan Nationalities League for Democracy to resign and has arbitrarily renewed the house arrest of NLD leaders Aung San Suu Kyi and Tin Oo. In general, freedom of association exists only for Government-approved organizations, including trade associations, professional bodies and Government-organized groups, such as the Union Solidarity and Development Association, which rely on coercion for their membership.

V. RULE OF LAW

A. Administration of justice and fair trials

40. The Special Rapporteur is seriously concerned about the long-standing culture of non-accountability in many cases of human rights violations, which is deeply rooted in the structures of the regime and national institutions, seriously obstructing the rule of law and the administration of justice.

41. The Special Rapporteur regrets that the judiciary lacks independence and that it has provided a legal basis for abuses of power, arbitrary decision-making and exoneration of those responsible for human rights violations. The capacity of law enforcement institutions and the independence and impartiality of the judiciary must be addressed by the Government urgently. This situation has reinforced inequality and increased the gap between the poor and the rich.

42. Impunity is deeply entrenched and cannot be attributed to lack of institutional capacity alone.

B. Political prisoners and conditions of detention

43. The Special Rapporteur is dismayed to see that, as at January 2008, 1,850 political prisoners were reported in prison. He noted that, instead of stopping unlawful arrests, the Government had accelerated them. The Special Rapporteur continues to receive credible reports on arrests of political and human rights activists, journalists and civilians in relation to the demonstrations of August and September 2007, which are covered in the Special Rapporteur's report to the Council at its seventh session (A/HRC/7/24). According to the information received, at least 70 individuals were arrested, and some 62 of them have been detained since the Special Rapporteur's mission in November 2007.

44. The Special Rapporteur has also received allegations of poor conditions of detention, death in custody, inadequate food and medical treatment, arbitrary arrests without warrants, incommunicado detention, ill-treatment in pretrial detention and defendants who have been denied the right to legal counsel. The Special Rapporteur urges the Government to carry out prompt, full, independent and impartial investigations into these serious allegations.

45. As Myanmar embarks upon new steps of the road map towards democracy, the Special Rapporteur believes it is of the utmost importance to address urgently the issue of political prisoners, whose release would be seen as a gesture of good faith that would help to pave the way to democratization and reconciliation. While, as a matter of principle, the Special Rapporteur continues to advocate for the release of all political prisoners, the Government may wish to consider this question in phases, as suggested by the Special Rapporteur in a letter to the Government in July 2007 and in his latest report to the General Assembly (A/62/223). As a first step, he urges the Government to release all political prisoners at risk, including female political prisoners and those who are elderly or ill.

46. The Special Rapporteur deeply regrets the continued imprisonment of 78-year-old poet and journalist U Win Tin, imprisoned since 1989 and serving a 20-year sentence for “anti-government propaganda and other offences”, for whom the Special Rapporteur expresses serious concern regarding his health; U Win Tin was admitted to the Yangon general hospital on 22 January 2008 for a hernia operation. The Special Rapporteur appeals once more to the Government to release the country’s longest-serving political prisoner, who should have been released in July 2005. According to reports, at least 36 detainees in Myanmar are aged over 60, including NLD members Hla Myint Than, Kyaw San and Maj-Gen Sao Hso Ten, president of the Shan State Peace Council. To date, prisoners have not received any visits from representatives of the International Committee of the Red Cross (ICRC) since the beginning of 2006.

47. The Special Rapporteur deplores the continued detention of NLD and other leaders still serving draconian arrest terms, such as the NLD General Secretary Daw Aung San Suu Kyi, under house arrest, for whom he reiterates his request for immediate and unconditional release. The Special Rapporteur would like to express his concerns regarding the deteriorating health conditions of Shan NLD leader Khun Htun Oo, arrested in 2003 and sentenced to 96 years of imprisonment, suffering since December 2007 from hepatitis B without proper access to medical treatment. His family is allowed to visit him every three months in Putao prison. The Special Rapporteur calls on the authorities to release him, and pending his release to supply medical treatment at the hospital and transfer him to the jail in Yangon, where his family lives.

48. 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 have been detained and sentenced to extraordinarily severe prison terms of 100 years or more.

C. Implementation of anti-terror laws

49. The authorities have for many years justified the imprisonment of hundreds of students, politicians, doctors, lawyers, housewives, farmers and others on the basis that they were seeking to cause “unrest”. Such arrests and sentences have been made possible by vaguely worded security laws, which allow excessively broad interpretation by the authorities of what constitutes

a threat to security, and by legislation that criminalizes the circulation of any written information, whether or not it is published, without the permission of the official censor. The Special Rapporteur is concerned that the 1962 Printers and Publishers Registration Act and other similar laws, which have been used to imprison many political prisoners, places far greater restrictions on rights and freedoms than would be necessary to meet the requirements of national security, public order or morality. The Act requires all books, magazines, periodicals, song lyrics and film scripts to be approved by censors prior to publication or distribution; anyone breaching it may be punished by up to seven years of imprisonment and a fine.

VI. HUMAN RIGHTS AND THE HUMANITARIAN SITUATION

50. 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 in March 2006. The Special Rapporteur encourages the provision of humanitarian assistance to Myanmar and believes that there must be transparency and accountability in the monitoring of that assistance to ensure that it is not misused for personal gain. Myanmar nationals employed by agencies working in the country must be afforded protection against any form of threat or intimidation for their work in humanitarian and development programmes.

A. International human rights and humanitarian obligations

51. The Government of Myanmar has an obligation 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”. Under international law, the Government 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. Those responsible for human rights violations must stand trial and their victims must obtain reparation.

52. 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.

53. Myanmar has not signed the Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) the Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflict (Protocol II) and the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Adoption of an Additional Distinctive Emblem (Protocol III).

54. On 29 June 2007, ICRC issued a public statement denouncing major and repeated violations of international humanitarian law committed against civilians and detainees, including the use of convicts as porters. The Special Rapporteur expresses his concern over these violations and his frustration at the restrictions on the movement of ICRC staff in the affected areas and on entry into places of detention in accordance with their standard procedures. ICRC has consequently failed to adhere to the requests of family members of political prisoners to continue prison visits, as there has been no breakthrough in negotiations with the authorities despite the willingness of ICRC to dialogue.

55. The Special Rapporteur is particularly pleased to note that Myanmar submitted its combined second and third reports to the Committee on the Elimination of Discrimination against Women in June 2007, which will be considered by the Committee at its forty-second session in October 2008. The pre-sessional working group of the Committee met in February 2008 to hold a preliminary review of the report and adopt a list of issues in relation to the country. The Special Rapporteur believes that this effort would have benefited from a larger consultation process within the country as to better reflect the advances and the challenges, including through the support of the expert views in the United Nations agencies and programmes in the country. The Special Rapporteur also believes that the Government will benefit from the expertise of Committee members in view of the widespread sexual violence against women and girls reported in the country. He encourages the Government to seek international assistance to implement the Committee's recommendations meaningfully and also commends the efforts of women's associations inside and outside the country to prepare documentation for the Committee.

56. The initial and second periodic reports under the Convention on the Rights of the Child have been submitted to the Committee on the Rights of the Child; the combined third and fourth periodic report is due in August 2008. This represents an opportunity for the Government to work with civil society, the United Nations system and the Committee on the Rights of the Child, 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.

57. Both committees have examined the reports submitted by Myanmar and adopted recommendations and concluding observations, providing guidance to the Government on how to fulfil its international human rights obligations. The Special Rapporteur reiterates that the recommendations of treaty bodies are an important tool for policymakers and development practitioners. It is therefore important for the Government 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.

B. Systematic human rights violations, impunity and accountability

58. The culture of impunity remains the main obstacle to securing respect for human rights in Myanmar and to creating a favourable environment for their realization. Throughout 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

the 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.

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

60. The Special Rapporteur also believes that impunity and non-accountability are among 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 contributed to the impoverishment of villagers as the military relies on local labour as the result of the incapacity of the Government to deliver support for its activities. The Special Rapporteur has received allegations that villagers have been severely punished because they refused to perform forced labour or have been subject to unlawful appropriation of their land, livestock, harvest and other property. A number of internally displaced people from several villages in Bago Division and Karen State informed the Special Rapporteur that they fled from their villages because they had been harassed to provide free labour force for the construction of roads to newly established camps. Myanmar has increased the number of its battalions nationwide since 1988, and the implementation of self-reliance policies by the local military over the past decade has undermined the rule of law and damaged the livelihood of local communities.

61. Concerns have also been expressed by the Special Rapporteur on various occasions over the use of excessive force in the country linked to the alleged participation of groups, such as the Swan Ah Shin and other militias in violent attacks against civilians.

62. 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 the examination of those responsible for serious human rights violations.

C. Land confiscation, natural resources, forced displacements and migration

63. Access to and control over land and natural resources have long been central to the political economy of Myanmar. In many ethnic minority-populated areas, repeated incidents of forced displacement 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.

64. 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. Arbitrary land confiscations throughout the country are another illustration of the culture of impunity prevailing in Myanmar. While the Government claims that land is “State-owned property”, on the basis of the Land Nationalization Act

of 26 October 1953 conferring land ownership on the State, 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; and opening the way for infrastructure development projects.

65. The *New Light of Myanmar* reported in May 2007 that seven hydropower projects on the Irrawaddy River had been designed to double production of electricity in the country by 2009. The projects are being implemented under an agreement signed in late 2006 with the State-owned China Power Investment Corporation. During construction, a number of human rights abuses in the local areas has been reported following the arrival of Light Infantry Battalion 121. The army is reportedly forcing villagers to pave the routes and is extorting money from local merchants, taking materials from shops and farms without paying. According to an environmental organization, the natural heritage of the Kachin people in the Myitsone area will be destroyed and more than 40 villages near the construction site will be flooded when the dam is built.

66. The extraction of natural resources, notably offshore gas, is providing various interest groups, including the military and foreign companies, with business opportunities. Economic concessions, including some for logging and mining, have been granted. This policy has led to numerous forced evictions, relocations and resettlements, especially in rural areas but also in urban areas, particularly in connection with the move of the capital from Yangon to Nay Pyi Taw. The Special Rapporteur views the ongoing large-scale confiscation of land as a matter of grave concern that will continue to have a dramatic impact on the environmental, political and economic stability of the country if not addressed.

67. The Special Rapporteur is not aware of any provisions in the draft constitution that 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.

68. Protection from land confiscation depends on settlement of the conflicts that have wracked the country for more than half a century. 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 the issue of land confiscation is addressed and transitional justice is introduced.

69. The majority of new incidents of internal displacement and forced migration were concentrated in north-east Karen State and adjacent areas of Pegu Division, still subject to armed conflict. In October 2007, sources estimated that the total number of internally displaced persons in eastern Myanmar was estimated at 503,000. These included 295,000 people in ceasefire zones, 99,000 in hiding in the jungle and 109,000 elsewhere in Myanmar, including in relocation sites. Assistance to displaced people from neighbouring countries is by definition illegal, as it challenges the sovereignty of Myanmar. Cross-border activities carried out include low-profile medical assistance and training of local non-governmental organizations staff, to the benefit of resettled internally displaced persons and other communities in Kachin and Wa ceasefire areas along the China border.

70. The Government does not recognize the existence of internally displaced persons within the borders of Myanmar, let alone its responsibility in preventing and addressing such a situation according to recognized international standards, and restricts access to them, especially in the eastern border zones, by United Nations agencies and other humanitarian actors. Most assistance to internally displaced persons is provided through local non-governmental organizations. The Special Rapporteur welcomes the recent initiative of the Office for the Coordination of Humanitarian Assistance to map assistance activities and to promote coordinated and effective ways to provide humanitarian aid to internally displaced persons in eastern Myanmar.

71. The causes of population movements within Myanmar (internal migration) and beyond its borders (external migration) are closely linked to the serious and systematic abuses of basic rights, and are therefore considered to be a form of forced migration. Their reasons for moving are often similar to those of internally displaced persons or, in the case of cross-border migrants, refugees. The Government has reportedly continued its attempts to limit and regulate international travel through punitive measures imposed on illegal migrants and regular closures of official border crossings. Borders with China, Thailand, Bangladesh and India remained permeable throughout the year and significant undocumented migration and commercial travel regularly take place. Foreigners, including humanitarian agencies seeking entry and access to certain areas of the country to deliver much-needed aid supplies, are also faced with significant restrictions on their freedom of movement.

D. Military operations in ethnic areas and discrimination against minorities

72. The Special Rapporteur has been very concerned about the intensified military campaigns in ethnic areas and their impact on the humanitarian and human rights situation, especially of civilians who are either victims of collateral damage or direct targets. This situation is 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 forced evictions, relocations and resettlements, forced migration and internal displacement. After half-a-century of low intensity civil war, many ethnic minorities in Myanmar living along areas bordering with Thailand are highly vulnerable; most armed ethnic groups have either agreed to ceasefires with the Government or been reduced to exhausted remnants in the jungle. The Government and non-State armed groups have the obligation under international humanitarian law to take appropriate measures to protect the civilian population against the effects of conflict. The Special Rapporteur would like to recall that the norms of international customary law provide, in particular, that attacks must not be directed against civilians.

73. The Special Rapporteur believes that the formal engagement of the humanitarian sector of the United Nations provides stronger, essential support in ensuring the integrity and independence of ongoing assistance efforts. He therefore welcomes the engagement of the Office for the Coordination of Humanitarian Affairs, which appointed a humanitarian coordinator for Myanmar and implemented a number of operational and policy measures agreed upon in the course of a mission by the Assistant Secretary-General in April 2007.

74. Violations of the human rights of ethnic nationalities continue to be reported in Kayin State, in eastern Myanmar (Mon, Shan and Kayah) and in northern Rakhine State. These violations have been perpetrated by military agents and non-State armed groups. The Government severely restricts access to them by United Nations agencies and other humanitarian actors.

75. In addition to direct relocation or eviction orders issued by the military and civil authorities, internal displacement results from a combination of coercive measures, such as forced labour, extortion and land confiscation, which drive down incomes to the point that the household economies collapse and people have no choice but to leave their homes. The conflict and the reported abuses result in large numbers of individuals and entire families seeking refuge in neighbouring countries following their internal displacement.

76. As at 15 February 2008, the population of refugees from Myanmar in Thailand, including the registered population, asylum-seekers waiting for action by the Thailand Provincial Admission Board and students was estimated by the Office of the United Nations High Commissioner for Refugees (UNHCR) at 130,241. This excludes some 14,182 refugees resettled in third countries. According to UNHCR, 123,663 Myanmar refugees temporarily residing in nine camps along the Thai-Myanmar border have been registered. A total of 228 individuals allegedly fleeing Myanmar as a result of the crackdown on the demonstrations held in August and September 2007 have also been registered.

77. It has been reported that, in Karen State, over 40,000 villagers have been internally displaced. At least 10 villagers in Karen State are said to have been killed and thousands rendered homeless owing to an increased army presence over the past months. According to reports in December 2007, there were 187 army battalions in Karen State, including the three districts, with at least 120 to 150 soldiers in each battalion.

78. The Special Rapporteur notes that, in the Northern Rakhine State (Arakan), the Sunni Muslim returnees are subjected to political, economic, religious and social repression by the authorities. The total number of Muslim residents/stateless (Rohingyas) is estimated by non-governmental sources at 728,000. They have been denied citizenship under the 1982 citizenship law, which renders them de facto stateless. They are subject to systematic discrimination and abuse, which, according to various sources, have worsened, especially with regard to the restriction of movement, arbitrary taxation, forced labour, confiscation, forced eviction and arbitrary arrest (including harassment and violence by police forces, death in custody and sexual violence). In addition, people are often harassed (house searches, confiscation of assets) or beaten by police forces, mainly during controls or at checkpoints. Cases of rape of young women and children, perpetrated by different police forces, have been reported.

79. The Special Rapporteur praises the Government of Myanmar for having included Muslim residents as part of its national documentation programme and by initially providing 35,000 persons in northern Arakan State with identity documents (temporary registration certificates). While noting the importance of this process, which can be considered a first step to a decent legal status for this population, and hoping that the pace can be accelerated

so as to include all residents within a reasonable time frame, the Special Rapporteur would also like to express his concern that the temporary registration certificates can neither be used to claim citizenship nor can they be seen as a long-term solution. In this context, he encourages the Government to repeal or amend the 1982 Citizenship Law and ensure the compliance of its legislation with the country's international human rights obligations.

80. The Special Rapporteur is also concerned at recent reports of human rights violations in Kayin State, which include extrajudicial killings, attacks on civilians and forced displacement. These follow the 2006-2007 military offensives in Kayin State perpetrated by the armed forces against civilians. The Special Rapporteur urges the authorities to provide full details of alleged crimes and to press for the cessation of hostilities by all parties. Widespread violence increased in 2007 in mountain areas outside military control in the Toungoo, Nyaunglebin and Papun Districts and in eastern Bago Division. For reliable observers, this is the worst humanitarian situation since the 1996-1997 military campaign.

E. Situation of children

81. The Special Rapporteur is extremely concerned regarding the figures reported by UNICEF in its annual report, entitled "The state of the world's children", that every day hundreds of children under the age of 5 die from preventable diseases in Myanmar. The mortality rate is a critical indicator of the well-being of children. The main cause of child deaths is acute respiratory infection, followed by pneumonia, diarrhoea and septicaemia. According to the report, there has been a drop in child mortality of 1.6 per cent per year in the country between 1990 and 2006.

82. The Special Rapporteur noted with satisfaction that the Special Representative of the Secretary-General for Children and Armed Conflict visited Myanmar in the framework of her mandate (Security Council resolution 1612 (2005)) in June 2007. The Special Rapporteur commended the report of the Secretary-General on Children and Armed Conflict in Myanmar presented to the Security Council Working Group on Children and Armed Conflict (S/2007/666), noting that the issue of recruitment and use of children continues to be a problem in Myanmar both with regard to the Government and various non-State actors, including the Karen National Union, the Karenni National Progressive Party, the Wa State Army and the Shan State Army-South. The work of the Working Group and the mechanism set in place by Security Council resolution 1612 (2005) have led to the commitment by some parties to stop this practice. The Special Rapporteur takes note of the Government's communication of 14 February 2008 addressed to him, in which the Government highlighted the measures it had taken to address the situation of the recruitment of child soldiers in the country.

83. According to a recent report, 968,000 children do not attend primary school. While this figure includes children in a number of areas, it presumably also includes displaced children. According to Government statistics, 97.58 per cent of primary school-age children are enrolled in school.

F. Situation of women

84. The sudden rise in fuel prices on 15 August 2007 demonstrated the already harsh conditions and the everyday struggle to meet basic needs for millions of women and girls in the country. Palaung women, for example, reported to the Special Rapporteur that their purchasing power fell to a record low following the hike in fuel prices, since household budgets were basically allocated to the purchase of food staples such as rice, rather than other products, such as tea, which is their reported main production.

85. The health conditions of female inmates is also an issue of concern. When the Special Rapporteur visited Insein prison in November, he had the opportunity, at his request, to meet in private with Su Su Nway, who had been arrested during the visit of the Special Rapporteur to Myanmar. Su Su Nway reportedly received medical treatment during the month following the visit. It is reported that, since then, she has not had access to her daily medication, resulting in the worsening of her health.

86. The situation of women caught in conflict in ethnic areas is appalling. The Special Rapporteur received reports and testimonies from women who were forced to flee their villages following the burning of their houses and the stealing of their cattle. Although some have sought refuge in neighbouring countries, their living conditions remain desperate.

87. The Special Rapporteur is not aware of any Government initiative to address the consistent and continuing pattern of impunity by members of the military involved in the high number of allegations of sexual violence against women and girls. The failure to investigate, prosecute and punish those responsible for rape and sexual violence has contributed to an environment conducive to the perpetuation of those acts against women and girls in Myanmar.

VII. CONCLUDING REMARKS

88. 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. It should be noted that the crackdown of the demonstrations of August and September 2007, the increased army deployment in certain ethnic areas and the implementation of major development projects are also opening new fronts in the patterns of human rights abuses observed since the establishment of the mandate.

89. The Special Rapporteur deplores the fact that the apparent willingness of the Government to address these problems when the Special Rapporteur first took up his mandate seven years ago has disappeared. The recommendations formulated by the General Assembly (the latest being resolution 62/222), the Security Council, the Human Rights Council (notably resolutions S-5/1 of the special session of 2 October 2007 and 6/33), the Commission on Human Rights, the Secretary-General and his Special Adviser, the thematic special procedures mandate-holders, as well as those advocated by the Special Rapporteur and relevant human rights treaty bodies have regrettably not been implemented.

90. The Special Rapporteur is convinced that Myanmar would benefit from more active cooperation with his mandate. He insists that, though it is his obligation to go public about allegations of human rights violations, that does not exclude a constructive and continuous dialogue with the Government. These two elements of his mandate can contribute to a new dynamic for the improvement of the situation of human rights in the country.

91. In this last opportunity to address the Council as Special Rapporteur on the situation of human rights in Myanmar, he would like to share some reflections on his experiences of the last seven years.

92. The Special Rapporteur has made every effort 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, have preferred to denounce his findings as inaccurate or biased instead of investigating the allegations reported by him. Combating impunity is essential for the promotion and protection of human rights. The investigation of reported abuses and punishment of perpetrators is necessary for the restoration of democracy and the rule of law.

93. The Special Rapporteur reaffirms that he has maintained his independence, impartiality and objectivity in weighing up the information provided by various sources. He has reported in an honest manner on the progress made and obstacles faced by the Government in promoting and protecting human rights. He is distressed to conclude that the Government of Myanmar refuses to cooperate with both his mandate and the Council.

94. The Special Rapporteur warmly thanks all the Member States, United Nations Resident Coordinators and United Nations country teams, in particular his colleagues in Myanmar, international and regional organizations as well as civil society organizations and scholars who have supported his mandate.

95. It is hoped that the ASEAN human rights mechanism, if established in accordance with international standards and norms, will assist Myanmar in fulfilling its international human rights obligations.

96. The Special Rapporteur would like to reaffirm what he has previously stated to the Council: humanitarian assistance cannot be a hostage to politics. Any decision on humanitarian assistance must be guided solely by the best interests of children, women, vulnerable groups and minority communities. 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.

97. The Special Rapporteur would like to conclude by praising all human rights defenders inside and outside the country for their courage and commitment in the promotion and protection of the human rights of the people of Myanmar.

98. The Special Rapporteur believes it is important that Member States 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 goal the encouragement of an effective democratic transition and the promotion of higher standards of living and the protection of human rights of the people of Myanmar.

VIII. RECOMMENDATIONS

99. **The Special Rapporteur's recommendations made in his previous reports remain valid in view of the prevailing situation in Myanmar and the non-implementation by the Government of those recommendations.**

100. The Special Rapporteur calls on the Government of Myanmar:

(a) **To urgently release all political prisoners at risk, including female political prisoners and those who are elderly and ill, as a first step towards the release of all political prisoners;**

(b) **To resume, without further delay, dialogue with all political actors, including NLD members and representatives of ethnic groups, with a view to having their views included in the drafting of the constitution prior to its finalization;**

(c) **To take all necessary steps to secure the right to freedom of opinion and expression as well as peaceful association of all persons and to repeal and reform laws that circumscribe fundamental freedoms as part of the road map to elections;**

(d) **To end the ongoing prosecution of political and human rights activists and to ensure free and fair trials in accordance with international recognized standards and the requirements of the due process of law;**

(e) **To take urgent measures to eliminate discriminatory practices against ethnic groups and to ensure that no further discrimination is carried out;**

(f) **To put an end to the restrictions on the peaceful exercise of fundamental freedoms by human rights defenders, victims of human rights abuses and their representatives;**

(g) **To establish a mechanism at the local level to ensure coordination on cross-border health issues and to implement bilateral agreed actions;**

(h) **To seek international technical assistance with a view to establishing an independent and impartial judiciary that is consistent with international standards and principles;**

(i) To take steps to improve conditions of detention and to ensure urgent medical treatment for prisoners, and to re-engage with ICRC in providing free access to detention centres;

(j) To authorize access to conflict-affected areas by the United Nations and associated personnel, as well as personnel of humanitarian organizations, and to guarantee their safety, security and freedom of movement;

(k) To respect its obligations under international human rights and humanitarian law in the areas affected by armed conflict, to put an end to the recruitment of child soldiers, and to ensure the efficient work of health providers in the conflict areas, including a serious investigation of the cases of harassment and abuses against health personnel;

(l) 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;

(m) To establish an effective mechanism to ensure that all officials who commit human rights abuses are subject to strict disciplinary control and punishment as an essential step to put an end to the culture of impunity that prevails throughout the country;

(n) To end illegal land confiscation in Myanmar and to ensure that land use and ownership issues are addressed in the constitution;

(o) To continue to collaborate with the Secretary-General to support the exercise of his good offices mission.

101. The Special Rapporteur calls on the international community and the United Nations:

(a) To promote a framework of principles with respect to Myanmar in order to allow Member States to pursue a plurality of strategies and cooperation in accordance with their particular strengths and capacities;

(b) To build on existing programmes of humanitarian assistance and support for health, education and human rights, in particular through support to civil society development;

(c) To engage in a serious dialogue with the Government of Myanmar on an adequate response to the situation of conflict in eastern Myanmar.
