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Report of the Special Rapporteur on the situation of human rights in Myanmar, Paulo Sérgio Pinheiro, mandated by resolution S-5/1 adopted by the Human Rights Council at its fifth Special Session*

* The annex to the present report is circulated as received in the language of submission only.

Summary

At its fifth Special Session dedicated to the situation of human rights in Myanmar, the Human Rights Council, by its resolution S-5/1 of 2 October 2007, requested "the Special Rapporteur on the situation of human rights in Myanmar to assess the current human rights situation and to monitor the implementation of this resolution, including by seeking an urgent visit to Myanmar, and to report to the resumed sixth session of the Human Rights Council" and urged "the Government of Myanmar to cooperate with the Special Rapporteur". On 19 October 2007, the Government officially extended an invitation to the Special Rapporteur and noted that he will be "accorded full cooperation". The Special Rapporteur conducted an official mission to Myanmar from 11 to 15 November 2007. He had additional meetings with the diplomatic community, United Nations agencies and civil society organizations in Bangkok from 16 to 17 November 2007.

The present report contains findings gathered by the Special Rapporteur prior to and during his official mission, with a focus on the current human rights situation, including the human rights implications of the crackdown on demonstrations and the severe reprisals. While covering developments from August until the end of the curfew on 20 October 2007, the report focuses in particular on the tragic events that took place in Myanmar from 26 to 29 September 2007. The report finally contains a number of recommendations by the Special Rapporteur.

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Introduction

1. On 15 August 2007, the Government of Myanmar increased the retail price of fuel by up to 500 per cent. This decision has drastically affected the livelihoods of the people of Myanmar. The population, which has seen its standards of living severely curtailed over the last few years, reacted strongly to this decision and started small peaceful demonstrations throughout August and into early September. On 5 September during a demonstration in Pakokku a number of monks were beaten up. The population and the monks, dissatisfied with this action, continued expressing their discontent over economic living conditions and undertook large peaceful demonstrations from 18 to 26 September across the country including in Yangon, Mandalay, Pakokku and Sittwe.

2. From 26 to 29 September, the State and its agents cracked down severely on peaceful demonstrators. Through the lens of the international media, the world witnessed killings, severe beatings and mass arrests of people. During the crackdowns, the security forces comprising police and army or riot police (Lone Htein), as well as members of the Union Solidarity and Development Association (USDA) and the Swan Ah Shin (SAS) militia, used excessive force against civilians, including unnecessary and disproportionate lethal force.

3. Following the crackdowns, several reports of killings, severe beatings and arrests were received as well as allegations of torture, deaths in custody, relatives of people in hiding being taken hostage and lack of access to medical treatment for the wounded. Allegations were also received that the bodies of some of the people reportedly killed during the crackdown had been burned. The Government of Myanmar provided figures that, for many independent observers, may have underestimated the real impact of the repression.

I. METHODOLOGY AND ACTIVITIES OF THE SPECIAL RAPPORTEUR

4. The Special Rapporteur undertook a five-day visit to Myanmar, from 11 to 15 November 2007, at the invitation of the Government. He would like to express his gratitude to the Government for its hospitality and for having accommodated his proposed agenda and shared with him several records and written chronologies of the events, as well as providing access to most of the places he had asked for. The Special Rapporteur stresses that his mission cannot be considered as a fully fledged fact-finding mission. The conditions for an independent and confidential investigation mission would require a different framework. In this context, the Special Rapporteur notes that his mission should be seen as an initial part of a process and that the authorities have expressed willingness for him to return on follow-up missions.

5. In the new capital, Nay Pyi Taw, the Special Rapporteur met with Major General Maung Oo, Minister of Home Affairs; U Nyan Win, Minister of Foreign Affairs; U Aung Kyi, Minister of Labour and Liaison Minister with the General Secretary of the National League for Democracy (NLD); U Soe Tha, Minister for National Planning and Economic Development; Brigadier General Thura Myint Maung, Minister of Religious Affairs and U Zaw Min, Joint Secretary-General of the USDA. He further participated in a round table with 20 members of

the newly-established Government human rights body. In his annual report to the Human Rights Council, the Special Rapporteur will cover various important thematic issues raised with the authorities, to be further developed during his forthcoming missions to the country.

6. The Special Rapporteur met in the presence of Government officials, with the United Nations resident coordinator and the country team, with over 20 ambassadors and representatives of the diplomatic corps, as well as with representatives of international non-governmental organizations (NGOs). He also met with representatives from national ethnic groups and women's development associations.

7. In Yangon, the Special Rapporteur held consultations with senior officials from, among others, the Ministry of Home Affairs, law enforcement agencies, the Yangon Peace and Development Council and the Yangon General Hospital. He was unfortunately not able to meet with military commanders. The Special Rapporteur also visited the former Government technical college (used during the demonstrations as a detention facility), the No. 7 Police Battalion Control Command Headquarters in Kyauktan, Thanlyin and the Htain Bin crematorium.

8. During his second visit to the Insein prison, he was authorized to hold one-to-one meetings with five detainees: Win Tin, the oldest political prisoner who has spent 18 years in prison and for whom the Special Rapporteur is asking, as on previous occasions, for his immediate release; Su Su Nway, a prominent activist who was arrested during the Rapporteur's visit; Min Zeya and Than Tin (otherwise known as Kyi Than) both "88 Generation" students and Maung Kan, NLD member. The Special Rapporteur had, by letter to the authorities, requested to meet with a list of 21 detainees as well as Su Su Nway and U Gambira, seeking clarification regarding the charges against them.

9. The Special Rapporteur met with senior abbots of the State Sangha Maha Nayaka Committee (the State Governing Body of the Buddhist Clergy), the Kya Khat Waing Monastery in Bago and the Board of Trustees of the Shwedagon Pagoda. Furthermore, he visited two monasteries (Nan Oo and Ngwe Kyar Yan) where he had discussions about the incidents that occurred during the demonstrations. He was authorized to meet in private with a group from the 92 monks of the Ngwe Kyar Yan monastery who had been transferred to a different location.

10. The Minister for Information and Secretary of the National Convention Convening Commission, Brigadier General Kyaw Hsan, briefed the Special Rapporteur about developments regarding the seven-step road map towards democracy. While the first and second steps have completed the fundamental principles and detailed principles adopted by the National Convention in drafting the Constitution, the third step is being implemented by the establishment of the Constitution Drafting Commission. It was noted that the NLD and other ethnically based parties will only be included in step four, when the draft Constitution is to be endorsed by the majority through national referendum. The Minister noted that 50 detailed principles concerning human rights are in conformity with international norms.

11. The Special Rapporteur noted that the Government State Peace and Development Council (SPDC) granted amnesty for 8,552 prisoners, including 33 foreigners, on 3 December to mark the functioning of the Constitution Drafting Commission and the completion of the National Convention. Among them, were only 10 political prisoners according to sources.

12. The Minister of Labour and Liaison Minister with the General Secretary of the NLD made positive reference to the collaboration with the International Labour Organization (ILO) following the signing in 2007 of a memorandum of understanding providing a mechanism to enable victims of forced labour to seek redress. He expected forced labour to be eradicated in the coming months or years. The Minister noted the effect of international sanctions on employment.

13. The Special Rapporteur met with the Women's Development Association and Women Affairs Federation Secretariat, and discussed their contributions to the country reports due to the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child. They were not in a position to provide the Special Rapporteur with information on cases of women detained in consequence of and during the manifestations.

II. UNDERLYING CAUSES OF THE EVENTS OF SEPTEMBER AND OCTOBER 2007

14. Since the military coup of 1962, the economy in Myanmar has steadily declined, making it progressively more difficult for people to meet their basic needs. Despite a wealth of natural resources, the country suffers from widespread poverty. A once stable economy has been damaged through decades of misguided economic policies, rampant corruption, cronyism, and disproportionate spending on the military. A significant percentage of the population has seen their livelihoods severely curtailed as a result of human rights violations, including forced labour, arbitrary taxation and extortion, forced relocation and land confiscation.

15. Over the last two years, the Special Rapporteur has received several reports alleging the Government's involvement in cracking down on several initiatives by people to organize themselves even for non-political purposes, such as social and economic issues. Poor economic conditions have led to a number of demonstrations and arrests since early 2007. Concerns over the economic situation were raised throughout the year, even before the significant increase in the retail price of fuel in August. On 22 February, the Government arrested nine protesters who participated in a peaceful demonstration against the worsening economic and social standards. They were later released without charge on 27 February. More protests and arrests took place between late February and April. Since then, there have been smaller, sporadic protests throughout the country. In June, the media reported that a protester in Rakhine State was held for two days after he staged a one-person demonstration against inflation that drew crowds of onlookers, but was later released. On 1 May, 33 persons were arrested in association with two separate discussions on workers' rights. While most were subsequently released, six organizers of the discussion at the American Center were charged with sedition, forming an illegal organization and having contact with illegal organizations. Thurein Aung, Wai Lin, Myo Min and Kyaw Win were each sentenced to 28 years' imprisonment, while Nyi Nyi Zaw and Kyaw Kyaw each received 20-year sentences. This provides a striking illustration of the climate of repression that prevailed in Myanmar before the peaceful protest of August 2007.

III. THE FACTS - CIRCUMSTANCES AND MAJOR INCIDENTS

A. The peaceful protests of August 2007

16. On 19 August following the fuel price increases, several dozen people, including prominent "88 Generation" student leaders, marched through Yangon in peaceful protest. Small sporadic and peaceful demonstrations by social and political activists, continued over the following week, despite the arrest of over 100 people, including almost the entire leadership of the 88 Generation group, the former chairperson of the Burma Labour Solidarity Organization and Human Rights Defenders and Promoters leaders, former political prisoners, university students, members of the NLD and the Myanmar Development Committee. The authorities deployed SAS militia to quickly and forcibly disperse any gatherings of activists.

B. The Pakokku incident: a turning point

17. The fuel hike caused large protests, but it was not until violence was used to quell a protest by Buddhist monks in Pakokku (Magway Division), about 600 kilometres north-west of Yangon, that the situation dramatically escalated. The town is a well-known religious centre in Myanmar, situated in a division that has seen a stark decline in the sustainability of livelihoods over the last decade.

18. On 5 September, a peaceful demonstration of Buddhist monks in Pakokku was forcibly dispersed by the police and the army, as well as SAS militia. A number of live rounds were reportedly fired over the heads of the monks, and members of the militia and the security forces then severely beat a number of monks, some of whom were first tied up. Rumours circulated that one of the monks had subsequently died, but this was never confirmed, though widely believed. The next day, the monks took as hostages a few military officials who went to the monastery, according to some reports, to order the Buddhist monks to stop participating in anti-Government marches, while other reports say they came to apologize to the monks. Vehicles were reportedly burned as the monks were angry over the arrest and beatings of monks during the peaceful protest the day before.

19. On 9 September, a newly-established group called the All Burma Monks Alliance (formed by a number of existing organizations of Buddhist monks in Myanmar) issued a statement containing four demands for the authorities: (a) to apologize for the Pakokku incident; (b) to reduce commodity and fuel prices; (c) to release all political prisoners including Daw Aung San Suu Kyi and those detained for recent protests; (d) to enter into a dialogue with democratic forces with a view to achieving national reconciliation and resolving the suffering of the people. The statement indicated that the authorities had until 17 September to comply with these demands or face a religious boycott. This choice of deadline was politically symbolic, since 18 September is the anniversary of the 1988 coup that brought the current military regime to power.

20. As the Government did not respond to these demands, large peaceful demonstrations led by monks started on 18 September, with the participation of civilians in the days that followed. The monks also withdrew their religious services from the military and their families, symbolized by the "overturning of the alms bowl" (known in Pali as "patam-nikkujjana-kamma"), whereby a number of monks participating in the demonstrations carried their alms bowls upside down in an emblematic gesture. This is an especially strong act, as it precludes the military leadership and members of their families from making merit - a very important part of Buddhist spiritual and religious life. Only under the most compelling moral circumstances will a monk refuse alms that have been offered. Under the monks' code of discipline, the Vinaya Pitaka, the boycott was formally agreed upon and announced in assemblies on 18 September.

21. This is not the first time Buddhist monks have staged demonstrations in Myanmar. Indeed, there is a long tradition of social and political militancy in the monasteries of the country. Several of Myanmar's anti-colonial revolts were, at least partially, organized and led by the clergy. Monks were again actively involved in the pro-democracy uprising that swept the country in 1988. The then State Law and Order Restoration Council (SLORC) launched a crackdown, monasteries were raided and as many as 300 monks were disrobed and imprisoned.

22. This time, the crucial difference is that the involvement of the monks found its origin in the harsh conditions of living imposed on the people of Myanmar. The worsening standard of living is also adversely affecting the livelihoods of the monks, squeezed between the increased demands of the people and the meagre offers made to them. Monasteries have increasingly been overrun by the desperately poor, who seek shelter and sustenance from the Sanghas, but have had to turn people away because lay contributions cannot sustain the monks and those they would normally take in. The monasteries are the only social safety net that exists for most communities in the country. Although the statements of the All Burma Monks Alliance were explicitly political from the outset, the majority of monks went to some lengths to show that their purpose in taking to the streets was to give expression to the socio-economic hardships that they and the people were facing, rather than the pursuit of any political agenda.

23. Thus, during the first days of the monks' demonstrations in Yangon after 18 September, the lay population was requested to keep separate from the demonstrations and not to chant political slogans. In addition to reinforcing the message to the authorities that the monks' actions stemmed from genuine social and religious grievances, it was important to ensure the broadest possible participation of monks, including the apolitical and more conservative elements. Yet, as the protests continued to increase in scale, a group of young activist monks gradually assumed a leadership role on the streets. There was increasing involvement of students, political parties, civil society groups, and the general population in the demonstrations.

24. The scale of the demonstrations and the leadership role of the monks took everyone by surprise. In previous cases, it had been easier for the authorities to justify their actions as being directed not at Buddhist monks per se, but at radical elements who had violated the Buddhist disciplinary code by entering the political realm ("bogus monks", in the regime's parlance).

While hardly convincing to most, such an explanation does have a certain resonance with conservative abbots and laity, who believe that monks should be completely disconnected from worldly affairs. In the present case, not only was the level of violence and insult against monks and monasteries particularly shocking, the essential grievances expressed by the monks were non-political and very widely shared.

25. For the Government, through the voice of its Minister for Religious Affairs, the root causes of the events of September and October found their origin in the "perpetration of internal and external destructionists, who are jealous of national development and stability, to harm all the Government's endeavours". The Minister also referred to "global powers" from outside who dislike the proposed Constitution as it contains stipulations on self-determination and prohibits the stationing of foreign troops on Myanmar soil, adding that these powers in collusion with "destructionists" are stirring up the current "disturbances".[1] The Minister for National Planning and Economic Development told the Special Rapporteur that fuel prices in Myanmar are still lower than in neighbouring countries and that the motive of the fuel price rises was used against the Government for political reasons. A further elaboration of the Government's view of the protests is contained in the annex.

C. The peaceful protests of September 2007 (18-25 September 2007)

26. From 18 to 25 September the peaceful protests of the monks grew in numbers and spread out across the country including Yangon, Mandalay, Pakokku and Sittwe. While few reports have been received on the demonstrations organized in the provinces, a detailed account of the sequence of events in Yangon from 18 to 25 September was verified through various reliable and independent sources. During this period peaceful protests occurred on a daily basis, growing in numbers, but were not immediately suppressed by the authorities (see annex).

D. The excessive use of force against peaceful demonstrators (26-29 September 2007)

27. On 26 September, monks and civilians continued to gather in large numbers. The security forces (army and riot police) as well as non law enforcement officials, including USDA members and SAS employed excessive force for the first time since Pakokku using tear gas and smoke grenades, severe beatings with wooden and bamboo sticks, rubber batons and slingshots (catapults), which were followed by the use of rubber bullets and live rounds. According to one eyewitness "shots were fired by the security forces, first in the air, then at the demonstrators".

28. Testimonies refer to the use of tear gas. Information from eyewitnesses interviewed by an independent source, however, indicates that this was most likely to have been smoke grenades, since the fumes did not cause the usual physiological reactions triggered by tear gas. According to other sources, both were used. Whereas fire brigades were reportedly at the scene,

[1] New Light of Myanmar, 25 September 2007.

water cannons were not used to disperse the crowd as was done in 1988. Reports from demonstrators and photographs of spent cartridges carried in the media suggest that the rubber bullets used were not the large "baton round" type, but metal ball bearings coated with a layer of rubber, capable of inflicting fatal injuries, particularly at short range (less than 40 metres). There were many arrests, numerous injuries (including of monks and nuns), and several reported deaths (see annex).

IV. PRELIMINARY FINDINGS

29. As a result of his investigations to date, the Special Rapporteur would like to present the following preliminary findings to the Human Rights Council, recalling that his visit cannot be considered as a full-fledged fact-finding mission, which would require a number of conditions, such as independent access to all places and people, to verify the information collected.

A. Excessive use of force against civilians, including use of unnecessary and disproportionate lethal force

30. The Special Rapporteur found that security forces, including the army and riot police, used excessive force against civilians from 26 to 29 September 2007, in spite of several international appeals calling upon the Government of Myanmar to show restraint in policing the demonstrations. This included the use of live ammunition, rubber bullets, tear gas and smoke grenades, bamboo and wooden sticks, rubber batons and catapults (slingshots). This largely explains the killings and severe injuries that have been reported. Victims included monks, as well as men, women, and children who were either directly participating in the protests or were onlookers in the vicinity. In some cases these beatings were administered indiscriminately, while in other cases the authorities deliberately targeted individuals, chasing them down to beat them. At least one demonstrator, Ko Ko Win, an NLD member, died as a result of injuries sustained when he was beaten near Sule Pagoda in Yangon on 27 September. Allegations of targeted killings and the use of snipers were also received but not yet verified.

31. In a letter dated 1 November 2007, the Special Rapporteur requested from the Government of Myanmar a list of the people who died. The Government has acknowledged the death of 15 people during the demonstrations and provided full details as to the causes of death. However several reports of killings indicate that the figure provided by the authorities may greatly underestimate the reality. To date the Special Rapporteur has received information regarding the killing of 16 additional persons as a result of the crackdown on the demonstrations in September and October, in addition to the 15 individuals included in the information provided by the Government. The Special Rapporteur has transmitted this information to the Government for clarification.

32. According to information received and based on credible eyewitness reports, there were more than 30 fatalities in Yangon associated with the protests on 26-27 September 2007, primarily on 27 September and in the vicinity of Sule Pagoda. No deaths were reported during the demonstrations outside Yangon. According to diplomats more than 500 protesters remain in detention in Yangon, Mandalay, Sittwe, Mytkyina, and Mawlamyine.

33. Among those killed by the security forces during the demonstrations was the Japanese photojournalist, Kenji Nagai. The TV footage of the killing of Mr. Nagai raises the possibility that he may have been deliberately targeted from a short distance rather than caught in crossfire between the security forces. While the Tokyo Metropolitan Police Agency conducted an autopsy on Mr. Nagai's body on 4 October at Kyorin University (Mitaka City, Tokyo),[2] his post-mortem certificate was also provided to the Special Rapporteur by the Htain Bin crematorium.

34. During his visit to the Htain Bin crematorium, the Special Rapporteur was informed by the authorities that during the disturbances in September, the Yangon General Hospital transferred 14 dead corpses, with the relevant burial certificates, to the crematorium. These were consequently registered and cremated accordingly. The hospital certified 11 deaths due to injuries (mostly firearms), 2 deaths due to illness and 1 death due to drowning. The Crematorium was not able to identify three corpses. The families and relatives of the identified bodies were reportedly able to participate in the cremations. The non-identified corpses were cremated on 1 October. It was noted that 25 persons are cremated on a daily basis at this crematorium and that corpses were only received from the General Hospital. While the Special Rapporteur was informed that there were no monks among the 14 corpses, the pictures did not provide sufficient indications to confirm this. Pictures and burial certificates from the register were shared with the Special Rapporteur.

35. Despite his request, the Special Rapporteur, was not given access to the second crematorium in Yangon, the Ye Way crematorium under the control of the Police Controller and Central Department, where credible sources report a large number of bodies (wrapped in plastic and rice bags) were burned during the night, between 4 a.m. and 8 a.m., on 27-30 September. Sources indicate that it was not usual practice for the crematorium to operate during the hours in question, that normal employees were instructed to keep away, and that the facility was operated on those nights by State security personnel or State-supported groups. At least one report indicates that some of the deceased being cremated had shaved heads and some had signs of serious injuries. The Special Rapporteur has expressed his concerns to the Government regarding these allegations and hopes that future investigations will shed light on these alleged cremations during the nights of the incidents in Yangon. The remains of the deceased should be returned to families or relatives in order to enable them to give their dead proper funerals in accordance with their religion and belief.

36. The Special Rapporteur asked officials from the General Hospital how many demonstrators were wounded, following allegations that they were only treated in the public hospital. The General Hospital recorded 30 admissions in Yangon, of which 23 were accidents and emergencies. According to the list, provided to the Special Rapporteur following clearance from the capital, the patients suffered injuries due to gunshots and assaults, among others. The Special Rapporteur enquired whether the wounded were detained. Once received in the emergency ward and after being sent to the general surgery wards, some were discharged. The information was also provided to the security forces who interviewed the patients at the hospital.

[2] Sankei News, 5 October 2007.

37. The use of lethal force by law enforcement officials from 26 to 29 September 2007 in Myanmar was inconsistent with the fundamental principles reflected in the basic international norms deriving from international customary law.[3] They ignored the principles of necessity and proportionality which are included in article 3 of the Code of Conduct for Law Enforcement Officials and its commentary. Article 3 states that: "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty." The commentary appended to this provision explains that "in no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved". Similarly, in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the most general statement on the use of lethal force, principle 9, provides that: "In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life." Whereas the Myanmar Code of Criminal Procedure provides for the use of civil force (art. 128) and military force (art. 129) to disperse an assembly, it also provides for the use of as little force as is consistent with dispersing an assembly, in order to avoid "injury to person and property" (art. 130). From 26 to 29 September, the security forces without doubt exceeded the limits of the power conferred on them by the law.

38. The Special Rapporteur found that whereas the Government and its agents showed some diligence in preventing a massacre, the decision by the security forces to shoot to kill and to severely beat protesters causing death constitutes an arbitrary deprivation of life and violates the right to life, as the lethal force used was unnecessary and disproportionate.

B. The use of non law enforcement officials

39. The Special Rapporteur considers that the participation of USDA members and SAS militia largely contributed to the excessive use of force against the peaceful protesters. It is unfortunate that the Myanmar Code of Criminal Procedure provides for the use by the authorities of civil forces to disperse assemblies (art. 128). In addition to Government soldiers and riot police, members of the Government-backed USDA and Swan Ah Shin (SAS) militia took violent action against the protesters with Government acquiescence or approval. Whether this group acted on direct Government orders is not clear. There is evidence that the Myanmar authorities have been complicit in the abuses perpetrated by these groups, or negligent in failing to intervene, punish or prevent them.

40. The USDA was established by the State Peace and Development Council (SPDC) in 1993 and in 2006 announced its intention to become a political party and field candidates in the next election. The Special Rapporteur expressed concerns in his previous reports over various allegations of involvement by members of USDA in acts of political and criminal violence. The existence of the SAS was first reported in 2003 when they were allegedly involved in the tragic incident of Depayin.[4] According to sources, the SAS was reportedly already involved in

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[3] The principles of international human rights law applicable in such contexts draw significantly upon the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

[4] The Depayin massacre occurred on 30 May 2003, when at least 70 people associated with the NLD were allegedly killed by a Government-sponsored mob.

incidents in 1997. The SAS, which has no legal status, is a grassroots force composed of civilians who reportedly assist the authorities in providing law enforcement, paramilitary services and military intelligence without being on the payroll of the Government. It includes members of the fire brigades, first aid organizations, women's organizations and USDA, as well as criminals/convicts released from jails, members of local gangs and the very poor and unemployed.

C. Arbitrary arrest and detention

41. From 18 September to the end of the curfew on 20 October, people were arrested on a daily basis with massive numbers of arrests on 26, 27, 28 and 29 September. It should be stressed that since the lifting of the curfew on 20 October, the Special Rapporteur continues to receive reports alleging the arrests of people, as well as further releases. After reviewing various reports and testimonies, it is estimated that between 3,000 and 4,000 people were arrested in September and October, and between 500 and 1,000 are still detained at the time of writing. In addition, 1,150 political prisoners held prior to the protests have not been released. Most of the arrests took place during the crackdown on the demonstrations and the night raids carried out by the security forces and non law enforcement officials (USDA and SAS). The analysis of several credible reports has strengthened the Special Rapporteur's view that relatives of people in hiding have also been taken as hostages during the raids. In the context of the preparation of his visit, in a letter dated 1 November 2007 to the Government, the Special Rapporteur requested the lists of people arrested, those released and the persons who are still detained, including information on their whereabouts, their detention conditions and the charges for their detention. He further asked under which law they were kept in custody.

42. The Minister of Home Affairs informed the Special Rapporteur that 2,927 persons have been arrested for investigation since the start of the crackdown in September 2007, with 2,836 having been released, and 91 remaining in detention. Most of them are detained on charges under the criminal code for terrorism while others are still under investigation. At least 15 individuals arrested in relation to the peaceful protests since August have been sentenced to prison terms of up to 9.5 years. Five of these individuals were reportedly tried in proceedings likely to have been closed and grossly flawed, in a court inside Thayet prison, Magway division on 24 and 26 September according to reliable sources. It should be noted that the Special Rapporteur has not been able to verify the figures collected.

43. The Special Rapporteur is particularly concerned about the numerous accounts of the use of large capacity informal detention centres, unacknowledged by State authorities, which are regarded as "secret" facilities. Detainees have included children and pregnant women. According to various reports, people have been held in six places of detention, including Government Technology Institute (GTI) in Insein Township, Police Centre No. 7 in Thanyin Township, Aung Tha Paye in Mayangone Township, Riot Police No. 5 in Hmawbe Township, Plate Myot Police Centre in Mandalay and Kyaik Ka San Interrogation Centre in Tamwe Township. Since many people have been released, it is believed that the remaining detainees are kept in custody in a few places of detention, including GTI and Police Centre No. 7, locations that the Special Rapporteur visited during his official mission.

44. During his visit to GTI the Special Rapporteur was informed by the police that from 27 September to 15 October, security forces took 1,930 demonstrators there (under responsibility of the Yangon Community since July 2007) out of which 80 persons were sent to Insein prison as violators of the security laws. The others were reportedly immediately released. He was presented with a detailed map indicating the detention rooms (women and men were separated) which he visited. He was informed that GTI, which is no longer a technical college, was planned as a shelter in case of emergency (in coordination with the Red Cross of Myanmar). While GTI could only host 1,500 persons at a time, Government officials informed him that 2,500 blankets were made available; 488 persons had reportedly been sick under the responsibility of 5 doctors and 15 nurses; and 5 persons were transferred to the General Hospital for urgent treatment. The Special Rapporteur visited the rooms where 153 women and 140 men had been detained (70 per room). One hundred police officers had ensured security. The Special Rapporteur was told information on the injuries and investigations of the detainees was classified.

45. The Special Rapporteur also welcomed the access provided to No. 7 Police Battalion Control Command Headquarters in Kyauktan, Thanlyin, located around 60 km from Yangon. It was reported that those brought here were being moved in and out, as it had a maximum capacity of 30 at a time. The facility is under the control of the Security Force Battalion of Southern District Township, their main activity being VIP escort for embassies, security in Nay Pyi Taw and working along the border areas. The Special Rapporteur asked about their participation in law enforcement activities, to which they noted that they were responsible for receiving those detainees sent by other security forces. He further asked why the suspects were brought to such an isolated and remote area, in response to which he was told that the facility covers Yangon downtown area. The authorities noted that those involved in the demonstrations were to be separated, interrogated and investigated. When asked by whom the detainees were interrogated the authorities noted that this was not a place for interrogations, but only investigations. There were reportedly no wounded and all the people brought to Kyauktan had been transferred back, although it was not specified where. Despite his request, the Special Rapporteur was not granted access to the records, which were to be cleared by the Minister for Home Affairs and Police Chief.

46. The Special Rapporteur was informed that 10,000 prisoners are detained in Insein prison, managed by 500 guards, with 70 detainees reportedly placed in a separate building. Prisoners do receive visits from friends and family members, medicine, parcels and newspapers but are only allowed to write letters. Most prisoners need medical care and are in poor health due to the prison environment. Many of the 88 Generation Students are weak and can barely walk. The Special Rapporteur noted that most political prisoners from the NLD and the 88 Generation Group, as well as the monks, are labelled as terrorists by the authorities and had been prosecuted on the basis of the security law. Many political prisoners are in the so-called Insein Annex Dormitory 5 Building where not even prison guards are allegedly allowed access (70 detainees are in cell No. 8). The Special Rapporteur was provided with commercial satellite pictures of the place. Min Ko Naing was reportedly placed in the Annex a day before the Special Rapporteur's arrival at the Insein prison. Others in this dormitory are Htay Kywe, Min Zeya, Mie Mie, Mya Aye, Aung Thu, Ko Ko Gyi, Aung Naing, U Pyi Kyaw and U Zin Payit.

47. Credible sources report that detainees were held in degrading conditions in a special punishment area of Insein prison, commonly known as the “military dog cells”, a compound of 9 tiny isolation cells measuring 2 meters by 2 meters constantly guarded by a troop of 30 dogs. The cells lack ventilation or toilets, and the detainees (mostly political prisoners) have to sleep on a thin mat on the concrete floor and are only allowed to bathe with cold water once every three days for five minutes. A recently released detainee testified that he was made to kneel bare-legged on broken bricks and also made to stand on tiptoe for long periods. Further reports confirm that monks held in detention were disrobed and intentionally fed in the afternoon, a time during which they are religiously forbidden from eating.

48. State security groups have continued to search for and detain specific individuals suspected of involvement in the anti-Government protests primarily through night raids on homes. It has also been confirmed that the authorities have resorted to arbitrary and unlawful detention of family members or close friends and suspected sympathizers of protesters currently in hiding. This constitutes hostage taking - explicit or implicit pressure on the suspected protesters to come forward as a condition for releasing or not harming the hostage. It is a violation of fundamental rules of international law. For example, before Thet Thet Aung was detained on 19 October, her mother and mother-in-law, otherwise unwanted by the authorities, were arbitrarily detained by Myanmar authorities seemingly to intimidate and pressure Thet Thet Aung to come forward. Both have since been released, though her mother was kept in detention until 2 November. Similarly, before poet Ko Nyein Thit was detained by Myanmar authorities, his wife, Khin Mar Lar, was taken into custody on 1 October and not released until 21 October. When Di Nyein Lin evaded arrest on 12 October, the owner of the house in which he was hiding, Thein Aye, was arbitrarily arrested. Di Nyein Lin was arrested on 23 October, and Thein Aye remains in custody.

49. The Special Rapporteur received allegations indicating that 106 women, including 6 nuns, are being held in custody in Yangon after being arrested in connection with September’s demonstrations and would like to praise the more than 25 women activists who paraded through downtown Yangon on 26 November in the first public display of opposition to the military regime since the September crackdown, in commemoration of the International Day for the Elimination of Violence Against Women. The group, which included housewives and students, marched from the Sule Pagoda to the Botataung pagoda, where they prayed for the monks and other protesters who died in the September demonstrations and for the release of detainees. The women were shadowed by members of the Government-backed USDA and the paramilitary SAS, but they did not intervene.

50. On 20 November, a week after the Special Rapporteur’s visit and call for the release of all political prisoners in accordance with his proposed plan of action in his last report to the General Assembly (A/62/223), 58 prisoners had been released on humanitarian grounds, according to a statement by the Government. It said that 9 men over the age of 65, and 49 women, either pregnant or with children, were set free. It did not say if they were political prisoners and made no mention of pro-democracy leader Daw Aung San Suu Kyi. “The Government will continue to release those that will cause no harm to the community nor threaten the existing peace, stability and the unity of the nation as the country goes through a steady evolution towards a democracy”, the statement said.

51. The Special Rapporteur condemns, however, the new arrests of political activists, despite the commitment by Prime Minister Thein Sein to the Special Adviser to the Secretary-General on Myanmar, Ibrahim Gambari, in early November that no more arrests would be carried out. Credible reports confirm that the following arrests have occurred since early November: U Gambira, head of the All-Burma Monks Alliance and a leader of the September protests, his father, Min Lwin and brother, Aung Kyaw Kyaw who were previously detained as hostages in an attempt to force him out of hiding; Su Su Nway, a member of the youth wing of the NLD and fellow youth activist Bo Bo Win Hlaing. Authorities raided a monastery in western Rakhine State, and arrested monk U Than Rama, wanted for his involvement in the September protests, whose whereabouts remain unknown. Myint Naing, a senior member of the NLD was detained. Ethnic Arakanese leader U Tin Ohn was detained and his whereabouts remain unknown. Other ethnic leaders, including Arakanese Cin Sian Thang and U Aye Thar Aung, Naing Ngwe Thein from the Mon National Democracy Front, and Kachin political leader U Hkun Htoo were rounded up but released after questioning. Aung Zaw Oo, a member of the Human Rights Defenders and Promoters group, was arrested in Yangon, likely on account of his involvement in planning events for International Human Rights Day on 10 December. Three further persons were arrested, Win Maw, lead guitarist in the popular Shwe Thansin band, Myat San, a member of the Tri-Colour Students Group and Aung Aung, a friend of the two above. Moreover, eight members of the Kachin Independence Organization (KIO) were arrested in Daw Hpum Yang, Momauk Township, Bamaw District. It is believed that this was on account of the KIO's refusal to accede to the SPDC's demand that they publicly renounce the recent statements by Daw Aung San Suu Kyi, made public by the Special Adviser, Mr. Gambari.

52. The Special Rapporteur is therefore urgently calling on the Government of Myanmar to release all those detained or imprisoned merely for the peaceful exercise of their right to freedom of expression, assembly and association, including both long-term and recent prisoners of conscience, as well as in the context of the peaceful demonstrations, and to stop making further arrests. He notes with grave concern the long-standing use of arbitrary detention by the authorities against prisoners of conscience including Daw Aung San Suu Kyi, U Win Tin, and senior opposition figures from ethnic minority groups, such as U Khun Htun Oo. It has been confirmed that the release of many detainees to date has been conditional on their signing an agreement to refrain from further political activity.

D. Disappearances

53. In the course of his investigation to date, the Special Rapporteur is aware of at least 74 cases of enforced disappearance, where the Myanmar authorities are either unable or unwilling to account for the whereabouts of individuals where there are reasonable grounds to believe that they have been taken into custody by State agents. The figures provided by different sources may underestimate the reality, as not all family members reported missing persons, fearing reprisals and severe punishment. The Special Rapporteur engaged in a dialogue with the authorities during his mission, requesting them to disclose information about the fate and whereabouts of the persons concerned. The authorities only partially met with his requirements.

54. The allegation of the burning of a large amount of bodies documented earlier is very disturbing. Without expressing at this stage an opinion on the accuracy of these reports, careful attention should be given to this allegation as it may explain why the Government has not been able, so far, to provide information on the whereabouts of a number of detainees and missing persons. It may also explain the numerous reports received about the removal of dead bodies by the security forces during the crackdowns and night raids on some monasteries.

E. Death in custody

55. According to credible reports received from an independent source, 1 monk who was in the GTI detention centre from 27 September to 5 October reported that around 14 individuals died during that period in custody, including 8 monks and 1 young boy who died on the first day. According to the monk, who was held in one cell with hundreds of people, the deaths were due more to the poor conditions of detention than injuries sustained during the crackdown. The NLD member Win Shwe, who was arrested on 26 September near Mandalay reportedly died during questioning in Plate Myot Police Centre on 9 October. His body was not returned to his family. Likewise, Venerable U Thilavantha, Deputy Abbot of the Yuzana Kyaungthai monastery in Myitkyina, was allegedly beaten to death in detention on 26 September, having also been beaten the night before when his monastery was raided.

F. Cruel, inhuman and degrading treatment and torture

56. Increasing reports from people who have been released describe degrading conditions of detention and the practice of torture. The Special Rapporteur's general impression is that the detainees are undergoing harsh conditions during the interrogation phase, lasting from four to eight days, undertaken at separate locations from the places of detention (such as the Tax Commission Office and the Ministry of Home Affairs in Yangon). Many interrogations are conducted with the detainees handcuffed, and they sleep on cold and wet floors. Food and drink are provided depending upon the answers given by the detainees. Some prisoners are kept in isolation, with only one hour for exercise in each of the morning and the afternoon (during the Special Rapporteur's visit these times were extended by half an hour).

57. The practice of torture in Myanmar has been documented by various observers, including by the Special Rapporteur for the last seven years. Experience shows that political activists and human rights defenders have been particularly targeted during their arrest, interrogation and detention. Reports have confirmed appalling detention conditions which fail to meet international standards on the treatment of prisoners and in fact constitute cruel, inhuman and degrading treatment prohibited under international law. Since the crackdown there have been an increasing number of reports of death in custody as well as beatings, ill-treatment, lack of food, water or medical treatment in overcrowded unsanitary detention facilities across the country. Provision of basic necessities, including food, water, blankets, and access to sleeping space and sanitary facilities has been lacking.

G. Severe reprisals against peaceful protesters

58. In his last report to the General Assembly (A/62/223), the Special Rapporteur gave special attention to sustained practices of restriction on the right to freedom of expression, the right to peaceful assembly and the right to freedom of movement. The events of September and October 2007 represent another manifestation of the severe methods of persecution and harassment that prevail in Myanmar. From 26 September to 20 October, the ban on gatherings (five people or more) enshrined in the Myanmar law was strictly applied and a curfew severely restricted the freedom of movement of people, lending a hand to the security forces for the conduct of night raids.

59. Night raids have been reportedly committed during curfew hours. On 26 September, overnight, the security forces arrested Myint Thein, the spokesman for opposition leader Daw Aung San Suu Kyi's political party. Relatives of people in hiding are reportedly taken hostage during these raids. The reduced curfew hours decided on 2 October have had no impact on the incidents which are reportedly committed between 11 p.m. and 3 a.m.

60. From 26 September to 6 October, the security forces reportedly raided 52 monasteries across the country, looting the possessions of monks and beating and arresting them in large numbers. Allegations of killings were also received. Early on Thursday 27 September at 12.30 a.m., security forces raided the Ngwe Kyar Yan monastery, a famous Buddhist teaching centre in Yangon (South Okkalapa Township), where they allegedly opened fire, physically assaulted and arrested an estimated 70 monks. Pictures taken at the scene after the curfew show blood spattering at different locations in the monastery and destruction of property, including gates, windows and other furniture. The pictures also suggest looting, which has been alleged by various sources, including direct testimonies. According to unconfirmed reports, some of the monks left after the violent raid, reported several arrests and the removal of dead bodies of several monks allegedly beaten to death by the security forces. Ngwe Kyar Yan was the site later this same day of a huge confrontation between security forces and civilians. There were rings of soldiers and civilians around the monastery from late afternoon until the evening, with shots heard.

61. The Special Rapporteur was taken to the empty Ngwe Kyar Yan monastery, without being able to enter. The authorities showed him pictures of items (weapons, defamatory signs, gambling and pornographic images) reportedly found in the monastery. The total number of monks initially staying at the monastery was between 180 and 200. He was informed that 92 monks were moved on 27 September to another monastery under the State's responsibility, though not detained. He was able to engage in a closed meeting with 10 of these 92 remaining monks on the last day of his visit. The Special Rapporteur is concerned regarding the whereabouts of the remaining monks, who according to the authorities had absconded and returned to their families (allegedly dismissed for their conduct, according to the monks' disciplinary rules requiring permission from the head monk to leave the monastery). The Special Rapporteur noted that he will return to visit the monks on his follow-up mission.

62. The authorities announced that, as of 5 October, it had detained 533 monks, of whom 398 were released after sorting out what they called real monks from bogus ones. Twenty-one monks are reportedly detained in Insein prison. Reliable sources believe, however, that many more were detained or disappeared. Many young monks who used to study Buddhist literature have not dared to come back to Yangon, as the monasteries are still under surveillance by the authorities and vacant ones have been occupied by USDA members who immediately became trustees after the crackdown. There have been surprise checks in monasteries subjected to scrutiny by local authorities. On 29 November, monks assisting HIV/AIDS patients were forced by the military to leave the Maggin Monastery which was sealed off by the authorities.

V. RESPONSIBILITY OF THE STATE AND ITS AGENTS

63. The State and its agents had several opportunities to engage in a dialogue with the peaceful protesters to seek a peaceful resolution of the dispute. Instead of considering the best available options to contain the protests and despite several international appeals, the State and its agents chose to implement a repressive action. The State and its agents should have sought to identify and address the underlying causes of the peaceful demonstrations before using force to disperse the protesters. As a last resort, the use of force should have not exceeded the limits defined by internationally agreed standards for policing demonstrations.

64. Whereas it is difficult to clearly identify at this stage of the inquiry the chain of command that led to the tragic events of September and October 2007, the Special Rapporteur found that the Government had knowledge that severe human rights abuses would be likely to take place and failed to prevent these abuses by not using all available options and not exercising restraint in policing the demonstrations. He further found that the crackdown on demonstrations was not a policing but a military response. The Special Rapporteur noted that the excessive use of force, including lethal force was unnecessary and disproportionate. He also found that a ruthless campaign of reprisals took place, targeting monks, nuns, political activists, human rights defenders and other individuals who organized or participated in the peaceful demonstrations, as well as their family members.

65. In its announcement No. 1/2007 of 4 October 2007, the SPDC Information Committee stressed that the politicization by political parties and other organizations of the demands made by the monks created unrest.[5] The view that the peaceful demonstrations of last August and September are at the origin of the unrest is difficult to accept in the light of the sequence of events. It seems more accurate to say that a state of violent disturbance and disorder erupted as the result of the use of excessive force by the State and its agents. It is recognized that serious violations of human rights and international humanitarian law entail individual criminal responsibility. Since it failed to prevent these grave violations, it is now the responsibility of the Government to thoroughly investigate these grave violations of human rights, prosecute those responsible for their perpetration and, if their guilt is established, punish them.

[5] New Light of Myanmar, 5 October 2007.

66. According to a credible source, in addition to the riot police battalions, the following army forces are believed to have taken part in the crackdown on demonstrations in Yangon under the Bureau of Special Operations Number Five that supervises the Yangon Military Command and the units operating within it:

(i) Bureau of Special Operations Number Five (Commander: Lieutenant General Myint Swe);

(ii) Rangoon Command (Commander: Major General Hla Htay Win, Deputy Commander: Brigadier General Kyaw Kyaw Tun, No. 1 Military Garrison Unit Commander: Brigadier General Myint Soe, No. 2 Military Garrison Unit Commander: Colonel Tin Tun, No. 3 Military Garrison Unit Commander: Colonel Hla Aye);

(iii) 11th Light Infantry Division (Commander: Brigadier General Hla Min, No. 111 Tactical Commander: Colonel Myat Thu, No. 112 Tactical Commander: Colonel Htein Lin, No. 113 Tactical Commander: Lieutenant Colonel Tun Hla Aung);

(iv) 66th Light Infantry Division (Commander: Colonel Maung Maung Aye, No. 661 Tactical Commander: Colonel Htwe Hla, No. 662 Tactical Commander: Unknown, No. 663 Tactical Commander: Colonel Han Nyunt); and

(v) 77th Light Infantry Division (Commander: Brigadier General Win Myint, No. 771 Tactical Commander: Lieutenant Colonel Mya Win).

67. Despite his request, the Special Rapporteur was unfortunately not able to meet with the military commanders involved in the crackdowns. Further inquiry needs to be made to verify the above allegations through different sources and identify the army forces and commands involved in the crackdown in other parts of the country, including Mandalay, Pakokku and Sittwe. The Special Rapporteur would be grateful if the authorities could provide him with data regarding the deployment of security forces under the authority of military commanders (time, location, number of security forces), the type of arms the security forces were equipped with, the orders the military commanders received and from whom, in particular came the order to fire with live ammunition.

68. At the time of writing, the Special Rapporteur has not received assurances from the Government of Myanmar that those responsible for human rights violations will stand trial and that victims will obtain reparations.

VI. CONCLUSION

69. The Special Rapporteur has shared this report and a list of names of 653 persons detained, 74 persons disappeared and 16 killed (in addition to the list of 15 dead provided by the authorities), with the Government of Myanmar for comments. The list contains only those incidents where the names of the people involved are cited. There are a number of incidents where no names were reported but where there were allegations of groups of people reportedly killed which have also been shared. This list will be updated on a regular basis and used as the basis for an ongoing dialogue with the authorities.

70. The Special Rapporteur expresses his hopes for positive change from Myanmar's engagement with its international and regional counterparts, in particular through the Association of Southeast Asian Nations (ASEAN) Charter, signed by Myanmar, which includes a firm commitment to international human rights and humanitarian principles and pledges to set up a dedicated ASEAN human rights body. The Special Rapporteur would further like to re-emphasize a strong call for the authorities to re-engage with the International Committee of the Red Cross (ICRC) in providing free access to detention centres.

71. The incidents reported demonstrate the vulnerability of the economic and social foundations of Myanmar's society. It shows that the right to freedom of expression and the right to peaceful assembly have yet to be fully guaranteed and the tremendous challenges faced by Myanmar in ensuring the rule of law by holding accountable the perpetrators of serious criminal acts documented in this report. It further reveals the urgent need to repeal or amend old laws and regulations in accordance with international human rights standards, and to reconsider the participation of the army and non law enforcement officials in policing demonstrations.

72. Moreover, the events represent a compelling example of the indivisibility of human rights. Decades of denial of basic civil and political rights have compromised the standard of living of the population. By severely restricting the right to freedom of expression and the right to peaceful assembly, the Government has prevented over many years the emergence of a platform for genuine public dialogue, where people could share their concerns over their increasing lack of access to job opportunities and basic social services, including health and food.

73. In that context, the decision by the Government to authorize the Special Rapporteur to visit Myanmar should be praised. By allowing the Special Rapporteur to conduct an official visit, the Government has re-engaged in a dialogue with the United Nations human rights mechanisms and allowed an inquiry into the events of September and October 2007. The Special Rapporteur hopes the authorities will provide him with the further information requested regarding the whereabouts of the detained, the conditions of their detention, numbers of released people and the causes of death. The Government provided him with a number of detailed records that responded partially to his requests. He will continue to liaise with the Government on the matter.

74. The Special Rapporteur, however, did not find significant signs that the Government is implementing the substantive demands as set out in Human Rights Council resolution S-5/1, operative paragraphs 2, 3 and 4 urging the Government of Myanmar inter alia to:

> "ensure full respect for human rights and fundamental freedoms and to investigate and bring to justice perpetrators of human rights violations, including the recent violations of the rights of peaceful protesters;"
>
> "release without delay those arrested and detained as a result of the recent repression of peaceful protests, as well as to release all political detainees in Myanmar, including Daw Aung San Suu Kyi, and to ensure that conditions of detention meet international standards and include the possibility of visiting any detainee;"

> "lift all restraints on peaceful political activity of all persons by, inter alia, guaranteeing freedom of peaceful assembly and association and freedom of opinion and expression, including for free and independent media, and to ensure unhindered access to media information for the people of Myanmar."

75. The Special Rapporteur regrets that he was unable to meet with the General Secretary of the NLD, Daw Aung San Suu Kyi which would have benefitted the independence of his investigations, but was reassured by the authorities that this option will remain on the agenda of his follow-up missions. The Special Rapporteur recognizes the need for close coordination with the good offices of the Secretary-General and is in regular contact with Mr. Ibrahim Gambari on the matter.

VII. RECOMMENDATIONS

76. In light of the objectives of his mission to Myanmar, and of recommendations already made in his previous reports, the Special Rapporteur suggests a number of immediate and transitional measures to be addressed to the Government of Myanmar.

Immediate measures

(i) To secure the physical and psychological integrity of all persons who are kept in custody;

(ii) To reveal the whereabouts of people who are still detained or missing;

(iii) To return the remains of the deceased to families or relatives in order to enable them to give their dead proper funerals in accordance with their religion and belief;

(iv) To ensure immediate access by the ICRC and other independent humanitarian personnel to all detainees;

(v) To release unconditionally all persons who have been taken into custody for peaceful assembly or the peaceful expression of their political beliefs;

(vi) To grant an unconditional amnesty to people who have been already sentenced, and to drop charges against those who are in the process of being prosecuted;

(vii) To conduct an independent and thorough investigation into the killings, severe beatings, hostage taking, torture and disappearances;

(viii) To ban militia as an illegal group in accordance with the law of Myanmar;

(ix) To bring the perpetrators of human rights violations to justice and to provide the victims and their families with effective remedies;

(x) To effectively engage in a constructive and sustainable dialogue with the Human Rights Council and its special procedures, especially the mandate of the Special Rapporteur on the situation of human rights in Myanmar;

(xi) To agree with the Special Rapporteur on the situation of human rights in Myanmar on the terms of reference and dates for his next visit to the country;

(xii) To invite an international commission of inquiry or fact-finding mission to investigate in a more comprehensive manner the recent events.

Transitional measures

(xiii) To develop an effective channel for follow-up communications and cooperation with the Special Rapporteur and provide him and his support team with regular access to the country;

(xiv) To consider the implementation of the plan of action for the release of all political prisoners as suggested by the Special Rapporteur in his last report to the General Assembly (A/62/223);

(xv) To pursue the dialogue with Daw Aung San Suu Kyi through the Minister of Labour and Liaison Minister;

(xvi) To repeal or amend old laws and regulations in relation to the right to peaceful assembly, the right to freedom of expression, the right to freedom of movement and all matters related to criminal and penal procedures and prison regulations;

(xvii) Within the context of the National Convention and recent crisis, seek technical assistance to repeal or amend the penal code and code of criminal procedure and to review the rules that govern the policing of demonstrations.

Annex

CHRONOLOGY AND FACTS: THE PEACEFUL PROTESTS OF SEPTEMBER 2007 (18-25 SEPTEMBER 2007)

On 18 September, monks gathered at 9 am at the Shwedagon Pagoda to prepare the demonstration. At 1 pm a group of about 300 monks gathered at the southern stairway. The access to stairway was blocked by burly plain-clothed unarmed individuals who formed a cordon. The monks, after hesitating, marched instead to the downtown Sule Pagoda, then Botahtaung Pagoda, gathering several hundred lay followers as they went. Similar marches were held on subsequent days, gaining momentum every day despite torrential monsoon rains. One monk at the front of the procession held an upturned alms bowl, a symbol of religious boycott. There was no visible uniformed security presence, although plain-clothes personnel photographed and videoed the marchers. However, over the weekend of 22-23 September, the nature of the demonstrations shifted, becoming much larger in scale and more overtly political, thus posing a level of challenge to the regime that it must have found impossible to ignore. A highly symbolic moment in this regard occurred on 22 September, when a group of protesters were permitted to pass a police checkpoint and pass by the house of Daw Aung San Suu Kyi, who briefly appeared at her gate to greet them. By 24 September, the demonstrations in Yangon involved thousands of people led by monks. The same day, monks, nuns and students reportedly staged the largest demonstration so far in Sittwe (Rakhine state) demanding a reduction in essential commodities prices.

The general population in Yangon was becoming more defiant, increasingly taking part in the demonstrations rather than watching the monks or escorting them. Students, prominent political actors (from NLD and the ethnic political parties represented in the Committee Representing People's Parliament) and well-known personalities (actors, artists, writers) were joining the demonstrations, in some cases carrying red "fighting peacock" flags, a symbol of resistance. Comedian and former political prisoner Zaganar the movie star Kyaw Thu, and independent politician U Win Naing publicly offered food and drink to the monks before they started their march from Shwedagon. That evening, in the first reaction to the week of monk-led demonstrations, the authorities announced on television that further demonstrations would not be tolerated, and that action would be taken "according to the law". A statement by the Minister for Religious Affairs was carried on state television. No details were given concerning which laws he was referring to, but para. (b) of Order 2/88 of 18 September 1988 prohibits unauthorized public assembly of five or more persons (it should be noted that other provisions of Order 2/88 have been abrogated); and Order 6/90 of 20 October 1990 bans all unlawful Sangha (Buddhist monk) organizations, except the nine legal Buddhist sects. A number of other laws prohibit criticism of the Government or otherwise curtail freedom of expression.[a]

[a] The Official Secrets Act of 1923, the Burma Wireless Telegraphy Act of 1933, Section 122, Penal Code of Burma, the Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention against Disturbances and Oppositions, Emergency Provisions Act of 1950, the Printers and Publishers Registration Law of 1962, State Protection Law of 1975 (a.k.a. the "Law to Safeguard

In his discussions with senior officials in Yangon, the Special Rapporteur asked why the Government had decided to "take effective action" at this stage of the demonstrations and what was the legal basis of the ban on gathering. He further enquired on whether the Government tried to engage in a dialogue with the monks after the incident of the 5 September in Pakokku and whether it tried to give consideration to the demands by the monks on 9 September. He asked whether the chain of command for law enforcement came from the police or in coordination with other sectors of the military, what was the role and connection of the Specific Operation N° 5, the participation of security forces, the number of police and other persons involved in the operations, arms authorized, and whether orders were given to fire with live ammunition and rubber bullets, and use smoke bombs, tear gas and water canons.

The Yangon Division Commissioner, U Hla Soe acknowledged that "the monk strike was due to the world increase of the price of petroleum which affected the change of fuel price in Myanmar on 15 August 2007. This was taken advantage of by the monks in Pakkoku to organize strikes and terrorism. Both internal and external anti-government organizations expanded the strike with the help of the media, persuading peaceful monks to go on strike, presenting a difficult solution for the authorities in a majority-Buddhist-living country and generating further opposition to the Government. According to the Commissioner the monk demonstration in Yangon began on 18 September when 150 monks assembled at Theinbyu Street in Botahtaung Township and marched to the East gate of Shwedagon Pagoda. Because of the prohibition of Divisional and Township Sangha Nayaka abbots, the marching monks made prayers in front of the Bronze Buddha Image at Yedashe junction and marched to Sule Pagoda from where to Botahtaung Pagoda and Pazundaung Market. On the same day 19 monks gathered and made the strike at Thingangyun Kyatkasan Pagoda. On 19 September, 120 monks from Ahlone Township and 97 monks from South Okkalapa Nswe Kya Yan monastery assembled at Yankin Moegaung pagoda Compound and 30 monks at Mayangon Kaba Aye Pagoda did the same. Out of 150 monks in front of the Bronze Buddha Image at Bahan, some marched to Tamwe Shwe Baho Cinema Hall and some to Sule Pagoda and dispersed at Theinbyu Street".

The Commissioner noted that "on 20 September 300 monks near the Bronze Buddha Image, East of Shwedagon Pagoda marched to Sule and Botahtaung Direction. Similarly 200 monks from South Dagon Township, 300 monks from South Okkalapa Ngwe Kya Yan monastery, 50 monks from Hlegu Township, 50 monks from Kon Chan Gon Township and 50 monks from Khayan Township marched through the town. On 21 September 540 monks from Ngwe Kya Yan monastery marched from Shwedagon Pagoda to Sule and Botahtaung Direction, 200 monks from North New Dagon Township, 15 monks from South Okkalapa Pagoda and Moengaung Pagoda, 70 monks from Than Lyan Township and 20 monks from Khayan Township marched about the township. After the 22 September strike the number of people increased in which the 88 Generation Student Group and anti-political party members persuaded

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the State from the Dangers of Destructive Elements"), the Television and Video Law, the Motion Picture Law and the Computer Science Development Law.

the people and the roadside to join them on strike. Out of 45 Townships in Yangon Division, strike occurred in 36 Townships, sparing 9 Townships. The strike was mostly concentrated in a busy street in downtown of Yangon. The monk strike comprised 15,000 monks and 15,000 people which are beyond the estimate due to the majority of spectators which were peaceful at first, and later got involved by the political demon and terrorism".

The Special Rapporteur was informed by the authorities that "buses and taxis were stopped and the passengers were emptied while the drivers were forced to take the striking monks to the Shwedagon and Sule Pagodas. At Tamwe Township, car owners were forced to drive the monks to the Pagodas under threats of burning their cars. The owners were consequently beaten and the car doors destroyed. Two police motorcycles were burned and car windows were stoned. Trees were felled to block the way while advertising boards and telephone boots were destroyed". According to the Commissioner "people suffered losses due to the anarchy and daily-wage workers became unemployed. The hawkers were affected in business and the taxi and trishaw drivers lost income. Stores and restaurants were shut and passengers were disturbed. The schools did not close but the parents kept their kids at home for fear of terrorism". The Special Rapporteur was provided with a list recording from 17 to 26 September the "total number of Sanghas, nuns and laypersons participating in the praying procession activities on the Shwedagon Pagoda platform after having agitation leaflets dating 13 September".

The authorities noted that "the strike monks did not obey the State Sangha Maha Nayaka Committee who instructed them to live according to Buddhist Sangha discipline. The monks are liable to obey the rules and instructions of Buddha and State Laws prescribed by the Committee". On 24 September, the Directive 93 was issued by the State Sangha Maha Nayaka Committee calling for state/division/township/ward Sangha Nayaka Committees to supervise the monks and novices so that they only practice Pariyatti and Patipatti. In other words, the Directive prohibited the participation of monks in secular affairs.[b] The Special Rapporteur asked the Sangha what had been the process for issuing Directive 93 and whether the Parivetti and Patipatti prevents monks to address the economic and social grievances of peoples. He was informed by the authorities that "the activities of the strike monks, 88 Generation Student Group, Political parties and terrorists affected the peace, security and lead to riots. In order to prevent the danger to the public, the Curfew N 144, under the Code of Criminal Procedure was announced according to the existing law by the Yangon Division Commissioner himself. The Order N 1/2007 was announced at 8.45 pm on 25 September which was made known to the public from 9 pm through the towns overnight by thirty-three cars through loud-speakers, advertised on boards at public places and broadcasted by the City FM Radio and advertised in newspapers and journals. Action was taken according to the law against people disobeying the order. Within three days of the strike, people were taken into custody and the worries of the public were reportedly released after which the Curfew Order was lifted step by step depending on the situation. The Order N 2/2007 at 9 pm on 2 October, the Order N 3/2007 at 8.45 pm on 12 October and the Order N 4/2007 at 6 pm on 13 October were announced with the approval of the Yangon Division Peace and Development Council. Curfew Order Section N 144 which was expected to be in force for 2 months, until 24 November, was lifted by Order N 5/2007 at 6 pm on 20 October because of local peace and stability".

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[b] New Light of Myanmar, 25 September 2007.

The Special Rapporteur met with the Minister of Home Affairs and 20 members of the Government-established Human Rights Body[c] in Nay Pyi Taw. He was informed that "if more than 5 persons want to stage a demonstration, permission can be obtained from the authorities concerned in accordance with Notification N° 2/88 of the State Law and Order Restoration Council". It was noted that "the protestors of September 2007 did not obtain prior permission from the authorities concerned in accordance with the procedures and acted against the Law. The instigation by some monks and laymen, who wants to overthrow the government through violent means, among the monks who peacefully participated in the demonstrations on the understanding that it was a religious act, led to violent activities. The Government had to control the situation in accordance with the Aid to Civil Power procedures".

The Special Rapporteur was informed by the authorities that "the agitators contacted anti-government organizations based abroad, declared as terrorist organizations, and illegally received cash from them. The leading protestors aimed at paralyzing the State machinery through unrest and destruction to overthrow the Government, guided by anti-government organizations abroad through television broadcasts, internet websites and news media. The protestors in turn sent exaggerated information, photos and interviews to the foreign media painting the peaceful demonstrations as a political movement. The unrest which occurred in September was not the wish of the entire people, with the non-participation of these people". It was noted that "at the beginning of the peaceful demonstrations, the Government tolerated without any action. The authorities concerned requested senior monks to prevent the violence. On 24 September the Minister for Religious Affairs reported the situation to the Chairman Sayadaw and members of the State Sangha Maha Nayaka Committee which issued nine directives instructing all monks to behave in accordance. Despite this, some monks involved in politics continued their activities with the infiltration of peaceful monks by violent persons and political opportunists instigated by foreign media. The demonstration transformed into violence and attacked security personnel by hitting with sticks and stones, putting state owned motorbikes and vehicles on fire, almost threatening lives." The various warnings did not have a significant impact on the demonstrations, and on 25 September, tens of thousands of people again took to the streets of Yangon in protest. On the same evening, the authorities announced the night-time curfew (from 9 pm to 5 am), and by the following morning had positioned truck-loads of armed riot police and troops at key locations in Yangon, including at a number of monasteries. These troops sealed off a number of monasteries to prevent monks from joining the demonstrations.

The Minister of Home Affairs noted that "only the Government declared Article 144 in Yangon and Mandalay and the security forces dispersed the demonstrations. Therefore only 10 died and 14 were injured during the dispersion of a huge crowd of demonstrators. There were no monks among the dead. Among the tens of thousand of demonstrators, only those instigating and leading the demonstrations have been detained for investigation. Those who participated out of naivety in the demonstrations also violated the law, but were released after making undertakings". He further stated that "up to 1 November 2,927 persons have been investigated and 2,836 of them have been released, with 91 persons remaining in custody. They have been

[c] The formalization of the Human Rights Body was signed on 14 November 2997 by the Supreme Authority SPDC Notification, State P 53/2007, composed of 4 patrons (Prime Minister, Minister of Foreign Affairs, Key Justice and Attorney General) and 21 members.

detained and are investigated in accordance with the law for terrorist activities disrupting security and stability in connection with explosions, destructions and committing crimes. Those under temporary detention have been detained in accordance with the law and registered in the "Prisoner's Personal Data". It was reported by the authorities that the detainees who are not well have been given treatment by doctors from prison hospitals and township medical units. Each detainee is reportedly provided health care free of charge and arrangements are made for their health care, food and accommodation and for them to receive food from donors. Prisoners and detainees and treated kindly and sympathetically by allowing them to write to their families and receive food and necessities from them. The ICRC is allowed to visit prisoners together with NGOs from Myanmar, but the ICRC stopped the visits since 2005 stating that joint visits are contrary to the norms."

The authorities acknowledged that the demonstration were peaceful until the incidents were influenced by the meeting of the Security Council. The demonstrations were allegedly instigated by "terrorist" groups which had dispatched agents to the country working with labour groups, students and monks. Bomb blast, attacks with Yengali handmade tools and TNT explosives were reportedly used to obstruct the security forces and destabilize the authorities. These agents persuaded the demonstrators to come in strength robbing arms from security forces which had to intervene against the terrorist attacks, though without the intention of harming the peaceful demonstrators. During the Special Rapporteur's visit to the monasteries and police station the authorities provided pictures of items that had reportedly been seized. The authorities informed the Special Rapporteur that they had learnt before the 18 August resumption of the National Convention, through a Karen statement, that monks attended trainings and that instigators had activated innocents at the Shwedagon and Sulive Pagodas. The law enforcements agents were responsible for enforcing the law against the mobs which had become a risk through their activities against the law. Around the Shwedagon Pagoda one group of 150 security forces and another group with 50 security people were facing 20,000 to 30,000 people.

The Special Rapporteur asked whether the SPDC had submitted a request to receive aid from civil powers. Under the Criminal Code Procedure Section 128, the police have the power to request assistance while law authorizes them to give orders. The Yangon Division and Peace Development controlled the police division. The Special Rapporteur enquired about the use of military commanders and participation of units used with Security Forces (11^{th}, 6^{th} and 77^{th} light infantry divisions). The police forces were overwhelmed and had to ask for the support by military on 26 September at 1 pm, rendering aid to civil and military power. N° 3 and N° 77 light divisions participated, but not the N° 11 according to governmental sources.

The authorities said that they could not use the water canons, as they were not able to access the mobs and crowded areas, but used other techniques. It was noted that the decision to act was in accordance with the seriousness of the treat, decided by the Police Order and other chain of command. 13 police officers were reported wounded throughout the entire period of demonstrations (on 26 September) though no law enforcement agents were killed. The Special Rapporteur asked whether there were any prosecutions and who where the people responsible behind the procedures and there whereabouts. He was informed that the search by security personnel was complementary to the police forces and that there were only 1,200 police and military personnel. The Special Rapporteur asked where the arrested persons were placed, the coordination with the law enforcement and whether there were any civilians to be reported among the 1,200 effectives after the 26 September, when the General Administration

Department and Police rendered the power to the Senior Commanders to act upon groups that controlled the monks. They noted that there were no women but only men who willingly wanted to join in accordance with Section 120 of the criminal code, rendering power to the law enforcement forces. The Authorities noted that until 26 September the events were totally under police command, while after the 26 September the events were rendered to military command, in collaboration with police and administration, under the surveillance of the SPDC. The operations were overseen by a Permanent State Division Judge/City Judge present at the scene. The 1940 Control manual (from the colonial area) and 1961 Manual for riot control were applied under the supervision of the police division of Yangon.

The excessive use of force against peaceful demonstrators (26-29 September 2007)

26 September

Several confrontations between the security forces and protesters reportedly took place at different locations in Yangon, including Shwedagon pagoda, Bahan Township, Tamwe Township, Shwe Gone Daing road, Sule Pagoda and Yangon City Hall. Other incidents were reported in Mandalay, Loikaw, Sittwe, Kachin state, and Ba Maw and Myitkyina. According to various independent and reliable sources, and direct testimonies of victims and witnesses, two major incidents occurred in the streets of Yangon. This includes the crackdowns at Shwedagon Pagoda and Sule Pagoda. Many have witnessed monks and civilians being beaten and slapped during the demonstrations.

Monks started marching at around 10 am. The gates of the pagoda were locked and all roads were blocked by the security forces (riot police and army). At around 11.30 am, more riot police arrived at the site. As they could not pursue their peaceful walk, monks sat down. According to a direct testimony one of the monk leaders, Ven Kovida, who participated in the demonstration,[d] a delegation of monks attempted to enter into negotiations with the security forces. The monks were ordered to disperse and get into military trucks to be brought back to their monasteries. Fearing arrests or other forms of reprisals, the monks agreed to disperse with the condition of going back to their monasteries on their own. The security forces refused. At around 11.45 am, violence began at Shwedagon pagoda. As the monks refused to disperse, security forces started beating monks on their heads with rubber batons. Teargas and smoke grenades were reportedly used. One victim who witnessed the crackdown heard orders to beat monks coming from behind the riot police. Whereas unconfirmed allegations of killings were received, several witnesses interviewed saw monks severely beaten who were lying down on the floor without moving. They were not in position to say if they were dead or unconscious. Several arrests were also reported by various credible sources.

At 1 pm, security forces were blocking the road to Sule pagoda at the intersection, south of Traders hotel. At 2.05 pm, security forces fired shots in the air and what appeared to be teargas or smoke grenades at the intersection south of Traders hotel and north of Sule pagoda. The crowd was effectively dispersed, but re-assembled at the intersection just north of Traders. Protesters then gathered around Sule Pagoda downtown directly in front of troops, and continued

[d] See also International Herald Tribune, 26 October 2007.

to march around the area. Troops fired warning shots and either teargas or smoke grenades, which failed to disperse the people. Shots were fired in the air again at about 3 pm to scatter the crowd which kept re-assembling. At 3.10 pm, a large procession travelled south with many monks and walked across the front of the soldiers, without incident. They were travelling south on the north-south road one block east of Sule Pagoda Road, and then turned west to pass directly in front of the soldiers. At 3.15 pm, state television announced that all senior clergy should rein in their monks. According to the State-run newspaper the New Light of Myanmar, protesters entered homes, threatening families who refused to participate in the demonstrations. They also requested those who did not want to join the protests to provide financial assistance.[e]

At 3 pm, most of the country's mobile phone lines were reportedly disconnected, preventing journalists and demonstrators from reporting on the crackdown launched by the security forces in the heart of Yangon. Several journalists were reportedly injured, including Than Lwin Zaung Htet of the magazine The Voice. The authorities closed internet cafés in Yangon while the government-controlled Internet Service Provider, Bagan Cyber, reduced internet traffic speed. It was getting harder and harder to send or receive photos and videos sent from Myanmar. Dozens of foreign journalists were refused tourist visas by the Myanmar embassy in Bangkok. Blogs, websites and Internet cafés were closed, while it was becoming increasingly difficult to call mobile phones from abroad.

The same day, the United Nations Secretary-General, Ban Ki-Moon, announced he was sending his Special Envoy, Ibrahim Gambari, to the region in response to the deteriorating situation in Myanmar, and once again urged Myanmar authorities to respond to the ongoing peaceful protests with the utmost restraint. While the Secretary-General's Special Envoy briefed the Security Council on the latest developments, the United Nations High Commissioner for Human Rights, Louise Arbour, urged the authorities to allow the peaceful expression of dissent in the country and to abide by international human rights law in their response. She further noted that "the use of excessive force and all forms of arbitrary detention of peaceful protesters are strictly prohibited under international law." She stressed that the serious abuses being currently perpetrated by the security forces "may constitute international crimes and could invoke individual criminal responsibility".

27 September

The Ministry of Foreign Affairs called a meeting in Nay Pyi Taw for United Nations heads of agencies and foreign diplomats. The Government blamed the internal and external destructive elements for inciting monks to protest, influenced by some foreign embassies. The Government however insisted that it would act with restraint. On 27 September, despite a heavy presence of the security forces and the use of lethal force the previous day, the demonstrations continued in Yangon. There was a smaller participation of monks, no doubt due in part to the large number of arrests and ongoing security presence at monasteries. Ignoring again the appeals by the international community, the security forces responded to the ongoing demonstrations with further violence, with the army now playing a more prominent role. State media acknowledged the firing of warning shots, the killing of 9 demonstrators and several wounded, including

[e] New Light of Myanmar, 27 September 2007.

women on September 27.[f] Many observers suggested that the real figure was several times higher. A diplomat in Myanmar, when interviewed by radio, said "several multiples of the ten acknowledged by the authorities'' have been killed.

About 10,000 people demonstrated around Sule Pagoda, at the intersection of Sule Pagoda Road and Anawrahta Street. They were staging a peaceful sit-down protest in the intersection. At about 1.20 pm, they were reportedly fired upon with teargas and smoke grenades and beaten by security forces. Many people were found to be soaked with blood running away. Several rounds of gunfire were heard. The Japanese photojournalist, Kenji Nagai was shot dead at this intersection. The army reportedly fired upon demonstrators near Thingangyun Kyaikkasan Pagoda as well as at the Tamwe roundabout and Pansodan. Several allegations of killings were received. In front of Trader's Hotel, 4 people were reportedly wounded from gunfire and one women died on the spot after being shot.

According to various reports and testimonies, a particularly brutal incident occurred nearby the State High School No. 3 in Tamwe Township. One witness saw the crowd being ambushed by the security forces in front of the school. The army opened fire and drove a truck into the crowd, killing at least 2 people. The soldiers then stopped the truck and came out. They first shot in the air, then, at people. They did not make any announcements or warnings before they began shooting. One witness saw soldiers who shot one boy in the back when he was climbing the wall of the High School N° 3. One student, Maung Tun Lynn Kyaw, who died was reportedly shot in the head in cold blood in front of his mother. According to other sources, 5 or more people were killed. Many injuries and arrest were also reported during the incident. Several reports indicate that dead bodies were removed by the security forces. In the same area, one killing at the corner of Anawrahta and Pansodan streets was reported by an eyewitness. One young man was holding the fighting peacock flag and had an NLD Youth badge on his white shirt. He was reportedly shot in the head. There was only one shot and no soldiers in the immediate vicinity. Soldiers and police descended on several hotels in Yangon, including Traders, to check the IDs of foreign journalists. Internet and international phone lines were still open at these hotels. That night, further raids by security forces on monasteries were reported, and the surrounding areas were declared no-go zones. There were also raids on a number of residential areas and many arrests were reported.

28 September

The following day, the demonstrations had become much smaller, and were quickly broken up by security forces, with a number of further fatalities reported, and a large number of arrests. Among the fatalities, 3 more killings at the corner of Anawrahta and Pansodan were reported at around 2 pm. Eyewitnesses saw people being pushed back by trucks of military on Pansodan bridge and riot police charging and arresting a few people in front of the Traders Hotel.

[f] New Light of Myanmar, 28 September 2007.

The main public internet link to the country was closed down, which significantly reduced the flow of media information coming from the country. The two internet service providers in the country are State-controlled. The only other internet access is by dedicated satellite links (such as those operated by foreign embassies, the United Nations, or multinational companies), as well as possibly a small number of data capable satellite phones. The same day, the State-run newspaper the New Light of Myanmar reported that more 5,700 people from Taungtha Township (Mandalay Division) staged a peaceful demonstration with the permission of the local authorities to protests against the demonstrations led by the monks.[g] The following days, several ceremonies and demonstrations were organized by the Government to support the national convention and constitution.

29 September

When the Secretary-General's Special Envoy, Ibrahim Gambari arrived in Yangon in the afternoon, several demonstrators including some monks demonstrated in downtown Yangon. The demonstrations were mainly led by high school students. Troops fired warning shots. Demonstrators were reportedly cordoned off, beaten and arrested. Many escaped and staged demonstrations in other parts of downtown. A procession of 800 followed by civilians took place in Pakokku from 2 to 3.30 pm. At Kyaukpadaung, monks, nuns and civilians demonstrated peacefully. No significant incident was reported. Additional reports of killings were received, including a 40 year-old man named Pho Zaw and an 18 year-old man named Sunni Kalamalay.

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[g] New Light of Myanmar, 28 September 2007.