

COLLECTED REPORTS TO THE HUMAN RIGHTS COUNCIL AND THE COMMISSION ON HUMAN RIGHTS BY THE SPECIAL RAPPORTEURS ON THE SITUATION OF HUMAN RIGHTS IN MYANMAR

Sr Tomás Ojea Quintana (2008-)

Professor Paulo Sérgio Pinheiro (2000-2007)

Judge Rajsoomer Lallah (1996-2000)

Professor Yozo Yokota (1992-1996)

INTRODUCTION

Basic starting points for an assessment of human rights conditions in Burma/Myanmar are the UN resolutions on the situation of human rights in Myanmar and the body of reports submitted since 1992 to the UN General Assembly and Commission on Human Rights (replaced by the Human Rights Council in 2006) by the UN Special Rapporteurs on Myanmar.

Special Rapporteurs are independent experts appointed by the Commission on Human Rights/Human Rights Council to examine and report on particular human rights themes or on the situation of human rights in particular countries. Country Special Rapporteurs are only appointed to examine the most serious human rights situations. The Commission appointed Professor Yozo Yokota as Special Rapporteur on the situation of human rights in Myanmar in 1992 following two years when Burma/Myanmar had been examined by the Commission under its 1503 (confidential) procedure. He was succeeded in 1996 by Judge Rajsoomer Lallah, who was followed in 2000 by Professor Paolo Sergio Pinheiro. In May 2008, Sr Tomás Ojea Quintana assumed the mandate.

Not only are the reports of the Special Rapporteur the most authoritative general reports on the human rights situation in Burma/Myanmar, including analysis of the legal framework governing the exercise of human rights in the country, but they also contain an abundance of summaries of testimonies gathered by the Special Rapporteurs since 1992 as well as the responses of the Government of Myanmar to specific allegations.

By reading the reports as a body it is thus possible to see the patterns of violations over a number of years, to assess the degree to which they are systematic, widespread and persistent over time, to track particular themes from 1992 (e.g. killings, rape, torture, forced relocation, forced labour) but also to inquire whether there has been any development, positive or negative, since the United Nations human rights bodies began their examination of the situation.

The present document and the parallel collection of reports to the General Assembly are intended to facilitate searching of the reports as a body. Since they are rather large documents, they are presented in a simple format (in pdf) and although I have presented the information from the tables as clearly as possible, some readers may wish to check the original (and authoritative) versions -- go to <http://www.burmalibrary.org> and search for the document number, e.g. A/48/578, and click on the link.

Updated, February 2009

Reports to the Human Rights Council

A/HRC/8/12

3 June 2008

Sr Quintana's first report to the Human Rights Council

A/HRC/7/24

7 March 2008

A/HRC/7/18

7 March 2008

A/HRC/6/14

7 December 2007

A/HRC/4/14

12 February 2007

Reports to the Commission on Human Rights

E/CN.4/2006/34

7 February 2006

E/CN.4/2005/36

2 December 2004

E/CN.4/2004/33

5 January 2004

E/CN.4/2003/41

27 December 2002

E/CN.4/2002/45

10 January 2002

(Professor Pinheiro's first report to the Commission)

(There was no written report in 2001)

E/CN.4/2000/38

24 January 2000

E/CN.4/1999/35

22 January 1999

E/CN.4/1998/70

15 January 1998

follow-up report on the status of implementation of Council resolutions S-5/1 and 6/33, as requested by the Council in its resolution 7/31. In the report, the Special Rapporteur focuses on the human rights issues pertinent to the current constitutional process in the country, the developments with regard to the crackdown on the demonstrations in September 2007, and the human rights impact of tropical cyclone Nargis. The report builds upon the preliminary findings and further developments included in the previous report submitted to the Council (A/HRC/7/24). Since the present report is his first to be submitted to the Council, the Special Rapporteur also presents an overview of his methodology and programme of work in discharging his mandate. The Special Rapporteur would like to pay tribute to the victims of cyclone Nargis, present his condolences to the families at this tragic time and convey to the people of Myanmar a message of encouragement in the recovery phase of that natural disaster.

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I. INTRODUCTION

1. The mandate on the situation of human rights in Myanmar was established in 1992 by the Commission on Human Rights in its resolution 1992/58 and extended by the Human Rights Council in its decision 1/102 and resolution 5/1.
2. In March 2008, the Council reviewed the mandate, and in its resolution 7/32, extended it for another year. On 1 May 2008, Tomás Ojea Quintana (Argentina) officially assumed the function of the Special Rapporteur on the situation of human rights in Myanmar, succeeding Paulo Sérgio Pinheiro.

3. The present report is submitted in accordance with Council resolution 7/31. It covers human rights developments in Myanmar since the previous report submitted to the Council (A/HRC/7/24) in March 2008 on the latest developments of the implementation of Council resolutions S-5/31 and 6/33. In view of the short time between the official assumption of his mandate and the timeline reporting constraints of the Council for the present session, the Special Rapporteur considers it important to inform the Council on the information brought to his attention relevant to the areas covered in the above-mentioned resolutions. However, he would like to point out that the present report should be observed as a preliminary analysis requiring further research and discussions with the Government of Myanmar.

4. In the above-mentioned resolutions, the Government of Myanmar is requested (a) to ensure full respect for human rights and fundamental freedoms and to investigate and bring to justice perpetrators of violations of the human rights of peaceful protesters during the demonstrations of September 2007; (b) to release, without delay, those arrested and detained as a result of the demonstrations, and to release all political detainees in Myanmar, including the General Secretary of the National League for Democracy (NLD), Daw Aung San Suu Kyi, and to ensure that the conditions of detention meet international standards and include the possibility of visiting any detainee; (c) to 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; (d) to engage urgently in a reinvigorated national dialogue with all parties with a view to achieving genuine national reconciliation, democratization and the establishment of the rule of law; and (e) to cooperate fully with humanitarian organizations, including by ensuring full, safe and unhindered access of humanitarian assistance to all persons in need in the country.

5. The Council also requested the Special Rapporteur to monitor the implementation of its resolutions and to conduct visits to the country. It encouraged the Government of Myanmar and the Office of the United Nations High Commissioner for Human Rights (OHCHR) to continue to engage in a dialogue with a view to ensuring full respect for all human rights and fundamental freedoms.

6. The Council resolutions, while focusing on the tragic events of September 2007, are also relevant to key current situations in the country with regard to the constitutional process and the devastating effects of cyclone Nargis. In accordance with resolution 7/31, in the present report the Special Rapporteur focuses on the human rights issues pertinent to the current constitutional process in the country and the developments with regard to the crackdown on the demonstrations of September 2007. He also reviews the impact on the human rights situation of the people of Myanmar of tropical cyclone Nargis and on access to humanitarian assistance. Furthermore, the report includes the Special Rapporteur's overview of the methodology and programme of work that he would like to follow in discharging his mandate.

7. The Special Rapporteur addressed two letters to the Government of Myanmar. In the first letter, dated 6 May 2008, he expressed his distress and profound sympathy to the people of Myanmar following the devastating cyclone; in the second letter, dated 7 May, he focused on establishing formal contacts by introducing himself and requesting to visit the country. The Government of Myanmar responded to his first letter, expressing its deep appreciation on behalf of the people of Myanmar for his kind message regarding the tragic event, noting that the Special Rapporteur's support and encouragement reflected the cooperation between the Government of Myanmar and the Council. At the time of finalization of the present report, the Special Rapporteur had not yet received any reply to his request for a visit. He very much hopes that, in accordance with the sense of collaboration expressed in the above-mentioned communication, his request will be accepted by the Government.

8. The Special Rapporteur would like to benefit from the expertise developed by his predecessors and explore with the authorities, national partners and the people of Myanmar positive ways to

address the main human rights challenges in the country. He would also like to thank OHCHR and its Regional Office for South-East Asia for the support received in the implementation of his mandate.

II. HUMAN RIGHTS AND THE CONSTITUTIONAL PROCESS

9. In its resolution 7/31, the Council requested the Special Rapporteur to report to it at its eighth session on the implementation of resolutions S-5/1 and 6/33. In those resolutions, the Council addressed a number of requests to the Government of Myanmar in substantive thematic areas. With regard to the current constitutional process, the Council requested the Government to lift all restraints on the peaceful political activities 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 and to engage urgently in a reinvigorated national dialogue with all parties with a view to achieving genuine national reconciliation, democratization and the establishment of the rule of law. The Special Rapporteur therefore considers it relevant to provide the Council with the information set out below.

A. Developments in the constitutional process, including the referendum

10. On 19 February 2008, the finalization of the draft Constitution, the fourth step in the Government's 7-step road map to democracy, was announced. On 9 April, it was announced that the referendum on the adoption of the new Constitution was scheduled for 10 May 2008, with multiparty democratic elections scheduled by the Government for 2010. The people of Myanmar have not been called to vote since 1990.

11. Copies of the 457-article draft Constitution were officially made public on 9 April and were reportedly on sale in bookshops at the price of 1,000 kyat (\$1) a copy, a price that was reportedly unaffordable for a significant proportion of the population. The short time frame between the official announcement of the referendum and 10 May, the date of its holding, raised deep concerns locally and internationally with regard to the readiness, preparedness, organization and carrying out of the referendum process. It was widely noted that the schedule fell far short of ensuring a far-reaching publicity campaign, inclusive of information dissemination, public-awareness programmes and free debate to enable members of the electorate to make an informed decision when casting their votes.

12. The atmosphere for a credible, widely acceptable referendum has been, regrettably, sombre. The calls from world leaders, including the Secretary-General, to the Myanmar authorities to make the constitution-making process inclusive, participatory and transparent and to engage without delay in a time-bound dialogue with others, including the General Secretary of NLD, Daw Aung San Suu Kyi, were not properly heeded by the Government. The Government relied on a narrow sovereignty interpretation and used this as grounds not to accept the recommendation of the Special Adviser to the Secretary-General on Myanmar, Ibrahim Gambari, to invite international observers for the referendum. By inviting international observers, the referendum process would have been transparent, and the observers could have assisted in ensuring a free and fair process. The path for the referendum was further challenged by cyclone Nargis, which struck Myanmar on 2 and 3 May.

13. Despite the cyclone, the Government decided to proceed with the referendum, as had been announced by the commission responsible for organizing the referendum, in its statement 8/2008, according to which the referendum would be held, as scheduled, on 10 May, in all states and divisions, except in 40 towns in Yangon Division and 7 towns in Irrawady Division, devastated by the cyclone, where the referendum would be held shortly after, on 24 May. Subsequently, on 8 May, the Secretary-General noted that it might be more prudent to focus instead on mobilizing all available resources and capacity for emergency response efforts.

14. The referendum was held on 10 May 2008. Aung Toe, head of the Commission for the referendum, announced that the draft Constitution had been overwhelmingly approved by 92.4 per cent of the 22 million eligible voters, pointing out that there had been a turnout of more than 99 per cent. In the remaining 47 towns, the referendum was held on 24 May.

15. The NLD publicly dismissed the national referendum on the draft Constitution stating that it had not been inclusive and that it was unclear. It also pointed out that the Government had failed to discuss the drafting of the new Constitution with the representatives elected in the 1990 parliamentary elections, and that decree No. 5/96 reportedly prohibited criticism of the national convention and allowed critics to be sentenced to up to 20 years of prison. On 17 May, the NLD rejected the Government's claim that more than 92 per cent of voters had approved the draft Constitution in the first round of the referendum.

16. On several occasions, the Government announced that the referendum and the 2010 elections were two crucial steps on the road to democracy. Such announcements are particularly relevant in the context of the Universal Declaration of Human Rights. In article 20, it is stated that "everyone has the right to freedom of peaceful assembly and association" and "no-one may be compelled to belong to an association". In article 21, it is stated that "everyone has the right to take part in the Government of his country, directly or through freely chosen representatives", "everyone has the right of equal access to public service in his country", and that "the will of the people shall be the basis of the authority of Government; this will shall be expressed in periodic and genuine elections, which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures".

17. If properly carried out, this path would lead to the formation of an elected Government and create an excellent opportunity to establish the basis for economic, social and political reforms, address the country's pressing humanitarian and human rights needs, find effective precautionary measures for the rapidly deteriorating health and education situation and find avenues for true dialogue with opposition leaders.

18. The lack of participation in the drafting process, its transparency, the challenges regarding public knowledge about its contents, the implications of the draft Constitution for the people of Myanmar before making an informed decision, and the conditions under which the referendum was held all raise significant concerns from a human rights perspective.

19. The draft Constitution is said to have provisions that could compromise the enjoyment of the human rights recognized in the Universal Declaration of Human Rights. This aspect will be developed in future reports of the Special Rapporteur. To that end, the Special Rapporteur hopes to receive in the near future, an official English-language translation of the draft.

B. Right to freedom of opinion and expression, peaceful assembly and association, and the role of human rights defenders

20. The right to freedom of opinion and expression is guaranteed under international law by a number of human rights instruments, notably under article 19 of the Universal Declaration of Human Rights. This universal right is particularly relevant to the democratization process.

21. After the announcement of the finalization of the draft Constitution, the Government intensified its campaign in support of the referendum and to ensure the acceptance of the Constitution by the people of Myanmar. A widespread media campaign encouraging citizens to vote in favour of the draft Constitution, as well as public rallies and activities, were reportedly held throughout the country. Public political debate, activism and organization are fundamental values encouraged by the Universal Declaration of Human Rights in its articles 2, 18, 19, 20 and 21. These provisions should provide space for all voices to be heard, including those that might be different, with varying perspectives enriching the pluralism of a vibrant democracy.

22. The provision included in the Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar No. 1/2008 and the existing provisions in the State Law and Order Restoration Council Law No. 5/96 threatened any opposition to the referendum. According to the Referendum Law, people who publicly stand against the referendum face fines and prison sentences. The Law has curtailed the peoples' right to express their views, the essence of modern democracy. Despite these provisions, reports were received that posters had been hung on walls and anti-referendum rallies held.

23. The Special Rapporteur received a number of allegations regarding the arrest, detention and bringing of charges against individuals who had expressed views against the referendum and the draft Constitution. Reports were received of acts of protest and anti-referendum rallies in several parts of the country, in particular in Yangon and Mandalay. On 4 March, in Yangon, a number of demonstrators wearing T-shirts bearing anti-referendum slogans gathered near NLD headquarters; reportedly, seven activists participating in the rally were arrested. Several instances of harassment of NLD members (Myint Soe and Aung Ko Ko) were also reported after the NLD launched a "Vote No" campaign. A number of activists were also reportedly arrested in Sittwe following a peaceful demonstration against the referendum on 19 April.

24. According to the reports brought to the attention of the Special Rapporteur, the respect for voter anonymity at polling stations and during the collection of advance votes had not been respected. There were also accounts of pro-Constitution posters being displayed at polling stations and polling station administrators putting pressure on voters to vote in favour of the Constitution.

25. A solid and independent civil society is a good measure of democracy in a country. Human rights organizations should be part of a vibrant civil society. States members of the United Nations recognized the importance of human rights defenders when, in 1999, the General Assembly adopted by consensus the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (resolution 53/144). Human rights defenders are fundamental partners in democratization, and the Declaration provides a framework for their action, defining their rights and responsibilities and giving guidance on how their role should be supported and protected. The presence of human rights defenders and the possibility of conducting their work without hindrance and with full liberty are indicators of democratization.

C. Political prisoners and the path to democracy

26. Over the years, the Commission on Human Rights and the Human Rights Council have denounced the situation of political prisoners in Myanmar. This situation is particularly relevant at a time when the country is supposed to be paving the way towards a democratic society.

27. Regrettably, the reported number of political prisoners and detention conditions continue to be appalling. The Special Rapporteur was informed that, as at 20 May 2008, 1,900 persons were in prison, allegedly on political grounds.

28. The situation of the General Secretary of the NLD, Aung Saan Suu Kyi, and in particular her house arrest, are issues of particular concern in this regard. According to Opinion No. 2/2007 of the Working Group on Arbitrary Detention, the Government argued that Aung Saan Suu Kyi had been arrested because, in 2003, during her political activism in numerous towns, she had committed acts against peace and order of local communities, had made speeches against the Government and had campaigned with the intention of weakening the integrity of Myanmar and the solidarity of ethnic communities. On these grounds, the Government applied article 10 (b) of State Protection Law 1975, which established that a person who is a "threat to the sovereignty and security of the State and the peace of the people may be detained for up to five years, but no more than one year at a time". On 25 May 2007, the Government extended Aung Saan Suu Kyi's arrest for another year, reaching the limit of five years provided for by the Law. According to reliable information, in May 2008, the

Government of Myanmar exceeded the limit by again extending Aung Saan Suu Kyi's arrest with no new evidence or allegations against her.

29. The situation of Aung Saan Suu Kyi is an issue of critical concern for the Special Rapporteur, since it compromises the fundamental human rights recognized by the Universal Declaration of Human Rights. Articles 9, 10 and 11, which grant a number of rights to arrested persons, and articles 19, 20 and 21, which protect the principle of political rights, are all seriously affected in the case of Aung Saan Suu Kyi. In addition, given her responsibility as NLD General Secretary, her arrest affects the political rights of many other members of the NLD and of the people of Myanmar.

III. DEVELOPMENTS WITH REGARD TO THE EVENTS OF AUGUST AND SEPTEMBER 2007

30. In its resolutions S-5/31 and 6/33, the Council called on the Government of Myanmar to investigate and bring to justice perpetrators of human rights violations with regard to the peaceful demonstrators of September 2007, and to release, without delay, those arrested and detained as a result of the demonstrations and to ensure that the conditions of detention met international standards and included the possibility of visiting any detainee.

31. The Special Rapporteur would like to provide more recent information brought to his attention in relation to the situation covered in the previous report (A/HRC/7/24).

A. Arrests, detentions, trials and releases in connection with the demonstrations of September 2007

32. In the previous report (A/HRC/7/24), the Special Rapporteur noted that 718 individuals had been arrested between August 2007 and February 2008 and that they were reportedly still detained at the time of finalization of the report. That figure included the 93 individuals confirmed by the Government to be in detention during the Special Rapporteur's mission to Myanmar in November 2007. The Special Rapporteur has relied on information from various sources and it is incumbent on the Government to provide confirmation in order for the Special Rapporteur to present an accurate account. The Special Rapporteur has received information relating to individuals reportedly arrested and/or in detention in connection with the crackdown on the demonstrations of September 2007. These arrests contravene articles 9, 10, 11, 19, 20 and 21 of the Universal Declaration of Human Rights.

33. Regarding the situation of some members of the 88 Generation Students group, the Special Rapporteur has received information confirming that Khin Moe Ay, Aung Gyi (also known as Moe Aung Soe), Myat Hsan, Zaw Min, Htun Htun Win and Win Maw are all still detained in Insein prison. Kyaw Soe, Myo Yan Naung Thein and Win Maw are also still detained in Insein prison and have reportedly been charged under section 5 (g) of the penal code. Mon Min Soe (also known as Min Min Soe), included in the report as self-identified political activist, has also reportedly been identified as a member of the 88 Generation Student group and is reportedly still in Insein prison.

34. Regarding the situation of self-identified political activists, the Special Rapporteur is pleased to report that, according to information received, Myint Naing, Dr. Aung Moe Nyo and Htet Htet Aung have been released; however, Ye Thein (alias Ko Bo Naung) is reportedly still detained in Sittwe prison, Arakan State. U Khin Hla was reportedly transferred from Thandwe prison, Arakan State, on 8 February 2008, to Buthidaung prison, Arakan State, and charged under sections 294, 506 and 427 of the Penal Code and has been sentenced to four years of imprisonment. Htay Myint, is reportedly still detained in Thayet prison, while Nay Myo Kyaw is still held in Insein prison. Kyaw Zin Win, who remains in Insein prison, has been allegedly charged under sections 6, 32 (b) and 13/1 of the Penal Code.

35. U Thet Wia, Sanchaung township NLD Chairman, who had allegedly been arrested in September 2007 for being in possession of information on forced labour and children in armed conflict and subsequently released on bail in January 2008, is still reported as released on bail.

36. Regarding the situation of Thet Zin, editor-in-chief of Myanmar Nation (Myo Myanmar) and Sein Win, both reportedly arrested for being in possession of the report of the previous Special Rapporteur, Thet Zin is still in detention in Insein prison and has been charged under section 17/20 of the Printing Act. With regard to the detained artists mentioned in the report of the Special Rapporteur, according to reliable sources they are still detained in Insein prison.

37. Human rights defender Aung Zaw Oo is still reportedly detained in Insein prison and is said to have been charged under section 5 (g) of the Penal Code. U Tin Hla, a member of the Federation of Trade Unions - Burma, on 11 January 2008, was reportedly charged under section 19 (a) of the Penal Code and sentenced to seven years imprisonment and is in Insein prison. On 7 November 2007, Thet Oo was reportedly charged under section 505 (b) of the Penal Code and sentenced to two years imprisonment in Taungoo prison, where he is now. Zaw Tun was reportedly charged on 7 November 2007 under section 505 (b) of the Penal Code; he is in Prome prison. On 18 October 2007, Shwe Pain was reportedly charged under section 505 (b) of the Penal Code and sentenced to two years of imprisonment; he is in Katha prison, Sagaing Division. Ya Zar and Zaw Kyi are both still detained in Kale prison. Shwe Thwe is still detained in Kale prison and has been sentenced to two and a half years of imprisonment. Aung Naing Soe is still detained in Thandwe prison; the order for his solitary confinement was lifted on 13 December 2007.

38. In the previous report (A/HRC/7/24), information was provided concerning the arrest of two students. According to recent information received, Ye Myat Hein, a 17-year-old student, who had reportedly been charged but has never been brought before the courts, was finally brought to Bahan town court on 2 January 2008 and reportedly charged under sections 505 (b), 143, 144, 145, 295 and 295 (a) of the Penal Code. He remains detained in Insein prison and has been allowed to communicate with his lawyer. Regarding the other student, Sithu Maung (alias Ya Pyeit), according to information received, he is also detained in Insein prison and has been charged under sections 505 (b), 143, 144, 145, 295 and 295 (a) of the Penal Code. He was taken to Bahan town court together with Ye Myat Hein and has been allowed to contact his lawyer also.

39. In relation to the reported detained monks, U Kaw Vida is still reportedly detained in Insein annex prison and has been charged under sections 134, 135 and 505 (b) of the Penal Code. U Gambira reportedly continues to be detained under the same charges. Another eight monks - U Pyinnyar Thila, U Nara Pati, U Vilathetka, U Sanda Vanna, U Eindriya, U Khaymar Vantha, U Zathi La and U Zar Nayya - have also reportedly been brought before the court together with U Kaw Vida. The Special Rapporteur was informed that a nun, Daw Thi La Nandi (also known as Aye Aye), is still detained in Insein prison. She has reportedly been charged under section 295 of the Penal Code after she allegedly appeared before Okkapala town court on 27 February 2008 with seven other nuns.

40. In his next report to the Council, the Special Rapporteur would like to provide an analysis on the compatibility of the provision in the current Penal Code and its procedural frameworks with human rights standards. In this context, the Special Rapporteur will propose to the Government of Myanmar, in the course of a future visit, the possibility of setting up a national experts' conference that could enlighten him on the country's procedures and serve as an open and ongoing forum for dialogue on these matters.

B. Conditions of detention: right to health and treatment

41. Information was received with regard to the health situation of Paw U Tun (alias Min Ko Naing), a member of the 88 Generation Students group active in the demonstrations against the sharp rise in fuel prices in August 2007; Paw U Tun has reportedly been suffering from a severe eye infection while in detention. He requested to visit an ophthalmologist, but the prison authorities allegedly refused this request, claiming that an eye doctor would not be available before May 2008. According to reports, Paw U Tun's eye condition and acute pain prevented him from eating and sleeping.

42. Information has also been received with regard to the situation of one of the NLD members mentioned in the report. Aye Cho is reportedly suffering from hypertension and a heart problem and requires assistance.

C. Access to prisoners by international organizations

43. The reports received indicate that the detention conditions of detainees at Insein prison in Yangon remain appalling. Family members and relatives continue to report that they face many obstacles, including lengthy procedures, before they can visit detainees in prison. While some of the prisoners have had access to legal counsel during the reported trials, reports on the situation of most of the detainees can still only be obtained through contacts with prisoners' families.

44. According to the most recent information, there have been no visible developments in the access by the International Committee of the Red Cross (ICRC) to the detainees in accordance with its mandate. In this context, the Special Rapporteur would like to emphasize his call to the authorities to re-engage with ICRC and provide free access to detention centres.

D. Investigations on the 31 reported killings and depuration of responsibilities for excessive use of force

45. The Special Rapporteur, as mandated by the Council, would like to continue to follow up on the steps taken by his predecessor in engaging in fruitful discussions with the relevant authorities with a view to clarifying the reported tragic deaths of at least 31 individuals during and/or as a result of the crackdown on the peaceful protests in September 2007. The excessive use of force contravenes article 29 (2) and (3) of the Universal Declaration of Human Rights.

46. At the time of finalization of the present report, the Special Rapporteur had not received any further information from the relevant authorities on the status of the investigations on the deaths of the mentioned individuals and the investigations with regard to responsibility in the light of article 3 of the Code of Conduct for Law Enforcement Officials and its commentary.

47. A number of individuals continued to be reported as missing since the crackdown on the protests. While noting the difficulties in assessing the whereabouts of these individuals in view of the present circumstances, the Special Rapporteur would like to express his concern and hopes that the Government will put a mechanism in place in order to discover the whereabouts of these individuals.

48. In this context, the Special Rapporteur would like to focus in his dialogue with the Government on the importance of access to official information and the outcome of investigations; this will allow him to follow the process of identification and clarification of cases reported to him.

IV. THE IMPACT OF CYCLONE NARGIS

49. Tropical cyclone Nargis struck Myanmar on 2 and 3 May 2008, causing devastation in Ayeyarwady Division and directly hitting the country's largest city, Yangon. A total of 40 towns in Yangon Division and 7 townships in Ayeyarwady Division are still on the Government's list of disaster areas. As at 16 May, the official death toll had risen to more than 77,000. According to Government media, nearly 56,000 people remain missing, with the official number of injured being approximately 19,400.

50. Assessment teams in the country have reported major damage in affected areas, particularly in the low-lying Ayeyarwady (Irrawaddy) delta region, where the impact of the cyclone was compounded by a storm surge. At the moment of finalization of the present report, the Office for the Coordination of Humanitarian Affairs reported that, of the 2.4 million cyclone-affected people, an estimated 1.4 million are located in severely affected areas of Ayeyarwady Division, including Bogale, Labutta, Ngaputaw, Dedaye, Pyapon, Kyaiklat, and Mawlamyinegyun.

In addition, the Office estimates that 680,000 individuals reside in severely affected areas of Yangon Division.

51. In its resolutions, the Council has traditionally called on the Government to cooperate fully with humanitarian organizations, including by ensuring full, safe and unhindered access of humanitarian assistance to all persons in need in the country. Regrettably, and in view of the devastating effects of the cyclone, the recommendations made by the Council in October and December 2007 respectively continue to be of great relevance to the promotion and protection of the human rights of the people of Myanmar.

Promotion and protection of human rights in humanitarian crises as a result of natural disasters

52. In natural disasters, the timing of emergency assistance and the delivery of aid can determine life or death. This has been confirmed in a number of situations over recent years in almost all regions of the world. All too often, the human rights of disaster victims have not been sufficiently taken into account.

53. In the situations created by natural disasters, the rights of the victims, in particular of children, women and the elderly and other vulnerable groups, to receive assistance and protection and to have their basic needs addressed should be the priority of the concerned Government, with its ultimate responsibility to protect the rights of its people. The victims of complex emergencies and natural disasters are not only those who are directly affected by the natural disaster, but may also include many others whose lives have been indirectly disrupted by the impact of these events and who are in need of help. Regrettably, the most recent natural disasters are of such great magnitude that international assistance is crucial for effective and timely action. However, the consequences of these disasters can take long to remedy.

54. The question of equal access to humanitarian aid, gender-based violence, enforced relocation, increased fear of recruitment of children into armed conflict or fighting forces in the areas where this phenomenon exists, involuntary resettlement, as well as issues relating to lost documentation and property, are human rights issues that have been often identified in situations of natural disasters and need to be addressed as part of the humanitarian process: immediate relief, and short-term and longterm recovery.

55. Concerns regarding the situation of children separated from their parents, increases in forced labour, the conditions of temporary shelter facilities and their management, the right to food and drinking water, the protection of the right to health and ultimately the right to life and the blockage of access to the affected areas have been expressed since the immediate aftermath of cyclone Nargis.

56. In a humanitarian crisis as a result of natural disasters, the risk of human rights violations is therefore demonstrably high, in particular in relation to the violation of economic, social and cultural rights and discrimination with respect to aid. While there are violations that can occur as a direct result of policies and actions, many others are the result of oversight. For this reason, the Special Rapporteur is of the view that, in order to avoid such violations, it is important that both the national authorities responsible and all national actors respect the human rights of all victims and others, and establish the necessary monitoring mechanisms in the early stage of humanitarian aid delivery and in recovery planning.

57. According to information brought to the attention of the Special Rapporteur, on 2 May, at around midnight, when cyclone Nargis hit Myanmar, many zinc roofs of the prison Insein in Yangon were torn off. Owing to the destruction in one area of the prison, some 1,000 prisoners were reportedly forced to congregate inside the main prison hall, which was then locked. Prisoners reportedly panicked, creating chaos inside the hall. In order to control the situation, it is reported that soldiers and riot police were called in and opened fire on the prisoners in that area. A number of prisoners

were allegedly killed during the operation. The authorities should conduct a thorough and transparent investigation to clarify the facts and identify the perpetrators of these arbitrary killings.

58. The human rights principles of non-discrimination and accountability are essential in this process. The primary bearer of responsibility for providing assistance and protection is the Government of the affected country, which has the obligation to do everything in its power to prevent and limit the negative impact of natural disasters, such as those resulting from cyclone Nargis, which left so many dead and homeless. Assisting victims and recovering from such natural disasters may require the support of the international community to supplement the efforts of the authorities of the affected country.

59. The principles of equality and non-discrimination are contained in numerous human rights instruments to which Myanmar is a State party, such as the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. These principles are the key to ensuring a human rights-based response to natural disaster situations. Another key principle is the involvement of the affected communities in the decisions that will have an impact in their lives. The right to have access to free and impartial information and the right to freedom of expression, as guaranteed by human rights law, should also be respected and provided.

60. In this context, the Special Rapporteur calls on all actors to pay special attention to the situation of women, children, and in particular the situation of orphans or children separated from their parents, internally displaced persons, elderly persons, persons with disabilities, persons living with HIV/AIDS and minority ethnic groups. It is essential that a full protection-coordination mechanism be established in the country, in close coordination with the Government.

61. To promote and facilitate a rights-based approach to disaster relief, the Inter-Agency Standing Committee adopted its Operational Guidelines on Human Rights and Natural Disasters in June 2006. The Special Rapporteur very much hopes that the Government of Myanmar and the international, regional and national organizations involved in the provision of assistance to address the needs created by the cyclone pay special attention to these Guidelines. While the Operational Guidelines are mainly addressed to intergovernmental and non-governmental humanitarian actors, they are certainly a very useful tool to guide the Government's efforts to assist in getting the lives of its people back to normal.

V. METHODOLOGY, ACTIVITIES AND PROGRAMME OF WORK OF THE SPECIAL RAPPORTEUR: PRELIMINARY OVERVIEW

62. The Special Rapporteur wishes to emphasize that, as his primary task, he would like to cooperate with and assist the Government of Myanmar in its efforts in the promotion and protection of human rights. The Special Rapporteur will highlight any shortcomings with a positive approach, in order to assist the authorities to remedy them.

63. Taking into consideration the major human rights issues set out above, the Special Rapporteur, within his mandate, will also identify particular topics that deserve special attention and present a programme of work in his next report to the Council.

64. The Special Rapporteur is of the view that, in order to report on the progress made by Myanmar in the implementation of Council resolutions and to adequately monitor developments in the overall human rights situation of the people of Myanmar, in-depth research, including discussions with the experts in the country, is essential. In addition to receiving information from human rights organizations and international academic experts, the Special Rapporteur would like to engage with the experts in the country itself in order to advance the promotion and protection of human rights in the country. An outline for each thematic study will be prepared after a preliminary examination of the subject based on existing documentation. The study will then be developed using a variety of

inputs and sources, including material and reports prepared by government agencies, civil society organizations, the United Nations country team and academic institutions.

65. The Special Rapporteur expects the Government to accept his requests to visit the country regularly. Since time and resources are limited, such visits will have to be prepared carefully to maximize results. The Special Rapporteur also considers it important to continue engaging countries in the region as well in the discussions regarding progress made on the implementation of resolutions. In view of the important role of the Association of Southeast Asian Nations, he will also carry out visits to neighbouring countries.

66. The Special Rapporteur welcomes full cooperation from the States members of the Human Rights Council in discharging his mandate. This includes the good offices of countries neighbouring Myanmar and other States in ensuring meaningful dialogue and cooperation between the mandate of the Special Rapporteur and the Government of Myanmar to achieve progress in the promotion and protection of human rights, especially at this crucial time, when the Government has set up its 7-step road map to democracy.

67. With the assistance of OHCHR and other institutions, the Special Rapporteur hopes to develop a computerized database of allegations of human rights violations that he receives. The database would help to continue strengthening the accuracy of the information received.

68. Effective coordination is a priority in the United Nations. In this context, the Special Rapporteur envisages close cooperation with, among others, the Special Adviser to the Secretary-General on Myanmar, the Special Representative of the Secretary-General for Children and Armed Conflict, the International Labour Organization coordination mechanism on forced labour and other special procedures and mechanisms for oversight, and in the implementation of the international human rights instruments to which Myanmar is a State party, such as the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

VI. CONCLUSIONS

69. According to the information received since 26 March 2008, the situation of human rights in Myanmar reported by the previous Special Rapporteur has not changed for the better. It is a great concern of the present Special Rapporteur that almost no improvement has been made and that critical issues still have to be addressed.

70. Further development of the present report will need close cooperation with the Government of Myanmar, in order to improve the enjoyment of human rights of the people of Myanmar.

71. In that regard, the Special Rapporteur regrets that, owing to time constraints and the schedule of the Council, he must submit the present report without having a chance to explore thoroughly with the Government of Myanmar areas of cooperation and exchange of information.

VII. RECOMMENDATIONS

72. The Special Rapporteur recommends that the Government of Myanmar:

- (a) Immediate release of the General Secretary of the NLD, Aung Saan Suu Kyi, as an initial step in the reconciliation process, to be followed by the release of all other political prisoners;
- (b) Set-up an effective mechanism to establish the whereabouts of those who reportedly disappeared during and after the crackdown on the peaceful demonstrations in September 2007, and provide information on the progress of its work;
- (c) Guarantee the physical integrity of all political prisoners, and in particular access to medical treatment of those in need;
- (d) Prepare a public report on how the referendum was conducted and the lessons learned;

- (e) Fully respect freedom of expression, peaceful assembly and association, in particular at this crucial time in the establishment of the solid foundations of a healthy democracy;
- (f) Continue to uphold the agreements made with the Secretary-General to allow international humanitarian workers and supplies unhindered access to the country and particularly to the areas affected by cyclone Nargis, and cooperate with the international community in monitoring questions of access and in assessing the need for effectiveness of the aid being supplied;
- (g) Extend full cooperation to the mandate of the Special Rapporteur, accepting his requests for visits.

Reports to the Human Rights Council, March 2008

General Assembly

A/HRC/7/24

Original: ENGLISH

Seventh session

HUMAN RIGHTS SITUATIONS THAT REQUIRE THE COUNCIL'S ATTENTION

in Myanmar, Paulo Sérgio Pinheiro, mandated by resolution 6/33 of the Human Rights Council*

A/HRC/7/24

Summary

In its resolution 6/33, the Council requested the Special Rapporteur to monitor the implementation of that resolution and to conduct a follow-up mission to Myanmar, and to report to the Council at its seventh session, and urged the Government of Myanmar to cooperate fully with the Special Rapporteur. Consequently, in a letter to the Government dated 30 January 2008, the Special Rapporteur expressed his wish to conduct a follow-up mission to the country. The Special Rapporteur regrets that, to date, he has not been granted access to the country for a follow-up mission as requested by the Council.

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I. INTRODUCTION

1. On 15 August 2007, the Government of Myanmar raised the retail price of fuel by 500 per cent, thereby affecting the livelihood of the population, which responded to that decision by demonstrating peacefully in August and early September. From 18 to 26 September, large, peaceful demonstrations were held across the country, in Yangon, Mandalay, Pakokku and Sittwe. The Government's crackdown on the demonstrators, mostly monks, took place from 26 to 29 September. During the crackdown, the security forces, comprising police and army or riot police (Lone Htein), as well as members of the Union Solidarity and Development Association and the Swan Ah Shin militia, used excessive force against civilians, including unnecessary and disproportionate lethal force. Following the crackdowns, several reports were received, among others, of killings, severe beatings, arrests, torture and deaths in custody.

2. In accordance with Council resolution S-5/1, the Special Rapporteur, at the invitation of the Government, conducted a visit to Myanmar, from 11 to 15 November 2007. The Special Rapporteur stressed that his mission could not be considered a fully fledged fact-finding mission, since the conditions for an independent and confidential investigation would have required a

different framework. The Special Rapporteur therefore informed the Council that his mission should be seen as an initial step in a process, and that the authorities had expressed willingness for his follow-up missions.

3. During his visit, the Special Rapporteur found that, during the period from 26 to 29 September, the security forces, including the army and the riot police, had used excessive force against civilians. The Special Rapporteur concluded, after seriously considering a number of testimonies, reports and video and photo material provided, that there were solid grounds to believe that at least 31 persons had died as a result of the crackdown on the demonstrations in September and October, including the 15 individuals accounted for in the information provided by the Government on casualties. The Special Rapporteur believed that the participation of Union Solidarity Development Association members and the Swan Ah Shin militia largely contributed to the excessive use of force against peaceful demonstrators. According to reliable reports and accounts, it was estimated that some 3,000 to 4,000 people were arrested in September and October, and between 500 and 1,000 were still being detained in December. In his report, the Special Rapporteur brought to the attention of Government at least 74 cases of enforced disappearance that had been reported to him.

4. Subsequent to the Special Rapporteur's report (A/HRC/6/14), on 14 December 2007, the Council adopted resolution 6/33 in which it requested the Special Rapporteur to conduct a follow-up mission and to report to the Council at its seventh session. The Special Rapporteur transmitted a letter to the Government on 30 January 2008 in which he expressed his wish to conduct a follow-up mission prior to the seventh session of the Council in March 2008. At the time of the finalization of the present report, the Special Rapporteur had not been granted a visa by the Myanmar authorities.

5. In accordance with resolution 6/33, the Special Rapporteur presents a follow-up overview and assessment of the information collected in relation to the human rights implications of the crackdown on the demonstrations in September 2007 and the developments regarding the thematic areas addressed in his previous report to the Council. He deeply regrets not having been permitted to travel to Myanmar to assess the situation in situ.

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II. METHODOLOGY AND ACTIVITIES OF THE SPECIAL RAPPORTEUR

6. After the Council adopted resolution 6/33, the Special Rapporteur included in his programme of work a plan for a follow-up visit to Myanmar and a programme to gather updated information regarding developments in the investigations of the disappeared; the reported killings during the crackdown; the depuration of responsibilities as a result of the excessive use of force; and the situation of detainees, including their detention conditions and the fairness of the trials and their outcomes. After evaluating the various constraints encountered during his mission in November 2007, the Special Rapporteur also communicated clearly to the Government the framework that would be required to ensure a constructive visit.

7. The Special Rapporteur wrote to the Government on 8 February 2008 with a detailed programme proposal aimed at continuing to identify the circumstances and obtain the Government's views on the actions taken during the major incidents reported, including meetings with, among others, the Minister for Home Affairs; the Minister for Foreign Affairs; the Minister for Labour; law enforcement officials, including riot commanders and police battalions; and military and infantry divisions in charge of law and order during the crackdown on the demonstrations in September 2007. He also proposed meetings with the Attorney General and the judicial authorities to gather information regarding the legal conditions of the detainees,

the trials and convictions. The Special Rapporteur informed the Government that he also wished to focus on the incidents reported in Mandalay and Sittwe. As was the case during his visit in November 2007, the Special Rapporteur requested further private interviews with detainees, as well as unrestricted private access to the United Nations country team and civil society organizations.

8. Since the presentation of his report to the Council in December 2007, the Special Rapporteur has received and collected updated information from a number of reliable sources on the developments in the country in relation to the crackdown on the demonstrations held in September 2007. The Special Rapporteur has not had the opportunity to engage with the Government in situ on the new findings and to compare updated information gathered since December 2007. The information gathered during the period under review shows that the events in September 2007 and their consequences require systematic engagement and thorough investigation. This will be essential if the efforts of the Government to promote and protect human rights in the context of a democratic transition, as expressed to the Special Rapporteur by his Government interlocutors during his visit to the country in November 2007, are to be realized.

9. The Special Rapporteur would like to express his gratitude to the Office of the United Nations High Commissioner for Human Rights, and in particular to the Regional Office for South-East Asia for the support provided in the implementation of his mandate.

III. DEVELOPMENT SINCE THE FIRST MISSION RELATED TO THE EVENTS OF AUGUST AND SEPTEMBER

10. During the period under review, the Special Rapporteur continued to receive information regarding the arrest and detention of human rights activists and individuals in connection with the violent crackdown on the peaceful demonstrations held in September 2007.

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11. The reports received indicate that there is an ongoing trend to arrest individuals who have any relation with the organization of the peaceful demonstrations in September or who were allegedly attempting to provide testimonies or visual information regarding the crackdown. A number of detainees have reportedly been under trial and received sentences for their involvement in the demonstrations.

12. It has been reported that State surveillance of monks and monasteries continued during the period under review. Since his mission in November 2007, the Special Rapporteur has gathered the direct testimonies of 23 monks who participated in the demonstrations. Asked for the motivation of their engagement in the demonstrations, all stated that the reason for their engagement was the harsh conditions imposed by the Government on the people and the worsening standards of living. These reasons were reflected in the Special Rapporteur's report (A/HRC/6/14). The monks indicated that the economic situation was also squeezing their already scarce resources for social assistance, which has been seen traditionally as a social safety net for many people in the country. On 29 November, the Special Rapporteur received information concerning the closing of a number of monasteries, including the Maggin monastery in Yangon, which had traditionally offered assistance to HIV/AIDS patients. The shutting down of monasteries was allegedly related to their alleged support for the demonstrations in September by senior abbots. In other major cities such as Mandalay, monasteries were surrounded by the security forces.

13. On 4 December, the Special Rapporteur transmitted a letter to the Government containing three lists of people allegedly detained, killed or disappeared and requested information on their

cases. The Special Rapporteur regrets that he did not receive any information from the Government concerning these cases.

A. Releases, ongoing arrests and detentions

14. According to international human rights law, arrests and detentions must be carried out in compliance with formal and substantive rules of domestic and international law, including the principle of non-discrimination. Under the Universal Declaration of Human Rights, such arrests must not be arbitrary and may only be carried out by legally authorized persons. Moreover, a detainee's rights, including the right to be informed of the charges against him or her, to have access to legal counsel and medical care, to have his or her family informed of his or her whereabouts, and to have his or her arrest subjected to prompt judicial review, cannot be waived simply by renaming the arrest and detention an "investigation". Furthermore, principle 2 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that "arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose".

15. During the Special Rapporteur's mission in November 2007, the Government confirmed the detention of 93 individuals. On 4 December, the Special Rapporteur submitted a list of an additional 653 individuals who were believed to be still in detention at that time. The Special Rapporteur did not receive any response from the Government on the status of those reported detained, however, he did receive information from non-governmental sources regarding the release of some 100 people who had been arrested in connection with the demonstrations. The Special Rapporteur acknowledges the difficulties in keeping track of the releases due to the lack

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of information regarding the exact release date and, in this context, deeply regrets not having had the opportunity to verify these positive developments with the authorities through a follow-up visit.

16. After he left the country on 15 November 2007, the Special Rapporteur continued to receive information on ongoing arrests and detentions. Since his departure, further arrests have been reported. Some 70 individuals were reportedly arrested between 15 November 2007 and 18 February 2008 in connection with their presumed participation in the demonstrations and for allegedly having reported outside of the country on the use of force by State agents during the crackdown. At time of the finalization of the present report, 62 of them were reportedly still being detained.

17. Khin Moe Aye, Kyaw Soe, Zaw Min, Htun Htun Win, Myo Yan Naung Thein - all former political prisoners and current members of the 88 Generation Students groups - were reportedly arrested from 16 to 18 December 2007. It is reported that they were arrested in relation to the filming of the September protest and the testimonies provided to the foreign media. Former political prisoners Aung Aung Gyi, Myat Hsan and Win Maw were reportedly arrested in December 2007 for trying to send video footage of the September demonstrations to international media.

18. Ye Thein (alias Ko Bo Naung), Myint Naing, U Khin Hla, Mon Min Soe, Htay Myint, Dr. Aung Moe Nyo, Sin Win, Nay Myo Kyaw, Htet Htet Aung and Kyaw Zin Win, self-identified as political activists, have also been arrested since the Special Rapporteur's mission.

19. On 18 February 2008, U Thet Wia (alias Pauk Sa) the Chairman of the National League for Democracy (NLD) of Sanchaung township was reportedly arrested again after he had been arrested and released in September 2007 and in January 2008. When he was arrested in January,

police allegedly conducted a body search and found a digital memory device with information on forced labour and children in armed conflict; he was informed that this was the reason for his arrest. The Special Rapporteur was informed on 5 March 2008 that U Thet Wia had been released on bail (for 100,000,000 kyats) after having been charged under Penal Code articles 186 and 353.

20. Freedom of expression has been further curtailed, as seen by the arrest of a number of journalists and the banning of a number of media. On 15 February 2008, Thet Zin, editor-in chief of Myanmar Nation (Myo Myanmar), and Sein With Maung (alias Ko Soe), office manager of the same newspaper, were said to have been arrested at their office in Yangon. Reportedly, police searched the office and confiscated a copy of the Special Rapporteur's report, several books, compact discs containing images of the street protests of August and September 2007, mobile phones and poems written by Sein Win Maung and critical of the military junta. The Government banned the publication and distribution of Myanmar Nation on 19 February 2008. Nay Phone Latt (alias Nay Myo Kyaw) was arrested on 29 January allegedly for posting articles on expressions of youth on his Internet blog pages. With regard to the case of Thet Sin and Sein With Maung, the Special Rapporteur, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on Human Rights Defenders, transmitted a joint urgent appeal to the Government on 21 February.

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21. Furthermore the Special Rapporteur received detailed information regarding the arrest of artists and other activists. Saw Wai was reportedly arrested on 22 January 2008 for writing a poem criticizing the military junta leadership. Two other poets reportedly arrested in January were Ko Ko Maung alias (Zaw Lu Sein) and Ko Min Han. The artist-guitarist (Ko) Win Maw was reportedly arrested on 27 November 2007.

22. In 2007, the commemoration of International Human Rights Day on 10 December coincided with the global year-long campaign leading up to the sixtieth anniversary of the Universal Declaration of Human Rights. International Human Rights Day has traditionally been a date for commemorating the millions of human rights defenders around the world who struggle daily to protect and promote the rights of others as set up in the Universal Declaration. The Special Rapporteur deeply regrets that the human rights defenders in Myanmar were reportedly harassed for their preparations for the commemorations. The human rights defender Aung Zaw Oo, a member of the Human Rights Defenders and Promoters network, was reportedly arrested on 26 November 2007 while preparing materials for the commemoration. U Tin Hla, a member of the Federation of Trade Unions - Burma, was reportedly arrested with members of his family on 28 November for organizing and inciting the participation of railway workers in the September demonstrations. The Special Rapporteur was informed by the Government that Aung Zaw Oo had been charged under the Unlawful Association Act 1908 (17/1), Immigration (Emergency Provision) Act 1947 (13/1) and Penal Code section 505/B. The Government reported that U Tin Hla had been released on 25 October. He was reportedly rearrested on 28 November.

23. The Special Rapporteur is concerned about the numerous accounts of searching of political activists, human rights defenders and journalists and the reported reasons for their further detention, including allegations of possession of copies of his report to the Council.

24. At the time of finalization of the present report, the Special Rapporteur had received the names of 718 individuals arrested between August 2007 and February 2008 who were reportedly still being detained. That figure includes the 93 individuals confirmed by the Government during the Special Rapporteur's mission in November 2007. The Special Rapporteur submitted an

updated version of the lists submitted in December 2007 and, in particular, requested information concerning the 718 individuals, including the circumstances of arrest, places of detention, the legal grounds for detention, the charges, and a detailed account of their trials and convictions.

B. Trials and convictions

25. At his meeting with the Attorney General in November 2007, the Special Rapporteur expressed his concern at long-term detentions without legal guarantees for the detainees. He also stressed that everyone had the right to a fair trial in both civil and criminal cases and that effective human rights protection depended on access to competent courts that could administer justice. The principle of equality before the law must be guaranteed throughout the pretrial and trial stages, and everyone must have equal access to the courts to claim their rights. During his meetings with government officials, the Special Rapporteur observed that there was real reason to believe that the right to be presumed innocent of detainees was in jeopardy.

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26. The arrests ongoing since September have reportedly not been carried out in accordance with the Criminal Procedure. A number of people were reportedly arrested without warrant and detained in unknown locations, in various interrogation centres. After interrogation, some were released without charges, while others were sent to Insein prison in Yangon. In the prison, the detainees were reportedly informed of the charges against them under various provisions of the Criminal Code. While most of the detainees were reportedly charged under Penal Code section 505/B for making, publishing or circulating statements, rumours or reports “with intent to cause, or which was likely to cause fear or alarm in the public” other laws, such as the Printer and Publisher Act, Emergency Provision Act and the Unlawful Association Act, were also cited.

27. The Special Rapporteur was informed that the police could detain suspects for a period of up to 24 hours, after which they were required to take the case to court and provide grounds for detention. The judge may issue remand order of a maximum of 14 days for the police to continue investigations, if required. After the 14-day period, the police must bring the suspect to court again and obtain another 14-day remand to construct the case completely. After 28 days, the police must take the case to court. If the police in their investigations have not found any evidence against the suspect, the suspect must be released, in accordance with Criminal Procedure section 6.

28. At the time of finalization of the present report, 145 detainees had allegedly been charged under various laws, while others were being unlawfully detained. According to the reports received, 40 detainees had been sentenced to 2 to 22 years of imprisonment. Reportedly, many detainees were not brought before the court; in other cases, judicial authorities delivered the orders or judgements to the prison. In a large number of cases, detainees reportedly did not have legal representation.

29. It is reported that Ye Myat Hein, a 17-year-old student, has been charged but never been brought before the court. He does not have access to a lawyer and cannot receive visits from his family. Another student, Sithu Maung (alias Ya pyeit) has not been brought before the court. The monks U kaw Vi da and Zaw Thi la were also not brought before the court and were charged under the Penal Code. Reportedly, Aung Min Naing was arrested on 23 October and his lawyer was not allowed to be present at the court hearing. In some cases, the detainees face trial in the Insein prison special court, which is situated inside the prison and is not an open court. According to sources, even family members and sometimes lawyers are not allowed access to this court.

30. The 88 Generation student group members Min Ze Ya, Paw U Tun (alias Min Ko Naing), Ko Ko Gyi, Pyone Cho (alias Htay Win Aung), Aung Thu, Kyaw Kyaw Htwe (alias Marky),

Kyaw Min Yu (alias Jimmy), Mya Aye (alias Thu Ya) and Yin Htoo Aung, all arrested following the demonstrations, have been reportedly charged under section 17/20 of the Printers and Publishers Registration Act. A total of 33 monks, including the leader U Gambira, have been reportedly charged under the Penal Code, the Emergency Provision Act and the Unlawful Association Act.

31. The NLD members U Ba Myint, Kaw Maung, U Pe Sein, Aye Cho, Min Aung, U Nay Win, U Khin Hla and Thi Ha, arrested between September and October, were charged under the Penal Code and convicted to 2 to 22 years of imprisonment.

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32. Thi Ha, a political and human rights activist and member of NLD and the Human Rights Defenders and Promoters, has been reportedly convicted to 22 years of imprisonment. It is reported that he was arrested on 8 September for possession of political leaflets containing messages such as “It’s time to get back on track” and “where there are students, there are student unions”. He was charged with sedition and incitement to offences against public peace under sections 124 (a) and 505 (b) of the Penal Code.

33. The human rights defenders Thet Oo, Zaw Tun (Htun) and (Ko) Shwe Pain (alias Htay Naing Linn), arrested on 15 September and 19 October respectively, were charged under Penal Code section 505/B and sentenced to two years of imprisonment. Sources state that Thet Oo was not brought to court; a judge is said to have come to Prome prison, where he issued the verdict. It is reported that the civilians Ya Zar, Zaw Kyi and Shwe Thwe, arrested in September 2007, were charged under the Penal Code and sentenced to two years of imprisonment for providing water to the monks during the demonstration. A 33-year-old male civilian, Aung Naing Soe, was arrested in October 2007 and was sentenced to three years and nine months, and is reportedly, in solitary confinement in Thandwe prison.

34. Monks have also been sentenced to up to seven years of imprisonment. U Einthariya and U Wannathiri were arrested on 29 September, charged under Penal Code sections 143, 505/B and 295 and sentenced to seven years and six months of imprisonment, and two years, respectively. U Wikarmala (Kow Mala), arrested on 14 October 2007, was charged under Penal Code, sections 143 and 295/A and sentenced to two years and six months of imprisonment. According to sources, all three monks are in prisons in Rakhine State. The monk U Pannita (alias U Myint Ye) has been charged under the Penal Code and sentenced to two years of imprisonment without having been brought to court; the verdict was delivered by a judge in Prome prison where the monk was being detained.

IV. INVESTIGATIONS OF KILLINGS AS A RESULT OF THE CRACKDOWN ON DEMONSTRATIONS: ACCOUNTABILITY FOR EXCESSIVE USE OF FORCE

35. During his visit to the country and following his discussions with various authorities in Yangon who had provided him with material evidence regarding 15 individuals who had been killed, in December, the Special Rapporteur informed the authorities that he had received reliable information regarding 16 additional individuals who had been allegedly killed during the crackdown on the demonstrations in September.

36. The Special Rapporteur requested information from the Government regarding the investigations into the cause of death of the above-mentioned individuals and the responsibilities within the security forces, in the light of article 3 of the Code of Conduct for Law Enforcement Officials and its commentary. In his report (A/HRC/6/14), the Special Rapporteur also noted that he had received allegations of other people killed who had allegedly been taken to the Ye Way crematorium in Yangon and burnt during the night between 4 and 8 a.m from 27 to 30 September 2007.

37. The Special Rapporteur regrets that he has not received any concrete information regarding the investigation nor clarification of the responsibilities of any official or security branch involved in the killing of the 15 individuals acknowledged by the authorities as casualties from A/HRC/7/24

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the crackdown on the demonstrations held in September 2007. He also regrets the lack of information regarding the allegations of the killing of 16 additional individuals and the burning of a number of bodies at the Ye Way crematorium, as mentioned above, that could help him to provide a comprehensive picture of the reported events.

V. DEVELOPMENTS REGARDING THE SITUATION OF THE DISAPPEARED

38. Since the crackdown on the demonstrations, the Special Rapporteur has continued to receive information regarding people still unaccounted for. In the list he shared with the authorities coinciding with the preparations of his report (A/HRC/6/14), the Special Rapporteur took note of 74 people who were reported missing by a number of sources. Since December 2007, the Special Rapporteur has been updating the list as information from the sources were received. Some of the individuals included in the initial list of reported missing persons have been accounted for and are reportedly free (15) or reportedly in detention (8).

39. The Special Rapporteur, however, has also received reports of other individuals who are still reported missing and who were not included in his initial list. The Special Rapporteur regrets that the Government has failed to locate the whereabouts of the people missing since the crackdown and to provide any clarification on the list of 74 people missing as reported in December 2007.

40. At the time of finalization of the present report, there were 75 people still unaccounted for and whose cases had been brought to the attention of the Special Rapporteur. He shared with the Government an updated list and requested information regarding the whereabouts of the individuals reported missing.

VI. CONDITIONS OF DETENTION AND ACCESS BY THE INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC)

41. Reports received indicate that the detention conditions of detainees at Insein prison in Yangon remain appalling. Family members and relatives face a long list of obstacles including lengthy procedures to visit detainees in prison. As reported, most detainees rely on food and medicine provided by family members during prison visits for their well-being. To date, information concerning the situation of the detainees can only be obtained through contacts with the prisoners' families.

42. The Special Rapporteur would like to reiterate his concern at the lack of visible developments to give the International Committee of the Red Cross (ICRC) access to detainees in accordance with its mandate. He nonetheless commends the efforts to continue engaging with the authorities to ensure the resumption of visits in accordance with its mandate. The Special Rapporteur would further like to repeat his call to the authorities to re-engage with ICRC and allow free access to detention centres.

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VII. CONCLUSIONS

43. The Special Rapporteur regrets that he has not been granted access to the country for a follow-up mission as requested by the Council. He acknowledges the initial cooperation by the Government of Myanmar in November 2007 and the provision of information concerning

the causes of death of 15 individuals and the detention status of a number of individuals.

44. The lack of information concerning the investigation of the events of September 2007 is a compelling example of the challenges to the promotion and protection of human rights in Myanmar. The continued denial of basic civil and political rights and the worsening living conditions of the population make a difficult human rights situation even more acute. The Government continues to restrict, among others, the right to freedom of expression and the right to peaceful assembly, thereby jeopardizing the stable basis for a solid transition to democracy.

45. The Special Rapporteur shared with the Government an updated list of 718 persons believed to be in detention as a result of the crackdown on the demonstrations held in September 2007, a list of 16 people reported killed (in addition to the list of 15 dead provided by the authorities), and a list of 75 people reported missing, for comments and updated information. He would like to draw the attention of the Council to the fact that the lists transmitted to the Government only contained those incidents where the names of the people involved are cited and that they could not be seen as exhaustive, given the current constraints to verify the allegations received in situ.

46. The Special Rapporteur would like the Council to note that the lack of access for a follow-up mission is regrettable and reflects the lack of significant steps by the Government to implement the requirements set out in Council resolution S-5/1. The Special Rapporteur, however, considers that his initial visit in November 2007 opened an opportunity for a frank dialogue with the authorities on the human rights reforms needed to ensure the democratic transition aimed for in the constitutional process. In this context, the Special Rapporteur calls on the authorities to take genuine steps to engage with the Council in a thorough investigation on the crackdown of the demonstrations and to take measures anchored in international standards, which would prevent a repetition of the tragic events of September 2007.

VIII. RECOMMENDATIONS

47. The Special Rapporteur's recommendations made in his previous report (A/HRC/6/14) remain valid in view of the lack of information from the Government of Myanmar on the implementation of those recommendations. In the light of the objectives of his mission in November 2007 and of the recommendations already made in his previous report, the Special Rapporteur therefore calls on the Government of Myanmar to implement:

(i) Immediate measures

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

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

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(c) To provide information to the families of the deceased regarding the cause of death and the whereabouts of their remains and to carry out a thorough investigation of the cause of death;

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

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

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

(g) 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;

- (h) To conduct an independent and thorough investigation into the cases of killings, beatings, hostage-taking, torture and disappearance;
 - (i) To ban militias as illegal groups, in accordance with the law of Myanmar;
 - (j) 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;
 - (k) To ensure a follow-up mission on the initial findings from the Special Rapporteur's mission of November 2007 and the present report through the invitation of an international commission of inquiry or fact-finding mission to investigate the September events in a more comprehensive manner;
- (ii) Transitional measures
- (a) To develop an effective channel for follow-up communications and cooperation with the mandate of the Special Rapporteur and provide for regular access to the country;
 - (b) To consider the implementation of the plan of action for the release of all political prisoners as suggested by the Special Rapporteur in his report to the General Assembly (A/62/223);
 - (c) To pursue dialogue with Daw Aung San Suu Kyi through the Minister for Labour and the Liaison Minister;
 - (d) To repeal or amend existing 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;
 - (e) To 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.

UNITED NATIONS

Distr. GENERAL

7 March 2008

HUMAN RIGHTS COUNCIL

Agenda item 4

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

Summary

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

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VIII. RECOMMENDATIONS

I. INTRODUCTION

1. The Special Rapporteur's mandate on the situation of human rights in Myanmar was established in 1992 by the Commission on Human Rights in its resolution 1992/581 and extended in resolution 2005/10.

2. The mandate of the Special Rapporteur is expected to be reviewed by the Human Rights Council at its seventh session. The present report, submitted in accordance with Council resolution 5/1, covers the period from February 2007 to February 2008.

3. Since his nomination in December 2000, the Special Rapporteur has been authorized by the Government of Myanmar to visit the country seven times. Between November 2003 and November 2007, the Government did not allow the Special Rapporteur to conduct missions to Myanmar. Following the special session of the Council on 2 October 2007, the Special Rapporteur was invited by the Government to conduct a 5-day fact-finding mission to Myanmar in November 2007. His findings were reported to the Council (A/HRC/6/14).

4. The Special Rapporteur regrets that he was not permitted to return to Myanmar for a follow-up mission, as was requested by the Council.

5. The Special Rapporteur continued to discharge his mandate to the best of his ability on the basis of information on grave violations of human rights collected from a variety of independent, reliable sources. The Special Rapporteur acknowledges receipt of the responses concerning the situation of a number of detainees. He would also like to point out that the absence of substantive responses to the majority of his and other special procedures mandate-holders' communications makes it difficult for him to discern a genuine commitment on the part of the Government to address these human rights violations.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

6. The Special Rapporteur continued to have regular contacts with the Permanent Missions of Myanmar to the United Nations at Geneva and New York. He held consultations with representatives of Member States, officials of United Nations agencies and programmes, representatives of civil society organizations and members of the academic community. He presented his annual report (A/62/223) to the General Assembly in New York on 14 October 2007. He also shared his findings and had regular contacts with the United Nations High Commissioner for Human Rights, the Executive Office of the Secretary-General, the Department of Political Affairs, the Special Adviser to the Secretary-General on Myanmar, Ibrahim Gambari, and the Special Representative of the Secretary-General on Children and Armed Conflict, Radhika Coomaraswamy. The Special Rapporteur also welcomes the appointment of the special envoy on Myanmar of the European Union, Piero Fassino, with whom he met following his appointment.

7. From 11 to 15 November 2007, the Special Rapporteur visited Myanmar at the invitation of the Government, pursuant to Council resolution S-5/1. His report on that visit (A/HRC/6/14) was submitted separately to the Council in November 2007. On 16 and 17 November 2007, the Special Rapporteur held consultations in Bangkok with, inter alia, the Minister for Foreign Affairs of Thailand, representatives of the diplomatic community and non-governmental organizations operating in Myanmar, Thailand and on the Thai-Myanmar border.

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

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

III. RECENT DEVELOPMENTS

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

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

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

A. National convention and way forward

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

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

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

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

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

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

B. Establishment of a national human rights body

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

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

C. ASEAN charter and other political efforts

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

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

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

IV. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. Right to health, education and food

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

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

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

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

28. The Special Rapporteur received information that, in January 2008, officials from the Ministry of Health had summoned aid workers from international non-governmental organizations to the new capital Naypyidaw, warning them to follow strictly the rules and to report details of their field trips to the Government. Travel permits for international aid workers for international non-governmental organizations to work in the field are now issued for one month only, as opposed to the previous period of three months. The new tightened rules also require foreigners working for those organizations to be accompanied by a ministry liaison officer when travelling around the country. The new rules prohibit the collection of information other than that related to public health.

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

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

their village tract, which affects food security in the area as well as being a violation of the basic human rights.

B. Forced labour

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

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

33. One major development is that the authorities are apparently no longer requisitioning labour for national infrastructure projects. Nonetheless, forced labour continues to be widely imposed by local authorities for public infrastructure and services work. The situation remains most serious in border areas, where the army continues to impose forced labour on a widespread and systematic basis for a range of military and infrastructure-related purposes, including the use of civilians as porters for the army during patrols and military operations. Major obstacles to the elimination of forced labour include the apparent lack of political will to seriously address the problem or to develop acceptable alternatives, and the continued impunity of the Government officials and army officers responsible. Another problem is the lack of public information on, and awareness of, the Government's orders, which prohibit the use of forced labour and the mechanisms which exist to seek redress.

C. Freedom of expression, movement and peaceful assembly

34. The authorities have continued to impose severe restrictions on the freedoms of movement, expression, association and assembly. The Special Rapporteur has received several reports alleging that the Government is involved in crackdowns on initiatives by individuals; even those for nonpolitical

purposes, such as the fight against HIV/AIDS. He has also received allegations concerning the prosecution of individuals who have conveyed public information to organizations and individuals inside and outside the country. The Special Rapporteur remains concerned at the severe restrictions on freedom of movement that prevail in general in the country, and in particular at those imposed on specific minority groups.

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

36. Reporters Sans Frontières placed Myanmar 164 on its press freedom index, five places from the bottom, and the Committee to Protect Journalists ranked Myanmar second on its list of 10 most

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

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

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

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

V. RULE OF LAW

A. Administration of justice and fair trials

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

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

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

B. Political prisoners and conditions of detention

43. The Special Rapporteur is dismayed to see that, as at January 2008, 1,850 political prisoners were reported in prison. He noted that, instead of stopping unlawful arrests, the Government had accelerated them. The Special Rapporteur continues to receive credible reports on arrests of political and human rights activists, journalists and civilians in relation to the demonstrations of August and September 2007, which are covered in the Special Rapporteur's report to the Council at its seventh

session (A/HRC/7/24). According to the information received, at least 70 individuals were arrested, and some 62 of them have been detained since the Special Rapporteur's mission in November 2007.

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

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

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

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

48. The terms of detention of other prominent NLD leaders, including Tin Oo, Than Nyein and May Win Myint, were also extended. Several leaders of ethnic political parties have been detained and sentenced to extraordinarily severe prison terms of 100 years or more.

C. Implementation of anti-terror laws

49. The authorities have for many years justified the imprisonment of hundreds of students, politicians, doctors, lawyers, housewives, farmers and others on the basis that they were seeking to cause "unrest". Such arrests and sentences have been made possible by vaguely worded security laws, which allow excessively broad interpretation by the authorities of what constitutes a threat to security, and by legislation that criminalizes the circulation of any written information, whether or not it is published, without the permission of the official censor. The Special Rapporteur is concerned that the 1962 Printers and Publishers Registration Act and other similar laws, which have been used to imprison many political prisoners, places far greater restrictions on rights and freedoms

than would be necessary to meet the requirements of national security, public order or morality. The Act requires all books, magazines, periodicals, song lyrics and film scripts to be approved by censors prior to publication or distribution; anyone breaching it may be punished by up to seven years of imprisonment and a fine.

VI. HUMAN RIGHTS AND THE HUMANITARIAN SITUATION

50. The Special Rapporteur encourages the Government to ensure that humanitarian agencies can operate in a mutually agreeable environment, in accordance with the guiding principles provided by the United Nations country team in March 2006. The Special Rapporteur encourages the provision of humanitarian assistance to Myanmar and believes that there must be transparency and accountability in the monitoring of that assistance to ensure that it is not misused for personal gain. Myanmar nationals employed by agencies working in the country must be afforded protection against any form of threat or intimidation for their work in humanitarian and development programmes.

A. International human rights and humanitarian obligations

51. The Government of Myanmar has an obligation under the Charter of the United Nations, which provides for the promotion of “universal respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”. Under international law, the Government has an obligation to thoroughly investigate grave violations of human rights, to prosecute those responsible for their perpetration and, if their guilt is established, to punish them. Those responsible for human rights violations must stand trial and their victims must obtain reparation.

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

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

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

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

56. The initial and second periodic reports under the Convention on the Rights of the Child have been submitted to the Committee on the Rights of the Child; the combined third and fourth periodic report is due in August 2008. This represents an opportunity for the Government to work with civil society, the United Nations system and the Committee on the Rights of the Child, to engage in a discussion on sexual violence against girls and on the recruitment of child soldiers with a view to submitting its report in the best possible conditions.

57. Both committees have examined the reports submitted by Myanmar and adopted recommendations and concluding observations, providing guidance to the Government on how to fulfil its international human rights obligations. The Special Rapporteur reiterates that the recommendations of treaty bodies are an important tool for policymakers and development practitioners. It is therefore important for the Government and its partners to follow up on these recommendations. They will help to measure political will, obstacles encountered and progress made, to identify new trends and to complement the efforts made by the Government towards the protection and promotion of human rights.

B. Systematic human rights violations, impunity and accountability

58. The culture of impunity remains the main obstacle to securing respect for human rights in Myanmar and to creating a favourable environment for their realization. Throughout his mandate, the Special Rapporteur has received reports of widespread and systematic human rights violations, including summary executions, torture, forced labour practices, sexual violence and the recruitment of child soldiers. These violations have not been investigated and their authors have not been prosecuted. Victims have not been in a position to assert their rights and receive a fair and effective remedy.

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

60. The Special Rapporteur also believes that impunity and non-accountability are among the main underlying causes of the degrading economic and social conditions of rural farmers, who represent the majority of the population of Myanmar. The militarization of rural areas has contributed to the impoverishment of villagers as the military relies on local labour as the result of the incapacity of the Government to deliver support for its activities. The Special Rapporteur has received allegations that villagers have been severely punished because they refused to perform forced labour or have been subject to unlawful appropriation of their land, livestock, harvest and other property. A number of internally displaced people from several villages in Bago Division and Karen State informed the

Special Rapporteur that they fled from their villages because they had been harassed to provide free labour force for the construction of roads to newly established camps. Myanmar has increased the number of its battalions nationwide since 1988, and the implementation of self-reliance policies by the local military over the past decade has undermined the rule of law and damaged the livelihood of local communities.

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

62. The Special Rapporteur is seriously concerned at the continued misuse of the legal system, which denies the rule of law and represents a major obstacle to securing the effective and meaningful exercise of fundamental freedoms. The Special Rapporteur regrets to observe that the lack of independence of the judiciary has provided a “legal” basis for abuses of power, arbitrary decision-making and the examination of those responsible for serious human rights violations.

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

63. Access to and control over land and natural resources have long been central to the political economy of Myanmar. In many ethnic minority-populated areas, repeated incidents of forced displacement have been a fact of life for generations. Some 75 per cent of the population is engaged in agriculture (including fisheries, forestry and livestock), which accounts for 40 per cent of the gross domestic product.

64. The Special Rapporteur notes the increasing recognition among human rights, humanitarian and development groups of the need to document issues related to land and natural resource management in Myanmar. Arbitrary land confiscations throughout the country are another illustration of the culture of impunity prevailing in Myanmar. While the Government claims that land is “State-owned property”, on the basis of the Land Nationalization Act of 26 October 1953 conferring land ownership on the State, these confiscations appear to have several aims, including relocating civilian populations deemed to be sympathetic to the armed opposition; anchoring a military presence in disputed areas; and opening the way for infrastructure development projects.

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

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

67. The Special Rapporteur is not aware of any provisions in the draft constitution that provide for secure land and housing rights of citizens, protect the rights to fair and just compensation as a result of legal or illegal land or property expropriation or guarantee traditional practices of ethnic

minorities in relation to land and natural resource management, such as collective property rights and swidden agriculture, an important element of sustainable livelihood strategies.

68. Protection from land confiscation depends on settlement of the conflicts that have wracked the country for more than half a century. Nevertheless, some inspiring projects have been implemented by civil society groups in Myanmar. These examples show that it is not necessary to wait for fundamental democratic reform before the issue of land confiscation is addressed and transitional justice is introduced.

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

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

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

D. Military operations in ethnic areas and discrimination against minorities

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

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

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

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

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

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

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

79. The Special Rapporteur praises the Government of Myanmar for having included Muslim residents as part of its national documentation programme and by initially providing 35,000 persons in northern Arakan State with identity documents (temporary registration certificates). While noting the importance of this process, which can be considered a first step to a decent legal status for this population, and hoping that the pace can be accelerated so as to include all residents within a reasonable time frame, the Special Rapporteur would also like to express his concern that the temporary registration certificates can neither be used to claim citizenship nor can they be seen as a long-term solution. In this context, he encourages the Government to repeal or amend the 1982

Citizenship Law and ensure the compliance of its legislation with the country's international human rights obligations.

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

E. Situation of children

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

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

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

F. Situation of women

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

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

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

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

VII. CONCLUDING REMARKS

88. The human rights concerns enumerated in the present report are largely the same as those highlighted by the Special Rapporteur in his reports since 2001. It should be noted that the crackdown of the demonstrations of August and September 2007, the increased army deployment in certain ethnic areas and the implementation of major development projects are also opening new fronts in the patterns of human rights abuses observed since the establishment of the mandate.

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

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

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

92. The Special Rapporteur has made every effort to convince the Government of Myanmar to work towards the protection and promotion of human rights and to fulfil its international obligation of cooperation in the field of human rights. The representatives of Myanmar, despite their urbane treatment of the Special Rapporteur, have preferred to denounce his findings as inaccurate or biased instead of investigating the allegations reported by him. Combating impunity is essential for the promotion and protection of human rights. The investigation of reported abuses and punishment of perpetrators is necessary for the restoration of democracy and the rule of law.

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

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

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

96. The Special Rapporteur would like to reaffirm what he has previously stated to the Council: humanitarian assistance cannot be a hostage to politics. Any decision on humanitarian assistance must be guided solely by the best interests of children, women, vulnerable groups and minority communities. It would be a terrible mistake to wait for the political normalization of Myanmar to help the population and to empower communities and their representatives.

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

98. The Special Rapporteur believes it is important that Member States support effective initiatives to deal with common concerns of society in Myanmar and in the region. Joint initiatives on issues of common concern, such as the environment, economic growth and development, educational modernization, medical research and engineering and technology, which could prove to be paths to progress, should be explored. All these initiatives must have as their goal the encouragement of an effective democratic transition and the promotion of higher standards of living and the protection of human rights of the people of Myanmar.

VIII. RECOMMENDATIONS

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

100. The Special Rapporteur calls on the Government of Myanmar: (a) To urgently release all political prisoners at risk, including female political prisoners and those who are elderly and ill, as a first step towards the release of all political prisoners;

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

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

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

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

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

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

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

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

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

- (k) To respect its obligations under international human rights and humanitarian law in the areas affected by armed conflict, to put an end to the recruitment of child soldiers, and to ensure the efficient work of health providers in the conflict areas, including a serious investigation of the cases of harassment and abuses against health personnel;
- (l) To follow up on the recommendations and concluding observations adopted by the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child;
- (m) To establish an effective mechanism to ensure that all officials who commit human rights abuses are subject to strict disciplinary control and punishment as an essential step to put an end to the culture of impunity that prevails throughout the country;
- (n) To end illegal land confiscation in Myanmar and to ensure that land use and ownership issues are addressed in the constitution;
- (o) To continue to collaborate with the Secretary-General to support the exercise of his good offices mission.

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UNITED NATIONS

Distr. GENERAL

HUMAN RIGHTS SITUATIONS THAT REQUIRE THE COUNCIL'S ATTENTION

Pinheiro,

Session*

Summary

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 A/HRC/6/14

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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.

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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.

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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.

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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).

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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.

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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.

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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.

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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

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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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;”

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“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;

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- (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.

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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

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

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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 booths 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”.

b New Light of Myanmar, 25 September 2007.

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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.

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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 are 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 (11th, 6th and 77th 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 were the people responsible behind the procedures and their 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

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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, 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.

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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. 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 the New Light of Myanmar, 27 September 2007.

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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 woman 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.

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g New Light of Myanmar, 28 September 2007.

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UNITED
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Distr. GENERAL

A/HRC/4/14

12 February 2007

Original: ENGLISH

HUMAN RIGHTS COUNCIL

Fourth session

Item 2 of the provisional agenda

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251

OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”

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

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

GE.07-10731 (E) 210207

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Summary

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

The third holder of the mandate on Myanmar, Paulo Sérgio Pinheiro was appointed in December 2000 and has fulfilled his mandate to the best of his ability for the last six years, despite having been denied access to the country since November 2003. The Special Rapporteur, in the present, final report on the situation of human rights in Myanmar to the Human Rights Council, reiterates the findings contained in his last report to the sixty-first session of the General Assembly (A/61/369 and Corr.1).

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

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

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

The Special Rapporteur remains particularly concerned about impunity, which has become systematic and must be urgently addressed by the Government of Myanmar. It has become increasingly clear that impunity stems not only from a lack of institutional capacity.

Impunity has allowed those who have oppressed voices that question existing policies and practices to avoid being held accountable. Several individuals and groups responsible for
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committing serious violations of human rights, in particular members of the military, have not been prosecuted. There is also little evidence that these serious crimes have been investigated by relevant authorities.

Grave human rights violations are committed by persons within the established structures of the State Peace and Development Council and are not only perpetrated with impunity but authorized by law. In that respect, the Special Rapporteur is also very concerned about the continued misuse of the legal system, which denies the rule of law and represents a major

obstacle to securing the effective and meaningful exercise of fundamental freedoms by citizens. He considers the criminalization of the exercise of fundamental freedoms by political opponents, human rights defenders and victims of human rights abuses to be a matter of particular concern. During the course of his mandate, the Special Rapporteur has been very concerned about the 10 years of intensified military campaigns in ethnic areas of eastern Myanmar and its impact on the humanitarian and human rights situation, especially on civilians who have been targeted during the attacks. The situation should be considered in connection with the widespread practice of land confiscation throughout the country, which is seemingly aimed at anchoring military control, especially in ethnic areas. It has led to numerous forced evictions, relocations and resettlements, forced migration and internal displacement. Given the scale of the current military campaign, the situation may lead to a humanitarian crisis if it is not addressed immediately. The Special Rapporteur therefore welcomes the recent appointment of the Resident Coordinator as Humanitarian Coordinator. He believes that the formal engagement of the humanitarian sector of the United Nations Secretariat will provide stronger, essential support in ensuring the integrity and independence of ongoing efforts. The Special Rapporteur takes note with great satisfaction of the recent release of political prisoners, including the five “88 generation” student leaders arrested last September. He expresses the hope that other prominent political prisoners will benefit from the amnesty granted in early January 2007. He therefore welcomes the statement made by the Secretary-General on 8 January 2007 on this issue and commends the work done by the United Nations within the “good offices” mission.

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I. INTRODUCTION

1. The mandate of the Special Rapporteur on the situation of human rights in Myanmar was established by the Commission on Human Rights in its resolution 1992/58 of 3 March 1992 and extended in resolution 2005/10. By its decision 1/102, the Human Rights Council decided to

extend all mandates and mechanisms transferred to it by the Commission on Human Rights pursuant to resolution 60/251 of the General Assembly.

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

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

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

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

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

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

7. In Jakarta, the Special Rapporteur held meetings with the Secretariat of ASEAN, the former Minister of Foreign Affairs of Indonesia and scholars. In Kuala Lumpur, he held a meeting with the former Special Envoy of the Secretary-General to Myanmar. In Bangkok, A/HRC/4/14

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

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

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

10. At the request of the Special Rapporteur, the desk officer for Myanmar of the Office of the High Commissioner for Human Rights (OHCHR), who assists the mandate, conducted a

mission to the region from 22 August to 3 September 2006 to collect updated information, with the support of the OHCHR Regional Office, United Nations agencies, civil society organizations and experts.

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

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

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

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

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

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

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

17. The Government of Myanmar has affirmed - and the Special Rapporteur agrees - that the five missions which followed that first visit were an important indicator of its cooperation with the Commission on Human Rights. The Special Rapporteur regrets that the same kind of cooperation has not taken place during the last three years and two months, seriously curtailing his ability to report. The Special Rapporteur has tried to explain to the Government of Myanmar that official visits would give an opportunity to the Special Rapporteur to verify allegations of human rights violations and would allow the Government to have its views reflected in the report. Since his last mission to Myanmar in November 2003, the Special Rapporteur has

written on many occasions to the Government seeking an invitation to visit the country, without success. He has not even received a written reply.

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

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

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

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

21. Throughout the six years of his mandate, the Special Rapporteur has maintained a constant dialogue within the diplomatic community. In Asia, he has systematically sought the views of Myanmar's neighbours in order to verify his own impressions and analyses. He has reflected on their perspectives in his reports, having held consultations in Bangkok, Beijing,

Jakarta, Kuala Lumpur, Singapore and Tokyo with Governments, parliamentarians, the Secretariat of ASEAN, research centres and civil society organizations.

IV. MAJOR DEVELOPMENTS AND HUMAN RIGHTS ISSUES OF CONCERN

A. Political developments

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

Special Rapporteur remains convinced that the announcement of a timetable for the implementation of the road map would be a clear demonstration of a commitment to the realization of a political transition.

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

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

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

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

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

28. In spite of the severe restrictions imposed on communities and their representatives, the Special Rapporteur has noted with great appreciation the strong democratic aspirations among various groups who continue to struggle to exercise their fundamental freedoms. For example, last December, the “88 generation” student group initiated a new campaign to urge the people of

Myanmar to speak up about the political and social problems facing the nation. The campaign, called “Open Heart”, is scheduled to run from 4 January to 4 February and will call on all citizens of Myanmar to write to their government leaders urging reform in politics, the economy and social affairs.

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

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

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

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

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

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

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

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B. Systematic human rights violations and impunity

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

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

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

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

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

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

conducive to the perpetuation of violence against women and girls in Myanmar. As the Government has denied the Special Rapporteur access to Myanmar, he was not in a position to verify these allegations.

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42. Cases of forced labour represent another manifestation of the culture of impunity.

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

43. Following a damning 1998 report on forced labour in Myanmar by an ILO Commission of Inquiry, a process of dialogue commenced between ILO and the Myanmar authorities in 2000 on ways to address the problem. This led to a visit by a high-level team to the country in 2001 to provide a detailed assessment of recent developments on the ground and of the obstacles to the elimination of forced labour - the first time such an assessment was able to be carried out on the territory of Myanmar (the Commission of Inquiry having been denied access to the country).

Two key recommendations of the team were the establishment of a permanent ILO presence in the country and the development of a mechanism for credibly and effectively dealing with complaints from victims of forced labour. In 2002 the Myanmar authorities agreed to the appointment of an ILO liaison officer in Yangon. Discussions then began on a concrete plan of action to address forced labour, including the establishment of a complaint mechanism for victims. Although negotiations initially made reasonable progress, there were a number of obstacles which prevented the plan of action from being implemented, including death sentences pronounced against three people for alleged contacts with ILO (all were eventually released).

Following the removal from office of then Prime Minister Khin Nyunt together with a number of key ministers, with whom the plan of action had been negotiated, the Myanmar authorities indicated that they would no longer consider the plan. Despite intensive negotiations since that time, the Myanmar authorities have demonstrated little concrete cooperation with ILO, and have not so far agreed to any alternative formulations. This has led ILO to resort increasingly to other measures to try to secure Myanmar's compliance with its obligations, including calls for ILO members to review their relations with Myanmar, as well as various international legal measures.

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

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

those government officials who continue to impose forced labour.

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

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

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

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

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

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

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

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

C. Military operations in ethnic areas

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

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

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

57. The Special Rapporteur has received reports from reliable and independent sources alleging that the militarization of refugee camps at the border has put the safety of civilians at A/HRC/4/14

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

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

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

D. Land confiscation

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

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

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

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

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

64. The Special Rapporteur views the ongoing large-scale confiscation of land as a matter of grave concern that will continue to impact dramatically on the political and economic stability of

the country if it is not addressed. The Special Rapporteur notes the increasing recognition among human rights, humanitarian and development groups of the need to document issues related to land and natural resource management in Myanmar.

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

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

E. Humanitarian situation

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

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

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

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

71. The restrictive guidelines for United Nations agencies and international organizations announced by the Government in February 2006 added to the current difficulty for humanitarian workers seeking access to project areas and to operate independently, in accordance with internationally accepted standards. Although the Special Rapporteur recently received information about some positive signs of progress, there is still an urgent need for the

Government of Myanmar to demonstrate some flexibility. In that regard, the Special Rapporteur encourages the Government to ensure that humanitarian agencies can operate in a mutually agreeable environment, in accordance with the guiding principles provided by the United Nations Country Team on 7 March 2006.

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

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

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

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F. Myanmar's international human rights and humanitarian obligations

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

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

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

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

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

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

V. CONCLUDING REMARKS

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

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

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

82. From the outset of his work on Myanmar, the Special Rapporteur has made a point of visiting and reporting regularly on the plight of political prisoners. Nothing is more revealing about the situation of human rights in a country than the existence of political prisoners.

Moreover, the manner in which such persons are treated is a reflection of how a Government regards its own people. At least 1,201 citizens of Myanmar are behind bars without access to the guarantees of due process for the exercise of their political rights.

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

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

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

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

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

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

VI. RECOMMENDATIONS

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

- (a) To appeal to the Government of Myanmar to free all political prisoners and put an end to harassment and persecution of NLD members and representatives of ethnic groups;
- (b) To encourage the Government of Myanmar to resume, without further delay, dialogue with all political actors, including NLD and representatives of ethnic groups, to complete the drafting of the Constitution;
- (c) To recommend that, given the magnitude of human rights abuses, the Government of Myanmar subject all officials who commit these acts to strict disciplinary control and punishment and put an end to the culture of impunity that prevails throughout the country;

Report to the Commission on Human Rights, March 2006

UNITED
NATIONS

E
Economic and Social
Council

Distr. GENERAL

E/CN.4/2006/34

7 February 2006

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sixty-second session

Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS IN ANY PART OF THE WORLD

Situation of human rights in Myanmar

Report of the Special Rapporteur, Paulo Sérgio Pinheiro

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Summary

In its resolution 2005/10, the Commission requested the Special Rapporteur to report to the General Assembly at its sixtieth session and to the Commission at its sixty-second session. The Special Rapporteur thereby submitted an interim report to the Assembly in accordance with this request (A/60/221). The present report is also submitted in accordance with the above request and is based on information received by the Special Rapporteur up to 22 December 2005. It is to be read in conjunction with his last interim report.

Throughout the six-year period of his mandate, the Special Rapporteur received substantiated reports of grave human rights violations on an ongoing basis. Little evidence was available of the existence of a serious commitment by the Government to addressing the culture of impunity for State actors, with the vast majority of his communications to the authorities not receiving a response.

With regard to the transition process, the National Convention, having been suspended for a further nine months following its last session held from 17 February to 31 March 2005, was reconvened on 5 December 2005. The Special Rapporteur was deeply dismayed to learn that no progress towards instituting genuine democratic reform has been made since the previous session. The Special Rapporteur regrets that, according to information received during the last reporting period, the situation regarding the exercise of fundamental human rights and freedoms remains grave. The intimidation, harassment, arbitrary arrest and imprisonment of civilians for peacefully exercising their civil and political rights and freedoms continue. Members of registered political parties, human rights defenders and pro-democracy advocates are particular targets.

The activities of political parties remain severely repressed and subject to scrutiny by government agents. The offices of the National League for Democracy (NLD), which won over 80 per cent of the seats in the 1990 election, have been shut down, with the sole exception of the headquarters in Yangon. Members of NLD and other political parties are susceptible to harassment and imprisonment on a continuous basis.

On 27 November, the Government issued a new executive order prolonging the detention of Daw Aung San Suu Kyi for a further six months. The General-Secretary of NLD and Nobel Peace Prize laureate has now been in detention for over 10 of the last 16 years. The Special Rapporteur is gravely disturbed that a legitimate political leader continues to be held hostage in solitary confinement.

To date, the total number of political prisoners in Myanmar is estimated to stand at 1,144. Amongst those behind bars are students, monks, teachers, journalists and elected members of parliament. The number of releases during the reporting period was negligible, while the number of civilians arrested continued to rise.

The Special Rapporteur draws attention to the marked decline in socio-economic conditions, which has resulted in increased poverty countrywide. Urgent reform is required to prevent any further degeneration of an already severely damaged economy.

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The humanitarian situation in Myanmar, while not yet at the point of acute crisis, has shown marked signs of deterioration over the past year. In 2001, soon after the Special Rapporteur took up his mandate, the heads of eight United Nations agencies in Yangon expressed their concern over the “silent humanitarian crisis in the making”. The situation then was particularly serious in ethnic minority and conflict areas. It has since significantly deteriorated, affecting the population now on a wide scale.

The human rights concerns enumerated in the present report are largely the same as those which the Special Rapporteur highlighted when he commenced his mandate, six years ago. Despite early indications from the Government that it was willing to address these problems, he regrets that all such willingness appears to have disappeared.

The Special Rapporteur stressed that human development and economic reform must be prioritized in order to defeat the poverty that is at the root of Myanmar’s many problems. Rational management of the economy and substantially enhanced budgetary allocations for the protection of economic, social and cultural rights continue to be essential priorities for tackling those problems.

Any progress towards resolving ethnic conflict in Myanmar is unlikely to be possible or sustainable without tangible political reform. The ongoing armed conflict in several ethnic minority areas continues to underpin the most grave human rights abuses in the country and to exacerbate Myanmar’s humanitarian decline and long-standing state of socio-economic underachievement. Without an inclusive reform process, such urgent challenges for the country will not be addressed by the Government’s current road map process.

No transition process is worthy of the name as long as fundamental freedoms of assembly, expression and association are denied; voices advocating democratic reform are silenced; elected representatives are imprisoned; and human rights defenders are criminalized. No progress will be made towards national reconciliation as long as key political representatives are being locked behind bars, their constituents subject to grave and systematic human rights abuses and their political concerns disregarded.

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Introduction

1. The mandate of the Special Rapporteur on the situation of human rights in Myanmar was established by the Commission in its resolution 1992/58 of 3 March 1992 and extended most recently in resolution 2005/10.
2. In the latter resolution, the Commission requested the Special Rapporteur to report to the General Assembly at its sixtieth session and to the Commission at its sixty-second session. The Special Rapporteur thereby submitted an interim report to the General Assembly in accordance with this request (A/60/221). The present report is also submitted further to the above request

and is based on information received by the Special Rapporteur up to 20 December 2005. It is to be read in conjunction with his last interim report.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

3. The Special Rapporteur presented his interim report to the General Assembly on 27 October 2005. While in the United States of America, he met with representatives of the Government of Myanmar and held consultations with representatives of States Members of the United Nations and of the Association of South-East Asian Nations (ASEAN), officials from United Nations agencies, civil society organizations and members of the academic community.
 4. During the course of his mandate, which commenced in December 2000, the Special Rapporteur has visited Myanmar on six occasions, as facilitated by the Government.
 5. Since his last mission to Myanmar in November 2003, the Special Rapporteur has written on several occasions to the Government of Myanmar, seeking its cooperation. Notwithstanding his readiness to travel to the country at any time, the Government has not invited him to visit the country. The Special Rapporteur regrets that the Special Envoy of the Secretary-General for Myanmar has also been denied access to the country, since his last mission in March 2004, in spite of repeated requests to do so.
 6. Throughout the six years of his mandate, the Special Rapporteur has made a particular effort to reflect in his reports the perspectives of the countries of the region, having held consultations in Bangkok, Beijing, Kuala Lumpur, Singapore and Tokyo. He has held regular consultations with the permanent members of the Security Council and representatives of all regional groups in New York and Geneva.
 7. During the current reporting period he visited Brussels, London, Paris, Prague, Strasbourg, Sydney, Vienna and Washington. In November, he travelled to Thailand to meet with key local and regional actors in the diplomatic, parliamentary and non-governmental sectors, as well as representatives of United Nations agencies. He also met with senior officials from the Ministry of Foreign Affairs of the Government of Thailand, to whom he is most grateful for kindly facilitating this and previous visits. During his mission, he travelled to refugee camps along the Thai-Myanmar border, to meet with recent arrivals from Myanmar.
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8. The Special Rapporteur will be stepping down from his mandate, further to the six-year term limit following the submission of the present report. He wishes to thank all the Member States and civil society organizations who have supported his mandate and shared with him their observations on the situation of human rights in Myanmar.

II. OVERVIEW OF SIX-YEAR TERM

9. The Special Rapporteur believes it is useful to give a brief overview of his previous reflections on the situation of human rights in Myanmar. These notes illustrate that the positive momentum evident in the early years of his mandate has dissipated and the present administration is far less inclined towards democratic change.
10. His terms of reference as ascribed by the Commission on Human Rights requested that he “establish direct contacts with the Government and with the people of Myanmar, including political leaders deprived of their liberty, their families and lawyers, with a view to examining the situation of human rights in Myanmar and following any progress made towards the transfer of power to a civilian government and the drafting of a new constitution, the lifting of

restrictions on personal freedoms and the restoration of human rights in Myanmar” (resolution 1992/58, para. 3).

11. In April 2001, he began his mandate by undertaking an exploratory visit to Myanmar, aimed at establishing dialogue with the Government and relevant interlocutors. Subsequently he undertook five missions to Myanmar, visiting Shan, Kachin, Kayin, Mon States, and Bago and Yangon Divisions. He regarded each mission as an expression of partnership with Myanmar, the Government, the opposition and civil society, to analyse problems together, discuss solutions and mobilize international support for their implementation, in order to advance the protection and promotion of human rights in Myanmar.

12. Following his first visit, the Special Rapporteur was heartened by the fact that the then Secretary-1, Lieutenant-General Khin Nyunt, recognized the necessity and value of the political opposition and its potentially constructive role in the transition to democracy. The inclusion of all political representatives would be essential to building confidence in the transition process, a point the Special Rapporteur was to make repeatedly throughout his term. An enabling environment needed to be created, wherein the inherent rights of the people of Myanmar were no longer forcibly repressed but allowed their full expression, if progress towards national reconciliation and democracy was to be finally made.

13. The Special Rapporteur emphasized the long overdue need for the dynamic activation of the transition process, to which the Government had so fervently committed itself following its failure to transfer power to those democratically elected in 1990. He put forward basic recommendations which were essential first steps in instituting democratic governance. These would necessarily include, inter alia: the unrestricted participation of all political representatives in the transition process; the full and unconditional release of all political prisoners; increased military discipline and respect for international humanitarian law; the reform and development of a State bureaucracy capable of operating within professional norms; the enhancement of the country’s human rights capacity to address the prevention and monitoring of human rights violations, including the establishment of instituted mechanisms of accountability for State
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actors; and the development of a legal culture supportive of constitutionalism and the rule of law. He also stressed the need to strengthen social capital and to encourage the development of a dynamic civil society, so instrumental in the laying of a solid foundation for democracy. These and related recommendations put forward by the Secretary-General of the United Nations were never implemented, but remain nonetheless imperative.

14. The seven-point road map for national reconciliation and democratic transition launched by Prime Minister Khin Nyunt in 2003, while it did not have democratic and human rights principles firmly entrenched therein, represented an acquiescence that the political life and future of Myanmar could no longer be held hostage to military rule. Its early promise has since then failed to deliver any tangible progress, as the political environment remains severely repressed and the inbuilt anti-democratic conditions of the National Convention remain firmly in place.

15. From the beginning, the Special Rapporteur has sought to acknowledge every positive development, such as the dissemination of human rights standards for public officials; the release of political detainees; the reopening of branches of NLD; the facilitation of a country visit by Amnesty International; and cooperation with the International Committee of the Red Cross (ICRC), the International Labour Organization (ILO) and other United Nations agencies. Unfortunately, many of these positive developments have been reversed in recent times. He welcomed the activities of the short-lived Human Rights Committee, which had been established in 2000, allegedly as an interim body leading to the establishment of a National Human Rights Commission, until its reported disbanding following the change of administration in 2004.

16. Throughout the six-year period of the Special Rapporteur's mandate, substantiated reports of grave human rights violations continued to be received on an ongoing basis. Little evidence was available of a commitment by the Government to addressing the culture of impunity for State actors, with the vast majority of his communications to the authorities not receiving a response.

17. The Special Rapporteur also highlighted abuses by non-State armed groups. He pleaded for the rights of the civilian population, caught up in the ongoing conflict, violated and victimized primarily by the military but also by non-State armed forces. Such violence was and continues to be largely arbitrary, summary and indiscriminate, resulting in substantial internal displacement within Myanmar, and outflows of refugees and forced migrants into neighbouring countries. In reporting on the situation in ethnic minority areas whose populations were particularly subject to systematic human rights abuses, he called attention to the perpetration of sexual violence against women by government personnel. His repeated offers to conduct an independent investigation into allegations of sexual violence against women in Shan State were never accepted by the Government.

18. Throughout his mandate, he reiterated his belief that Myanmar and its neighbouring countries had an obvious interest in resolving the matter of ongoing insecurity along their common borders with related transnational issues of forced migration, refugees, trafficking of persons and narcotics, and the spread of communicable diseases.

19. During his visits to Myanmar the Special Rapporteur met with the General Secretary of NLD whose steadfast commitment to the promotion of human rights and democracy in Myanmar in the face of her continued captivity by the authorities is a cause of shame within the

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international community. The Special Rapporteur took her release from house arrest, in 2002, as a clear demonstration by the Government of its commitment to advancing confidence-building. Such positive momentum was ruptured, however, by the violent attack on her and her party colleagues at Depayin in May 2003, which he strongly condemned. His proposal to conduct an independent inquiry into the massacre was not taken up by the authorities, and those responsible for the attack have yet to be brought to justice. The rearrest of Daw Aung San Suu Kyi thereafter and the shutting of the offices of NLD represented a further regression in the human rights situation. Progress towards democratic reform deteriorated yet further, following the change of administration in October 2004.

20. The Special Rapporteur drew attention to many aspects of the humanitarian situation, stressing that only 0.17 per cent of the gross domestic product in 1999/2000 was understood to have been spent on health care and a similarly negligible amount on tertiary education. In 2002, he called attention to the alarming speed at which HIV/AIDS was spreading. He appealed to the Government to coordinate with the political opposition and the international community to plan the effective management of the humanitarian needs of Myanmar's most vulnerable groups.

21. Despite the lack of sustainable political or human rights developments in Myanmar during the last decade, there had been a minor expansion in the humanitarian space as a whole. Heightened engagement of government authorities by humanitarian agencies in policy-level dialogue was apparent. Positive indicators such as the official recognition of the HIV/AIDS epidemic, acknowledgement of the need to address the issue of recruitment of child soldiers into the military and the proclamation of a law prohibiting human trafficking are examples of the protection gains made during this period. Since October 2004, however, the positive trend towards addressing humanitarian exigencies has been largely reversed.

22. The Special Rapporteur stressed that human development and economic reform must be prioritized in order to defeat the poverty that is at the root of Myanmar's many problems.

Rational management of the economy and substantially enhanced budgetary allocations for the protection of economic, social and cultural rights were highlighted as essential priorities for tackling those problems. In order to initiate and maintain the pace of economic and democratic reform, he reminded the Government that the assistance of the international community was readily available and contingent only upon the willingness of the Government to engage in addressing the situation of the people of Myanmar.

III. RECENT DEVELOPMENTS

A. National Convention

23. Having been suspended for a further nine months, following its last session (17 February-31 March 2005), the National Convention reconvened on 5 December 2005. The Special Rapporteur was deeply dismayed to learn that no progress towards instituting genuine democratic reform has been made since the previous session. Procedural conditions and restrictions remain, legitimate political representatives are not included and apparently the concerns of the ethnic parties have not been addressed. No deviation from the preordained agenda and defined principles set by the Government has been reportedly accepted.

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24. The Special Rapporteur is particularly concerned over reports received from the recent session of the National Convention that “the President of State is to serve as the Head of State and the Head of the Union Government ... the President shall not be responsible for answering to any Hluttaw [legislative body] or to any court for the exercise or performance of the duties and functions vested in him by the Constitution or any of the existing laws or for any of his actions in the exercise and performance of these powers and functions”, as cited by the Alternate Chairperson of the Delegate Group to the National Convention.

25. Concern has also been expressed by some delegates that amendments to the Constitution may only be made with at least 75 per cent of votes from parliament. However, as the Government continues to stipulate that 25 per cent of the seats in parliament are to be reserved for military personnel, it appears that any proposed amendment to the Constitution will require military approval.

26. The Special Rapporteur has received reports of the mounting frustration of various ethnic political parties and ceasefire groups, that the constitutional proposals which they submitted for consideration to the National Convention have not been raised for open debate. Their concerns about the guaranteed role of the military in Government and the extent of devolution of legislative authority to states remain outstanding.

27. The Special Rapporteur has consistently indicated that national reconciliation requires meaningful and inclusive dialogue with and between political representatives and is severely damaged by silencing representatives. He is firmly of the opinion that national reconciliation and the stability of Myanmar are not well served by the very heavy sentencing of several leading Shan representatives in November 2005. The sentences were handed down only days after the Shan State Army (North) had presented its list of delegates who would be participating in the National Convention, having boycotted the last session. Those sentenced also included leaders of the Shan Nationalities League for Democracy (SNLD), which won the second largest number of electoral constituencies in the 1990 general election and a majority of seats in Shan State. By imprisoning key ethnic representatives, the Government undermines its own commitment to promote national reconciliation and sends a message to ethnic groups whether party to a ceasefire agreement or not that their participation in the political future of the country is not guaranteed.

28. The New Mon State Party, an ethnic ceasefire group, although sending observers, took the decision not to formally participate in the recent meetings of the National Convention, dissatisfied that a joint proposal regarding legislative and judicial issues submitted by several ethnic ceasefire groups during the last session was not accepted by the military authorities. The procedural restrictions placed on the participants' right to free speech which prevents open and frank discussion on the formulation of a new constitution were reportedly another reason cited by the ceasefire group for its stance.

29. The concerns of the ceasefire groups are compounded by reports of increased militarization in ceasefire areas. Contrary to expectations that entering into a ceasefire agreement would result in a loosening of military control, the confiscation of lands, the continued construction of military camps in ceasefire areas and other activities which have a negative impact on the civilian population, including forced labour demands, are leading many to query the dividends to be gained from entering into ceasefire agreements.

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30. The recommendations advanced on several occasions by the General Assembly and the Commission on Human Rights calling for the National Convention to be placed on a solid democratic footing, have been disregarded by the current administration. Repeated requests for inclusive dialogue proffered by NLD and various other political representatives also remain unheeded.

B. International developments

31. The Special Rapporteur regrets that the Government of Myanmar was not in a position to assume the chairmanship of ASEAN in July 2006. He also noted the statement issued by the Chairman of the ASEAN Regional Forum in July 2005, which gave voice to the regional concern at the pace of the democratization process in Myanmar, and called upon the Government to lift restrictions on political actors and to engage in effective dialogue with all parties.

32. On various occasions, the Special Rapporteur has alluded to the vital role that ASEAN member States can play in facilitating the political transition process in Myanmar. He has also stated that it is decisive that other concerned countries in other regions should coordinate their initiatives concerning Myanmar with ASEAN and neighbouring countries.

33. The Chairman's statement issued at the conclusion of the 11th ASEAN summit in Kuala Lumpur on 12 December 2005 calling on the Government of Myanmar to expedite democratic reforms and release political prisoners is to be warmly welcomed and supported. The Special Rapporteur believes the visit by a delegation of ASEAN representatives to Myanmar in January 2006 to assess the process of democratic reform represents a positive and constructive development.

34. The Special Rapporteur took note of the "Threat to the Peace" report commissioned by Archbishop Desmond Tutu and former President Václav Havel, published in September 2005, which calls for action to be taken by the Security Council, in the interest of regional peace and stability. He firmly believes that the report is a clear expression of the long-term frustration and grave concern of the international community at the lack of meaningful progress in the political transition and national reconciliation processes and the systematic human rights violations committed by the military authorities.

35. During its informal consultations on 2 December 2005, the Security Council decided to request a briefing by the Secretariat on the situation in Myanmar under "Other matters". Further to the proposal of the United Kingdom, presiding at the December meeting of the Security Council, the decision was taken by consensus on condition that no statement would be issued. The briefing took place during the meeting of the Security Council

on 16 December 2005.

C. Relocation of the capital of Myanmar

36. In November 2005, the Government announced that it had commenced its relocation of several ministries from the capital in Yangon to what it purports to be a “command and control centre” currently under construction near Pyinmana, in southern Mandalay Division. The Special Rapporteur is concerned by reports of forced relocation of villages and the alleged use of E/CN.4/2006/34

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forced labour in the construction of this compound. It has also been brought to his attention that civil servants who refused to move might be criminally charged and that no resignations or retirements were reportedly permitted.

IV. CIVIL AND POLITICAL RIGHTS

A. General observations

37. The Special Rapporteur regrets that according to information received during the last reporting period, the situation regarding the exercise of fundamental human rights and freedoms remains grave. The intimidation, harassment, arbitrary arrest and imprisonment of civilians for peacefully exercising their civil and political rights and freedoms continue. Members of registered political parties, human rights defenders, pro-democracy advocates are particular targets.

38. The activities of political parties remain severely repressed and subject to scrutiny by government agents. The offices of NLD, the political party which won over 80 per cent of the seats in the 1990 election, have been shut down, with the sole exception of the headquarters in Yangon. Members of NLD and other political parties are susceptible to harassment and imprisonment, on a continuous basis.

39. The Special Rapporteur regrets that trial procedures of those detained on charges of a political nature fall far below international standards. Information on charges, trial dates, legal representation and the right of appeal are frequently not made available to political detainees; trials are often conducted in camera, and within prisons; and sentences are regularly handed down shortly after the trial has begun, with little or no opportunity for the defendants to call upon witnesses.

B. “Security” legislation

40. Political prisoners are detained under laws promulgated by the Government as “security” legislation, should they be considered to be acting in opposition to the policies of the authorities. Such legislation, which contravenes international legal standards by restricting the right to freedom of expression, association and assembly, includes:

- (a) The Emergency Provisions Act (1950) is frequently applied to those who “threaten the stability of the Union”. Section 5 (J) which carries a sentence of seven years’ imprisonment is the charge on which most political prisoners are detained;
- (b) The Unlawful Association Act (1908) is frequently invoked to arbitrarily arrest and detain activists who are associated with what the Government deems as “unlawful” organizations and allows for prison sentences of two to five years to be imposed;
- (c) The Printers and Publishers Registration Law (1962) deems those who print, publish or circulate written materials without seeking and receiving prior permission by the Government liable to seven years’ imprisonment;

(d) The State Protection Law (1975) is invoked by the Government to detain political activists without charge or trial for up to five years, should they be deemed by the authorities to constitute a “danger to the State”. It also allows for the extension of the detention of political prisoners whose sentences have already expired.

41. Political activists and human rights defenders are also susceptible to arbitrary arrest on criminal charges. In October 2005, Ma Su Su Nway, an NLD member was sued for a criminal offence after she won a lawsuit against the local authorities for forced labour practices. She was sentenced to 18 months’ imprisonment.

C. Recent arrests and convictions

42. Since July 2005, at least 44 people are believed to have been arrested and imprisoned for their political beliefs and activities. Many include members of registered political parties such as NLD members, U San Shwe Tun and U Aung Ban Tha. U Hla Aye and Thant Tin Myo, both NLD members, arrested in Yangon on 15 September were subsequently sentenced to two years’ imprisonment. U Aung Pe, who had been arrested in February for teaching students about the political figure U Aung San, father of Aung San Suu Kyi, was sentenced to three years’ imprisonment.

43. Following a secret trial set up by the authorities inside Insein Prison, former Prime Minister Khin Nyunt was handed a 44-year suspended sentence on 22 July, on charges which included bribery and corruption. He is being held under house arrest along with his wife. His two sons received sentences of 68 and 51 years’ imprisonment respectively, for alleged economic crimes. Information on the names, whereabouts and charges against those individuals associated with the former Prime Minister currently held in detention has yet to be fully disclosed.

44. U Kyaw Min, Muslim MP of the National Democratic Party for Human Rights from Rakhine State, his wife, his two daughters and one of his sons who had been arrested in March 2005, were sentenced on 29 July 2005 in a special court set up inside Insein Prison. Having being denied legal representation, they were tried under the Emergency Provisions Act. U Kyaw Min received a 47-year sentence, his wife and three of his children were each sentenced to 17 years in prison.

45. Donald Sao Oo Kya, a senior member of the Shan State Consultative Council, was arrested on 3 August 2005 on alleged charges of operating as a tour guide without a licence. While in detention, he gave a statement which the authorities deemed to have defamed the State. In September, he was sentenced to 13 years’ imprisonment.

46. On 28 August, the Government convened a press conference, announcing allegations against 10 individuals reported to have had contact with the Federation of Trade Unions of Burma (FTUB), an organization which it has outlawed. Notwithstanding reports that they were merely exercising their right to freedom of expression, nine were allegedly sentenced in November to between 8 and 25 years in prison. These were: Myint Lwin (aged 77), Win Myint, U Hla Myint Than, Daw Yin Kyi, Ye Myint, Wai Linn, Aye Thi Khaing, Ma Aye Chan and Thein Lwin Oo. The tenth person, Aung Myint Thein (son of Thein Lwin Oo) died in custody (see paragraph 58 below).

47. Seventeen youth members of NLD were arrested on 26 October 2005 in Yangon Division while preparing for the wedding of two friends. The reason for their detention was that they had not abided by what is commonly known as the “Courtesy Law”, which requires the permission

of local authorities, should a person wish to stay overnight in the house of another. As the 17 NLD members did not allegedly obtain such permission, they were held in detention for over two weeks, pursuant to the above law.

48. In spite of the various calls from the international community for their release, the Special Rapporteur was deeply disturbed to learn of the inordinately severe sentences of the nine Shan leaders who had been arrested in February 2005, following their attendance at a political meeting in Shan State. On 3 November, all nine were convicted by a special court established within Insein prison, on charges of treason, for allegedly holding political discussions about the National Convention, which were described as “obstructing the successful completion of the National Convention”. General Hso Ten (Chairman, Shan State Peace Council) was sentenced to 106 years; Khun Htun Oo (Chairman, Shan Nationalities League for Democracy) to 93 years; Sai Nyunt Lwin (SNLD) to 85 years; Sai Hla Aung (SNLD) to 79 years; U Myint Than, Sai Myo Win Tun, Nyi Nyi Moe and U Tun Nyo, all members of the New Generation of Shan party, were each sentenced to 79 years; Sout Oo Kyar (SNLD) to 30 years; and Sout Tha Oo (SNLD) to 12 years. All were allegedly tried in camera within Insein Prison, without access to a legal counsel of their choosing. U Shwe Ohn, the 82-year-old Shan leader arrested in February remains under house arrest, without having been charged or tried.

49. On 27 November, the Government issued a new executive order prolonging the detention of Daw Aung San Suu Kyi, for a further six months. The General Secretary of the National League for Democracy and Nobel Peace Prize laureate has now been in detention for more than 10 of the last 16 years. The Special Rapporteur is gravely disturbed that a legitimate political leader continues to be held hostage in solitary confinement. The military authorities have refused her access to ICRC, which the Special Rapporteur finds deplorable.

50. To date, the total number of political prisoners in Myanmar is estimated to stand at 1,144. Amongst those behind bars are students, monks, teachers, journalists and elected members of parliament. In spite of repeated calls by the Secretary-General of the United Nations and the Special Rapporteur, the number of releases during the reporting period was negligible, while the number of civilians arrested continued to rise.

D. Conditions of detention

51. Conditions of detention and treatment of political prisoners remain a cause for serious concern. The Special Rapporteur notes with dismay that ICRC is facing increased difficulties in visiting places of detention in Myanmar, no longer enjoying the full privileges of access it enjoyed six months ago, prior to August 2005.

52. Incommunicado detention continues to be a common practice, whereby having been arrested, often without any warrant being shown or charges indicated, civilians are transported to an interrogation or detention centre, where they are held for significant periods of time, often several months, without the knowledge of their families.

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53. The diet of prisoners is reported to be severely lacking in basic nutritional value, resulting in a number of cases of malnutrition. The substandard quality of prison food is such a common complaint that prisoners are allegedly reliant on their families to provide supplements. Those incarcerated in prisons far from home, as is the case for many political prisoners, are not in a position to benefit from such family visits. In September 2005, an outbreak of diarrhoea in Tharawaddy Prison allegedly resulted in the deaths of 12 prisoners and the hospitalization of at least 40 others, following the serving of rotting food and unclean water.

54. Credible reports received about the conditions in various prisons throughout Myanmar strongly indicate that health problems of prisoners are being generated or exacerbated by poor

conditions of detention. Medical treatment for ill prisoners is reported to be inadequate and specialist medical treatment absent in several prisons. Malnutrition, heart disease, malaria, tuberculosis and mental illness are amongst the most common complaints.

55. The Special Rapporteur is seriously concerned about the continued detention of a number of severely ill political prisoners, who should be immediately released on humanitarian grounds (see annex below).

56. He is also deeply saddened at the continued incarceration of older political prisoners, some of whom are over 75 years of age. Amongst those who should be released on humanitarian grounds are: U Aung Khaing (Arakan Communist Party); U Aung Thu (People's Progressive Party); U Ba Chit (ex-captain); General Hso Ten (Chairman, Shan State Peace Council); U Hla Myint Than (NLD); U Khin Maung Swe (member of parliament, NLD); U Kyaw Khin (member of parliament, NLD); U Kyaw Min (member of parliament, NLD); U Kyaw San (member of parliament, NLD); U Maung Maung Oo (NLD); Saw Naing Naing (member of parliament, NLD); U Than Htay (member of parliament, NLD); Dr. Than Nyein (member of parliament, NLD); U Tin Oo (Vice-Chairperson, NLD); U Win Tin (Joint Secretary, NLD).

57. Reports of torture and ill-treatment of those held in pretrial detention and of political prisoners continue to be received. Allegations include food, water, sleep and light deprivation; harsh beatings; forced squatting for prolonged periods; shackling and solitary confinement.

58. The number of political prisoners who have died while in the custody of the military authorities since 1988 is currently reported to be over 90 persons. Between May and December 2005 alone, four deaths have been reported to the Special Rapporteur, allegedly as a consequence of torture, ill-treatment or inadequate medical attention. To date, no independent investigations are known to have been conducted into the recent deaths of the following persons:

(a) Aung Hlaing Win, a member of NLD, who died in May in an interrogation centre, 10 days after his arrest, was cremated without the knowledge of his family. While the autopsy indicated clearly that he had been tortured, Mayangone Township court handed down a decision, citing liver disease as the cause of death;

(b) Saw Stanford, a teacher who had been arrested on 7 July 2005 in Ayeryarwaddy Division, is alleged to have died as a result of electric shocks employed upon him during his interrogation. His family reportedly lodged a complaint about his death and requested that action be taken against those responsible. The authorities offered financial compensation to the family and allegedly requested that they not speak publicly about his death;

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(c) Min Tun Wai, a 40-year-old NLD member from Mon State, was arrested in May 2005, with no grounds given by the authorities and sentenced to seven years' imprisonment. On 30 May, he was reported to have died in Moulmein Prison and to have subsequently been buried by the authorities, without any notice having been given to his family;

(d) Aung Myint Thein, a human rights defender based in Yangon, was arrested on 2 July on the grounds of having had contact with an "illegal" organization, the exiled FTUB. According to a press conference given by the Director-General of Police on 28 August, he had confessed to attending a training workshop on labour rights and to communicating news to opposition groups in exile. While subject to a closed-door trial, in Insein Prison, he died on 5 November. The authorities reportedly stated that he died as a result of dysentery and cholera, in spite of the fact that no autopsy was known to have been conducted. His family was not permitted to see his body or to bury him.

E. Freedom of religion

59. The Special Rapporteur has been notified that restrictions continue to be imposed by the authorities on certain religious activities. Obtaining permission to repair or construct new churches, mosques and temples remains difficult for Myanmar's Christian, Muslim and Hindu communities.

60. Reports received from Rakhine State indicate that the Muslim minority continue to face discrimination on the basis of their ethnicity. The 1982 Citizenship Law as it currently stands does not consider the Rohingya minority an ethnic nationality of Myanmar, thus rendering them effectively stateless. The Special Rapporteur notes that the Government has yet to authorize the issuance of temporary resident's cards to those sections of the Muslim population in northern Rakhine State, who remain without formal identification papers. Discriminatory practices which they frequently face include imprisonment for travelling within or outside the State without an official travel permit; problems in obtaining permission to marry; difficulties in birth registration due to high fees and unauthorized marriages; difficulties in accessing education; and reported restrictions on taking up many civil service positions.

F. Freedom of expression

61. The Special Rapporteur notes that Myanmar's press continues to be tightly controlled by the State censorship board. Since October 2004, the Government has actively sought to regularize its control of the press. Every journal, newspaper and magazine must submit each edition to the censors for approval before publication. No publication may be issued without State approval. The process of official approval allegedly takes one week for weekly and monthly periodicals, within which period photographs and headlines are also scrutinized.

62. The Printers and Publishers Registration Law prohibits "anything detrimental to the State", "any incorrect ideas and opinions which do not accord with the times", "any descriptions which though factually correct, are unsuitable because of the time or circumstances of their writing" and "any criticism of a non-constructive type of the work of government departments". When writing about a government ministry, journalists are allegedly required to name their source and obliged to obtain a letter of authorization from the ministry concerned, which may or may not grant approval for publication.

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63. The Special Rapporteur regrets to learn that access to information, especially to the foreign media, has allegedly become more difficult over the past year. In 2005, censorship was reportedly extended to cover death notices.

64. With regard to the Internet, State censorship is reportedly exercised through the surveillance of e-mail activity, and the use of software-based filtering techniques to block access to any website, whose content the Government deems as being contrary to the national interest and the Internet Regulations of 2000. The majority of websites of the political opposition, pro-democracy groups and human rights organizations are blocked.

65. While 30 new publishing licences were reportedly granted in the past 12 months, very few of them have resulted in the establishment of viable publications given the excessive restrictions and bureaucratic demands, insisted upon by the Government. The possession of fax machines, video cameras, modems and satellite antennas remains illegal and punishable with prison sentences of up to 15 years. All computers or networks, including fax machines, must be registered with the Ministry of Communications, Posts and Telegraphs, and a licence agreement obtained.

66. The Special Rapporteur has learnt that the Ministry of Information Press Scrutiny and Registration Division (PSRD) has in recent months promised a more "flexible" approach to the

press in return for a more proactive approach by the press in supporting the policies of the Government. It was indicated that critical reports on government projects may be tolerated as long as criticisms are deemed “constructive”. Media coverage of natural disasters and poverty, previously banned, may be allowed on condition that it does not affect what the Government deems to be the “national interest”. This notwithstanding, in July, with the exception of the English-language Myanmar Times, none of the media outlets were allowed to report Myanmar’s decision to forgo its rotating chairmanship of ASEAN in 2006. According to PSRD, negative reports and commentaries about China, India and ASEAN will continue to be banned.

67. In August 2005, PSRD issued new publishing licence regulations, which further tighten control over the editorial teams of authorized publications. Under these new publishing rules, PSRD can also block the transfer of a publishing licence from one publisher to another.

68. The Government continues to tightly control access by international journalists to Myanmar. While a few select correspondents have been given reporting visas on an intermittent basis, many senior journalists and specialist writers have been consistently denied access to the country.

69. Amongst the political prisoners released in early July, to which the Special Rapporteur referred in his previous report (A/60/221, para. 42), there were several senior media figures, including Sein Hla Oo and documentary film-maker Aung Pwint. Seventy-year-old Sein Hla Oo was released from Myitkyina Prison after being held for nearly 11 years in harsh conditions. A freelance journalist, a former editor and an NLD member of parliament, he was arrested in 1994 and charged with “fabricating and sending anti-government reports” to foreign embassies, radio stations and journalists. Aung Pwint was arrested in 1999 and convicted on charges of “illegal possession of a fax machine” and of “transmitting information to banned publications”.

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70. As at November 2005, at least 17 editors, journalists, writers and poets remain in captivity in Myanmar’s prisons. The Special Rapporteur deeply regrets that Myanmar’s longest serving political prisoner, now in poor health, U Win Tin, passed his seventy-fifth birthday and 16 years in prison in 2005, despite firm expectations that he was to be released in July.

V. ECONOMIC AND SOCIAL RIGHTS

A. General observations

71. The Special Rapporteur calls attention to the marked decline in socio-economic conditions which has resulted in increased poverty countrywide. He notes that during the reporting period, the value of the Kyat sharply declined as inflation soared, leading to substantially increased hardship of the population. Commodity prices and public transportation fares escalated, as the cost of motor fuel reportedly rose ninefold. Urgent reform is required to prevent any further deterioration in an already critical economy.

72. A quarter of the population is currently believed to live below the poverty line. It is estimated that 70 per cent of household expenditure is on food alone. The rising costs of food commodities in recent months have further eroded declining purchasing power. Government expenditure on health per person is believed to be the lowest in the world. Life expectancy is 60 years, 10 years less than in Thailand. Mortality rate among children under the age of 5 stands at 7 per cent, almost four times as high as in neighbouring Thailand. An estimated 34 per cent of the rural population has no access to clean water and for 43 per cent of that population there are no safe sanitation facilities available. There is concern that as a consequence of deteriorating socio-economic conditions, the stress on families and communities is contributing to the

fragmentation of family and community networks and to the increased dependency of individuals on unregulated and illicit activities to assure their survival.

73. The Special Rapporteur firmly believes that State-sponsored practices such as the imposition of arbitrary taxes, extortion, land and crop confiscation, forced relocations, travel restrictions, financial penalties for non-compliance with orders and the looting of possessions of civilians by military authorities, all continue to have a devastating impact on livelihoods.

B. Forced labour

74. The Special Rapporteur continues to receive reports of widespread and systematic forced labour practices and forced recruitment, implemented by State actors, throughout Myanmar. Forced labour demands are particularly high in villages situated within the close vicinity of military camps and in relocation sites. Allegations of child labour have also been received.

75. Obliging civilians to work without pay is detrimentally impacting upon their ability to make a living. Rather than pursuing their own livelihoods, the citizens of Myanmar are being obliged by the Government to dedicate themselves to such activities as the construction of military camps, including digging of trenches and bunkers; the construction of hospitals and roads and portering of military supplies, including ammunition; the forced cultivation of tea plantations; and the breeding of livestock for army troops. In the case of forced labour for development projects, construction materials and food supplies are frequently demanded of civilians, who are allegedly told that it is their “civic duty” to comply with army orders.

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76. The policy of the Government to prosecute those who are considered to have lodged false complaints about such practices dissuades victims from reporting cases, for fear of prosecution. In this connection, the recent case of Ma Su Su Nway, the human rights defender, exemplifies the possible fate awaiting those who do attempt to seek legal redress for forced labour. Having successfully brought a case against local authorities in Yangon Division in January 2005 for forced labour imposed on her and on fellow villagers in connection with a road construction project, she found herself subject to harassment and criminal charges. In October 2005 she was sentenced to 18 months’ imprisonment in Insein Prison on charges of having defamed local authorities, following a trial which did not meet international standards of due process.

77. Having been released in January 2005 following a conviction for high treason for his contacts with ILO, U Aye Myint, a lawyer from Pegu Division, was sentenced on 31 October to seven years’ imprisonment for “spreading false information”, under the Emergency Provisions Act (1950). He was arrested on the grounds that he had submitted a letter of complaint to government authorities regarding a land confiscation case and had forwarded a copy to the ILO liaison officer.

C. Violence against women

78. Serious incidents of sexual violence against women continue to be reported throughout Myanmar. Women and girls in ethnic minority areas remain particularly susceptible to rape and harassment by State actors. As a consequence, their freedom of movement is unnecessarily restricted as they are often fearful of travelling unaccompanied.

79. The Special Rapporteur deeply regrets that the Government has not agreed to an independent investigation into allegations of systematic sexual violence in Shan State. Such a culture of impunity which continues to pervade in Myanmar, whereby State agents who perpetrate serious crimes are rarely prosecuted, is of grave concern to the Special Rapporteur. That those who lodge complaints to the authorities find no avenue of redress but, rather, are liable to reprisals is wholly unacceptable.

D. Drug control programmes: the need for alternative livelihoods

80. The Government has achieved notable progress in several areas of drug control over the past four years, with the assistance of the United Nations Office on Drugs and Crime (UNODC). According to a recent survey by UNODC, opium production in Myanmar declined by 29 per cent in 2004 from the 2003 level and by a further 26 per cent in 2005 from the 2004 level. However, eradication programmes, while achieving important successes, have also resulted in a number of undesirable consequences which have yet to be addressed, such as: out-migration as a result of the loss of livelihood, population drops, lower school enrolments and declining health services in affected areas. Approximately 2 million farmers and their households have either lost or are about to lose their primary income derived from opium poppy farming. Income-generating alternatives need to be developed, if the successes gained in the opium eradication programmes are not to be rapidly undermined.

81. While poppy-growing has dramatically declined, the production of synthetic drugs or amphetamine-type stimulants is steadily rising. A marked increase in heroin abuse amongst

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Myanmar's youth remains of concern, as does the exacerbating effect it could have on transmission rates of HIV/AIDS. The presence of cross-border criminal groups involved in drug trafficking continues to affect drugs production and to aggravate the relative lawlessness in the border states.

VI. THE HUMANITARIAN SITUATION

A. Overview

82. The humanitarian situation in Myanmar, while not yet at the point of acute crisis, has shown marked signs of deterioration over the past year. In 2001, soon after the Special Rapporteur took up his mandate, the heads of eight United Nations agencies in Yangon expressed their concern over the "silent humanitarian crisis in the making". The situation then was particularly serious in ethnic minority and conflict areas. It has since significantly deteriorated, affecting the population now on a wide scale.

83. Particularly vulnerable groups with acute humanitarian needs include: those living in areas of ongoing armed conflict; those forcibly moved to relocation sites who have not had their livelihoods substituted; internally displaced persons, especially those in hiding; those living in the vicinity of military camps who are particularly susceptible to forced labour and extortion; female-headed households; children and young people deprived of an adequate education and subject to forced labour practices; and the elderly who are deprived of appropriate community care and support.

84. The Special Rapporteur is particularly concerned that during the reporting period, the access of ICRC to the states of eastern Myanmar has been further restricted. The work of ICRC in assisting and monitoring the welfare of the civilian population is a basic humanitarian necessity, which the Government has an international responsibility to facilitate.

B. Health

85. Many aspects of human suffering, most particularly HIV/AIDS, tuberculosis and malaria, undeniably constitute a high degree of humanitarian need which the Government should address with the close cooperation and assistance of the international community.

86. In direct contrast to neighbouring countries such as Thailand and Cambodia, the rate of HIV/AIDS infection in Myanmar is rapidly rising. It is understood that 31.4 per cent of sex

workers and 37.9 per cent of intravenous drug users in Myanmar are infected with HIV/AIDS. There is serious concern that the disease is currently spreading from these high-risk groups into the general population (with 2 per cent of pregnant women in Myanmar already estimated to be HIV-positive).

87. According to UNAIDS, the number of people infected with HIV in Myanmar may be as high as 620,000. Northern Shan and Kachin States are reported to be particularly worst affected. The Government has acknowledged that the rapid spread of HIV/AIDS, perceived by the international community as presenting a significant regional threat, is a cause for concern and has indicated its willingness to take action. In this regard, the Special Rapporteur welcomes E/CN.4/2006/34

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reports that the implementation of the National Contraception Programme has been significantly stepped up by the Ministry of Health, with the assistance of the United Nations, from reaching only four townships in 2001 to covering almost one third of the country today.

88. The Special Rapporteur notes that the United Nations Children's Fund provides approximately 90 per cent of the vaccines used to inoculate children in Myanmar against seven major vaccine-preventable diseases, including tuberculosis (TB), polio and measles. Myanmar suffers from amongst the highest rates of TB in the world, with an estimated 97,000 new cases of the disease diagnosed annually. As is the case with HIV/AIDS, reports indicate that multi-drug-resistant TB is currently spreading to neighbouring countries.

89. Malaria is a leading cause of mortality in Myanmar. Eighty per cent of the population lives in areas where malaria is endemic. It is believed that 600,000 cases and at least 3,000 deaths are attributable to the disease each year. Such figures are conservative as less than 40 per cent of malaria suspects are understood to seek public health care. The under-five mortality rate as a result of malaria is allegedly twice the regional average. While neighbouring countries have achieved significant gains in malaria control, there is a risk that the situation in Myanmar, if not addressed, will negatively affect such positive regional developments. The combination drugs required to treat the widespread multi-drug-resistant strain of malaria are largely inaccessible for those sectors of the population most at risk.

C. Food security

90. The Special Rapporteur was disturbed to learn of impediments placed by the Government to the distribution of food supplies by the World Food Programme (WFP) to areas seriously affected by hunger in Rakhine State in July and August 2005. WFP, which is supporting the food needs of several hundred thousand people in Myanmar, found its programmes negatively affected by the reported delays in the issuance of permits for movement of food aid in Rakhine and Shan States, of up to three months. No reason had been given by the Government for the delays.

91. It has been also reported that there was an increase in the number of obstacles to the movement of rice within Myanmar in the past year, with special permission allegedly being insisted upon by the local authorities, both from where the procurement was being made and to its final destination. These increased restrictions have allegedly contributed to the rise in the price of rice.

92. As at the time of writing the present report, the Special Rapporteur is pleased to learn that access by the civilian population to food commodities provided by WFP and other humanitarian agencies has improved in the border states since September. However, delivery of food supplies to the Wa areas remains problematic and the imposition by the Government of a 10 per cent tax on the suppliers of WFP remains, despite appeals for its removal.

D. Government restrictions on humanitarian actors

93. The Special Rapporteur has become aware that in the second quarter of 2005, a number of international agencies faced increased restrictions on their access to and activities in remote areas of conflict, ceasefire areas and those populated by ethnic nationality groups. Some
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international agencies have also been instructed that their expatriate employees may travel into rural and remote areas only in the company of officials from the relevant government department or ministry.

94. Bureaucratic restrictions placed by the Government on the movement and activities of humanitarian agencies and the resultant hampering of monitoring procedures are having a seriously negative effect. The decision taken by the Global Fund To Fight AIDS, Tuberculosis and Malaria in August to terminate grants to Myanmar due to travel and procurement procedures is deeply regrettable. This decision will undoubtedly have extremely serious, if not fatal, consequences for those sectors of the population most vulnerable to these three communicable diseases.

95. The Special Rapporteur wishes to note that during the six years of his mandate, the United Nations Country Team, despite an increasingly difficult operational environment, has continued to provide essential assistance to people in need. Other agencies are also determined to address the needs of the most vulnerable, notwithstanding mounting difficulties. The Special Rapporteur is pleased to note the recent establishment of an office of the European Commission's humanitarian aid department (ECHO), which has more than tripled its humanitarian assistance in the past four years.

96. In his last report, the Special Rapporteur noted the severe restrictions placed by the authorities on the activities of the ILO liaison officer and the calls by government-affiliated organizations for Myanmar to withdraw from ILO (A/60/221, para. 69). Developments in recent months, however, indicate that the Government's cooperation with ILO has deteriorated significantly.

97. In June, July and August, several mass rallies were held by official and government-affiliated organizations, denouncing the activities of ILO and urging the Government to withdraw its membership. Disturbingly, the ILO liaison officer received 21 death threats, warning him to leave the country or else be killed. There has been no formal response from the Government of Myanmar to numerous expressions of concern by ILO, although verbal assurances about his security and indications that the matter was being investigated have been reportedly given to the liaison officer.

98. The Government's commitment to eradicating forced labour and to implementing the recommendations of ILO increasingly appeared minimal, if non-existent, when in October it alluded to the fact that it was giving serious consideration to withdrawing from the Organization. However, following discussions with ILO, the Special Rapporteur is pleased to note that the Government reasserted its commitment to cooperate with ILO in November 2005. A clear demonstration of the integrity of its pledge to cooperate with ILO is now required.

E. Refugees and internally displaced persons (IDPs)

99. The Special Rapporteur remains gravely concerned at the ongoing internal displacement and the exodus of civilian communities in Myanmar as a direct result of systematic human rights abuses and the conflict between the military authorities and non-State armed groups.

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100. Myanmar produces the largest numbers of refugees in the region, which continue to leave

the country for the neighbouring countries of Thailand, India, Bangladesh and elsewhere. While 150,000 persons have found refuge in camps on the Thai-Myanmar border, an estimated 1 million people originating from Myanmar are understood to be currently living in Thailand alone.

101. It is estimated that since October 2004, at least 87,000 people were obliged to leave their homes. As of late 2005, there were understood to be a total of 540,000 people displaced in eastern Myanmar alone, the area worst affected by armed conflict and systematic human rights abuses by government personnel.

102. In the ceasefire areas, there are believed to be 340,000 IDPs. Government troops have expanded their activities into these areas, in spite of ceasefire agreements, enforcing trade and travel restrictions on civilian communities. Pledges by the Government to provide economic aid to those administering ceasefire areas have faltered. One such example was the recent cut in aid from the Government to the New Mon State Party and the Karenni National People's Liberation Front. Such cuts are likely to result in outflows of IDPs from ceasefire areas. As long as the dividends accruing from ceasefire agreements remain negligible, their validity and sustainability will be questionable.

103. The total number of persons currently residing in relocation sites is understood to stand at 108,000. Since 2004, at least 30,000 people are understood to have been forcibly transferred to such sites, having been evicted from their homes by government forces. The loss of livelihoods for those forced to move to relocation sites is substantial, as the camps tend to be located on barren land close to military bases (the proximity to which leaves civilians susceptible to forced labour demands). Alternative income-generating options are rarely available and travel restrictions are invariably imposed.

104. Fear of attack and subjection to human rights violations by the military in their "counter-insurgency" activities mean civilians continue to flee their villages. It is understood that at least 92,000 civilians are hiding in those areas most affected by military conflict, in remote forests and mountainous regions. One such incident occurred on 26 November 2005, when 900 people fled Thandaung Township, Karen State, following an attack by government forces, which resulted in the burning of civilian dwellings and the laying of landmines. At the time of writing, those 900 civilians, many of whom are children, are in hiding, without adequate food or shelter. Southern Shan State has experienced the highest increases in the number of civilians fleeing into hiding, in the past year, largely as a result of the alleged harassment of civilians by the military over concerns that the Shan State National Army and Shan State Army South would constitute a full alliance.

105. In areas of conflict, there appears to be no diminution in the Government's so-called "Four Cuts Policy", which reportedly aims to eliminate the access of the armed opposition to new recruits, information, supplies and financial support, in order to extend its control over areas under the administration of ethnic nationality groups. The purposeful impoverishment and deprivation of civilians as a counter-insurgency strategy is exercised through severe travel restrictions, forced evictions, expropriation, the imposition of arbitrary taxes and the destruction of villages. Since 1996, an estimated 2,800 villages are understood to have been destroyed

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(invariably burnt), relocated en masse or otherwise abandoned due to armed activities. While the populations of a certain number of these villages have since been resettled, most remain displaced.

106. The Special Rapporteur reminds the Government and non-State armed groups of their obligation to protect civilians from the effects of armed conflict. The current government strategy of targeting civilians in the course of its military operations represents a wilful

abrogation of its responsibility under international humanitarian law.

107. He has also been notified of forced evictions due to State-sponsored development projects. The construction of the hydroelectric dam on the Salween River reportedly resulted in the forcible displacement of several villages in Shan and Karen States. Allegations regarding civilian land expropriation for natural resource extraction have also been received. Victims are rarely given compensation.

VII. CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

108. The human rights concerns enumerated in the present report are largely the same as those highlighted by the Special Rapporteur when he commenced his mandate, six years ago. Despite early indications from the Government that it was willing to address these problems, he regrets that all such willingness appears to have disappeared. Recommendations formulated by the Secretary-General of the United Nations and his Special Envoy as well as those advocated by the Special Rapporteur have not been implemented. Those detailed by the Special Rapporteur in his previous reports, therefore, remain valid, their implementation all the more essential given the stagnancy of the transition process, the lack of progress towards national reconciliation and the deteriorating humanitarian situation.

109. Meaningful political, economic, legislative and judicial reform is essential to moving Myanmar forward out of the current quagmire. The refusal of the Government to acknowledge and address the declining socio-economic conditions and mounting public dissatisfaction cannot be sustained in perpetuity. In a region which has experienced significant development in recent years, it is unacceptable that the people of Myanmar are denied their inherent rights.

110. The Special Rapporteur strongly supports the recent report of the Secretary-General to the General Assembly (A/60/422) requesting the Government of Myanmar to resume, without further delay, dialogue with all political actors, including NLD, and with all the representatives of the ethnic nationality groups. By June 2006, all political prisoners should be released; all constraints on political actors should be lifted; all offices of NLD should be permitted to reopen and all political representatives free to participate in the political transition process, without restrictions. These are the minimum steps required to establish confidence in the transition process.

111. The procedures and principles which govern the National Convention remain fundamentally anti-democratic. The Special Rapporteur wishes to emphasize that the framework of reference for his comments about the National Convention and the political

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situation has not been attributable to any individual or group of Member States but is firmly based upon the pledge repeatedly made since 1990 by the Government to the people of Myanmar and to the international community to institute a democratic Government.

112. The Special Rapporteur believes that it would be counterproductive to wait until the end of the political transition process to empower civil society. As in many similar humanitarian emergencies in nations undergoing political transition processes to democracy, the main challenge for the international community is to prevent social capital from being completely exhausted. As well as addressing the suffering of the people today, it is necessary to protect and strengthen the ability of communities and individuals to participate in the eventual political transition.

113. At the conclusion of his mandate, the Special Rapporteur strongly commends the determined efforts of those civil society organizations based both inside and outside the country, who document human rights abuses inside Myanmar, assist internally displaced persons and provide essential support to and empower refugee and migrant communities. He wishes also to acknowledge the contribution made by international non-governmental organizations, which continue to operate in the country, under increasingly difficult circumstances, towards providing basic social needs and building the capacity of the people of Myanmar.

114. Deep-rooted and worsening poverty, the continued violation of economic rights and the lack of economic reform which is subjecting the population to unnecessary privation are moving the country towards a humanitarian crisis. This worsening situation is not beyond redress and must be addressed by the Government with the assistance available from the international community, which has a duty to ensure that humanitarian aid does not become hostage to politics. The increased scrutiny and excessive bureaucratic restrictions to which humanitarian organizations are being subjected should not deter the international community from its duty to respond to the humanitarian crisis within the country. There have been many other contexts where humanitarian action has been implemented in a hostile political environment.

115. The Special Rapporteur believes the Government's failure to engage in policy-level dialogue and cooperate with international humanitarian agencies to address the acute protection needs of forced migrants is exacerbating an already very serious humanitarian situation. Evidently, the most effective and fundamental form of protection from forced displacement in Myanmar would be the cessation of human rights abuses and the resolution of the armed conflict through inclusive dialogue.

116. There is also an urgent need to establish transparent mechanisms of accountability to ensure that acute humanitarian problems are promptly identified and addressed and to monitor the disbursement of financial assistance. In this connection, the Special Rapporteur calls upon the Government to deepen its dialogue with international humanitarian agencies, stakeholders and beneficiaries to articulate an effective and coordinated strategy for action in tackling the critical humanitarian exigencies in Myanmar. The statement issued in September by "The Student Generation Since 1988" Group encouraging the Government to work together with all stakeholders to ameliorate the humanitarian situation in the country was a welcome development.

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117. The Special Rapporteur believes that the briefing to the members of the Security Council in December provided an opportunity to build a constructive and coordinated strategy towards Myanmar, in view of the urgent humanitarian needs of the population. He strongly hopes that such a positive step represents the beginning of a new momentum internationally, to proactively facilitate the long overdue transition from authoritarian to democratic rule in Myanmar. In this connection, he believes the instrumental role of ASEAN and of neighbouring countries in promoting the rights and fundamental freedoms of the people of Myanmar is of key importance in carrying this momentum forward.

118. The Special Rapporteur is convinced that any progress towards resolving the ethnic conflict in Myanmar is unlikely to be possible or sustainable without tangible political reform. The ongoing armed conflict in several ethnic minority areas continues to underpin the most grave human rights abuses in the country, to exacerbate Myanmar's humanitarian decline and to inhibit socio-economic development. Without an inclusive

reform process, such urgent challenges for the country will not be addressed by the Government's current road map process.

119. No transition process is worthy of the name as long as fundamental freedoms of assembly, expression and association are denied; voices advocating democratic reform are silenced; elected representatives are imprisoned; and human rights defenders are criminalized. No progress will be made towards national reconciliation as long as key political representatives are being locked behind bars, their constituents subject to grave and systematic human rights abuses and their political concerns disregarded.

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Annex

LIST OF SEVERELY ILL POLITICAL PRISONERS

Name Place of detention Illness

1. Aung Aung Mandalay Paralysis
2. Aung Naing Mandalay Hypertension
3. Aung Kyaw Oo Tharawaddy Liver and kidney complaints
4. Aung Shin Insein Asthma
5. Aung Soe Myint Insein Heart disease, diabetes, eye complaint
6. Aye Aung Kale Malaria, typhoid
7. Hla Win Moulmein Haemorrhoids
8. Hla Aye Insein Paralysis
9. Khin Khin Leh Insein Rheumatic arthritis
10. Khin Maung Lwin Puta-O Heart disease, hypertension, malaria
11. Kyaw Min Insein Rheumatic arthritis
12. Kyaw Mya* Myaungmya Gastric ulcer
13. Kyaw Soe Wai Bassein Chest pain
14. Kyaw Kyaw Tun Myaungmya Haemorrhoids, hernia
15. Lwin Nyein Myaungmya Hepatitis
16. May Win Myint, Dr.* Insein Rheumatic arthritis, gastric ulcer
17. Mu Tuu Myaungmya Neuropathy
18. Myo Chit Tharawaddy Asthma
19. Myo Thein Myaungmya Neuropathy

* The sentences of these prisoners have already expired, yet they remain in detention, further to the invocation of article 10 (A) of the 1975 State Protection Law.

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Name Place of detention Illness

20. Naing Aung Mon Tharawaddy Gastric ulcer
21. Nanda Sit Aung Pa-an Migraine, inability to walk
22. Nay Kyaw Pa-an Severe weakness. Illness unknown
23. Nine Nine Insein Recovery from surgical activity
24. Nyi Nyi Oo Taungoo Paralysis
25. Phone Thet Paing Myaungmya Osteosclerosis
26. San Aye Tharawaddy Severe weakness, unable to stand
27. Saw Myint Tharawaddy Asthma, hypertension
28. Soe Han Moulmein Eye disease

29. San Hla Baw Thayet Paralysis
30. Soe Moe Naing Taungoo Mental illness
31. Soe Myint Tharawaddy Rheumatic arthritis, hypertension
32. Su Su Nway Insein Heart disease
33. Than Hteik Myaungmya Heart complaint
34. Than Maung Myaungmya Heart problem
35. Than Nyein, Dr.* Insein Cirrhosis of liver
36. Than Than Htay Insein Rheumatic arthritis
37. Than Win Hlaing Tharawaddy Diabetes, kidney complaints
38. Than Zaw Htwe Taunggyi Mental illness
39. Thet Naung Soe Insein Mental illness
40. Thet Win Aung Mandalay Mental illness, malaria
41. Thura Kyaw Zin Myaungmya Hypertension, gastric ulcer
42. Tin Cho Mandalay Hypertension
43. Tin Myint Myaungmya Malaria

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Name Place of detention Illness

44. Tin San Insein Hypertension, heart disease
45. Tun Linn Kyaw Insein Tuberculosis
46. Tun Ngwe Thein Tharawaddy Fistula
47. Tun Oo Thayet Gastric ulcer
48. Win Naing Moulmein Heart ailment
49. Win Tin Insein Osteosclerosis
50. Win Maung Moulmein Hypertension, depression
51. Yan Gyi Aung Tharawaddy Glaucoma
52. Yan Naing Min Mandalay Hernia, mental illness
53. Zaw Htoo Myaungmya Hypertension, gastric ulcer
54. Zaw Min Oo Insein Coronary heart disease
55. Zaw Min Tun Myaungmya Coronary heart disease
56. Zaw Myint Maung, Dr. Myitkyina Depression
57. Zaw Ye Win Taungoo Heart disease, hypertension, kidney ailments
58. Zin Linn Tun Insein Heart disease, hypertension, gastric ailments

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Report to the Commission on Human Rights, March 2005

UNITED
NATIONS
Economic and Social
Council
Distr. GENERAL
E/CN.4/2005/36
2 December 2004
Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sixty first session

Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Situation of human rights in Myanmar

Report of the Special Rapporteur, Paulo Sérgio Pinheiro

SUMMARY

The mandate of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar was established by the Commission in its resolution 1992/58 and extended most recently in resolution 2004/61 of 21 April 2004 (approved by the Economic and Social Council in its decision 2004/266).

In its resolution 2004/61, the Commission requested the Special Rapporteur to report to the General Assembly at its fifty ninth session and to the Commission at its sixty first session (para. 6 (a)). The Special Rapporteur accordingly submitted an interim report to the General Assembly (A/59/311). The present report is also submitted in accordance with the above request and based upon information received by the Special Rapporteur up to 29 November 2004, and is to be read in conjunction with his interim report.

During the reporting period the Special Rapporteur was unable to conduct a fact finding mission to Myanmar. In view of the recent changes in the Government of Myanmar, the Special Rapporteur hopes that the new administration will extend its cooperation to him by, inter alia, inviting him to resume his visits to the country.

The Special Rapporteur considers that the pronouncements made and action taken by the current administration do not appear to signal any new policy direction in respect of the National Convention process. He will continue to follow the process closely and will wait for its eventual resumption before evaluating the impact of the recent leadership changes on the future of the road map.

The National Convention could promote further political moves towards the democratization envisaged in the road map set out by the Government. While the Special Rapporteur duly acknowledges the efforts exerted and achievements realized to date, he maintains that additional requirements are necessary if the objectives of the road map are to be fulfilled. In previous reports the Special Rapporteur has already articulated his concerns regarding both the process and the issue of the inclusiveness of and participation at the reconvened National Convention, believing that there is still scope for adjustments to be made that would transform its next session into a genuine forum for achieving national reconciliation and political transition, with the participation of key representatives from all legitimate organizations. The Special Rapporteur believes that in order to bring about a more sustainable solution to the political deadlock in the country, credible endeavours should be made by all actors to ensure that the National League for Democracy (NLD) and other parties join the National Convention process. He also believes that the democratization process currently under way in Myanmar should not be delayed, given that only a genuinely democratic system of governance, in which the concerns of different groups can be addressed, can lead to understanding, stability and progress.

Given that a sizeable number of political prisoners still remain in prison, with many of them serving long terms, the Special Rapporteur, while welcoming the recent release by the Government of some such prisoners, stresses yet again that only the full and unconditional release of all political prisoners will pave the way for national reconciliation and the rule of law.

The Special Rapporteur has noted in previous reports that it would be extremely difficult or even impossible to launch a process of change, without releasing political prisoners; discontinuing the imprisonment of people for merely speaking their minds or subjecting them to unfair trials without

providing legal assistance or the most basic elements of the due process of law.

The Special Rapporteur also wishes to reiterate that the restoration of freedom for political parties and ceasefire partners to operate and pursue peaceful political activity is a further prerequisite for a credible process of national reconciliation and political transition. Democratization cannot emerge from a unilaterally controlled, restrictive environment.

If the Government sincerely wishes to promote the cause of peace, development and justice in ethnic minority areas affected by armed conflict, it must look seriously into allegations of violations against civilians living in those areas. The Special Rapporteur believes that it is in the best interests of the Government to establish efficient mechanisms for the accountability of army personnel for alleged human rights violations, with a view to ensuring the protection of the civilian population. Allegations must be investigated and those responsible for violations should be held accountable, prosecuted and judged. It is therefore important that the United Nations and the international community should deal consistently with human rights violations: there must not be one set of standards or requirements for State agents and another for armed groups. In his reports, the Special Rapporteur has always demanded that State agents and armed groups should be held equally accountable. In that regard, the issue of impunity relating to the events of 30 May 2003 in Depayin must also be adequately addressed and those who are found to be responsible brought to justice.

The Special Rapporteur remains convinced that there is an urgent need to re-establish a common focus for the various United Nations and international community actors and agencies and to coordinate all political, humanitarian and human rights initiatives. It is more vital than ever before that all States, particularly those in the region, place serious emphasis on continuous dialogue and negotiation with the Government of Myanmar. Notwithstanding the recent changes in the Myanmar Government, the Special Rapporteur is of the view that all players should also continue to work together on such non political and/or social issues as are covered by assistance programmes with funding from the Global Fund, including HIV/AIDS prevention.

There is a pressing need in Myanmar to embark on a process of structured consultations on substantial policy issues. The normalization of political life would proceed more rapidly if bolder steps were taken with the assistance of the international community and multilateral organizations. With respect to economic and social rights, there are areas of concern which could be addressed by the Government, economists, political parties and other players, with assistance and advice from the United Nations, international agencies and neighbouring States, thereby paving the way for the integration of Myanmar into international financial and economic structures.

The Special Rapporteur underlines the fact that the State apparatus and its agents will not just disappear after the political transition has been completed. As was the case in many democratic transitions in the twentieth century, even subsequent to direct military rule, many State agents and bureaucrats with experience in running the country, including judges, public prosecutors and army officials, will remain in office in order to prevent instability. In other South East Asian countries, transitions gradually led to improvements in participatory democracy, elections, labour standards and human rights. The Special Rapporteur believes that it would be absurd for the international community to wait for the end of the political transition to cooperate on initiatives aimed at improving the lives of vulnerable persons in Myanmar and to hold the population hostage until the completion of the democratization process.

Many mutually reinforcing reforms could be considered simultaneously in order to promote political reform, including civil service reform; privatization and enhanced efficiency in public enterprises; anti corruption measures; addressing the problem of the black economic; reforms in the education sector; improvements in health care, including the issue of access; the demobilization and reintegration into productive roles in society of former combatants; environmental protection; and the provision of safety nets for those who are likely to be left behind in the process of moving towards a market oriented economic system, including poor persons, women, youth, older persons,

ethnic minorities and persons with disabilities.

Priority should also be given to the ratification of the core human rights instruments, including the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and its Optional Protocols, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography.

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Introduction

1. The mandate of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar was established by the Commission in its resolution 1992/58 and extended most recently in resolution 2004/61 of 21 April 2004 (approved by the Economic and Social Council in its decision 2004/266).

2. In its resolution 2004/61, the Commission requested the Special Rapporteur to report to the General Assembly at its fifty ninth session and to the Commission at its sixty first session (para. 6 (a)). The Special Rapporteur accordingly submitted an interim report to the General Assembly (A/59/311 of 30 August 2004). The present report is also submitted in accordance with the above request, is based upon information received by the Special Rapporteur up to 29 November 2004, and is to be read in conjunction with his interim report.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

3. The Special Rapporteur introduced his interim report to the Third Committee of the General Assembly on 28 October 2004. While at United Nations Headquarters, the Special Rapporteur had meetings with senior officials in the secretariat and from the Government of Myanmar, in order to discuss matters relating to the implementation of his mandate. In parallel, the Special Rapporteur held consultations with representatives of a large number of Member States, civil society groups and non governmental organizations (NGOs). He also gave a press briefing.

4. During the reporting period the Special Rapporteur was unable to conduct a fact finding mission to Myanmar. In his speech to the Commission on Human Rights in March 2004, the Special Rapporteur explained that, although he had not been able to visit the country since November 2003, the authorities had agreed in principle to permit him to visit and he was trying to work out mutually convenient dates with them. While the Special Rapporteur has requested cooperation from the Government of Myanmar on several occasions since then, no invitation to return to the country has yet been forthcoming. In view of the recent changes in the Government of Myanmar, the Special Rapporteur hopes that the present administration will extend its cooperation to him by, inter alia, inviting him to resume his visits to the country.

5. Since assuming his mandate in December 2000, the Special Rapporteur has paid six visits to Myanmar and reported as objectively as possible on his findings. He has acknowledged positive developments, noted ongoing efforts and made recommendations regarding areas of concern. Despite the lack of access to the country in the past year, the Special Rapporteur has endeavoured to follow the same working methods, as is demonstrated by his statements and reports to the General Assembly and to the Commission on Human Rights. With or without access to the country, the Special Rapporteur will pursue his mandate in the same spirit of independence, impartiality and solidarity with the peoples of Myanmar. However lack of access to the country is hampering his work and having a very negative impact on his ability to carry out his mandate.

6. In discharging his mandate, the Special Rapporteur works closely with the United Nations Country Team, other United Nations entities and, in particular, the Special Envoy of the Secretary General for Myanmar, with whom he holds regular consultations. Such consultations have been more frequent in 2004, in view of the difficulties of accessing the country, which are shared by the Special Envoy, who has not been able to return to Myanmar since March 2004.

II. THE NATIONAL CONVENTION PROCESS

A. Recent developments

7. After having been suspended for eight years, the National Convention was reconvened for eight weeks, from 17 May to 9 July 2004. The Special Rapporteur closely followed developments in the lead up to and the proceedings of the National Convention, and shared some observations in his two most recent reports to the Commission and the General Assembly (E/CN.4/2004/33, paras. 27 36 and A/59/311, paras. 7 16). In the paragraphs set forth below, the Special Rapporteur presents more detail on the National Convention process, including its workings and composition, based on the information available at the time of writing of this report.

8. The Government of Myanmar, in its communication of 18 September 2004, assured the Secretary General of “its unsparing efforts to ensure the success of the National Convention, which would lead to the successful drafting and an adoption by referendum of a democratic constitution. Free and fair elections will then be held in which the people of Myanmar will elect leaders of their choice”.

9. While there was a change of Prime Minister on 19 October 2004, the Government, under the new Prime Minister, Lieutenant General Soe Win, has given public assurances that all commitments

made under the previous Government will be honoured and that, in particular, it will remain fully committed to the successful implementation of the seven step road map for national reconciliation and democratic transition, including the National Convention, which was announced by the former Prime Minister, General Khin Nyunt, in August 2003. It was reiterated that the road map was formulated by the State Peace and Development Council (SPDC) rather than a single individual, and that SPDC would therefore continue to implement the road map, its own political agenda, without changes, step by step, “with a view to seeing to the emergence of a peaceful, developed and discipline flourishing democratic nation”.

10. In his press briefing on 22 October 2004 (published in a booklet on 7 November 2004), the Secretary 1 of SPDC and the Chairman of the National Convention Convening Commission, Lieutenant General Thein Sein, gave details of the joint meeting convened on that day by the National Convention Convening Commission, the Work Committee and the Management Committee. He further noted that, during the first session of the National Convention, delegates from eight groups had offered suggestions on 11 chapters concerning “the delineation of the legislature”, which were compiled by the Panel of Chairmen for the detailed formulation of basic principles. He added that it had been possible to reach agreement in that regard in keeping with the six main objectives for convening the National Convention.

11. At the same briefing, Lieutenant General Thein Sein detailed the modus operandi of the next session of the National Convention. He stated that the consolidated paper regarding “the delineation of the legislature” will be re read and further explained to delegates, with a view to obtaining their approval for submission to the National Convention Convening Commission. Once that body had endorsed the paper, the detailed basic principles would be laid down. Furthermore, the observations of the National Convention Work Committee concerning delineation of executive and judicial powers would be explained to the delegates; group discussions would be held; papers with suggestions made by the delegates would be considered by the group chairmen; approvals, submissions and suggestions would be consolidated; and papers representing the views of delegates would be rewritten and submitted to the Work Committee, which would also consider them prior to their presentation to the plenary meeting. It was stressed that proceedings at the next National Convention would follow that specific course.

12. In the memorandum of 29 October 2004 concerning the situation of human rights in Myanmar, submitted by the Permanent Mission of Myanmar to the United Nations for submission as a document of the fifty ninth session of the General Assembly, it was stated that deliberations during the first session of the reconvened National Convention had centred on the issue of power sharing between the central Government and the states and regions. It was indicated that the states and regions would have their own executive and legislative bodies in the “envisaged new structure”. The complex and sensitive nature of the issue was said to be the reason for the “time consuming and at times intense discussions”. The first session of the National Convention was seen by the authorities as successful, during which “a common desire among the delegates to ensure the success of the road map was evident” and the outcome of which also “justified the assessment of the road map as a pragmatic approach to a smooth transition to democracy”.

13. On 23 November 2004, the National Convention Convening Commission, the National Convention Convening Work Committee and the National Convention Convening Management Committee held another coordination meeting. Lieutenant General Thein Sein gave assurances of the Government’s commitment to working step by step towards “the emergence of a peaceful, developed and discipline flourishing democratic nation”, in accordance with the road map. He also said that the National Convention would resume in February 2005.

B. The participation of ethnic nationalities in the National Convention

14. The Special Rapporteur deems the National Convention a potentially significant step towards national reconciliation and political transition in Myanmar, given that it has secured the participation of a large spectrum of ethnic nationalities, including ceasefire groups that had emerged in the new political environment created by the ceasefire agreements between the Government and armed opposition groups. According to the Government memorandum of 29 October 2004, of the 1,088 delegates at the reconvened National Convention, 633 delegates were from various national races, while some 100 further delegates represented ceasefire groups included in the “specially invited guests” category.

15. According to the above mentioned memorandum, 34 ceasefire groups were represented at the National Convention. They included all 17 main ceasefire groups, who were each invited to send five delegates. The remaining groups were mostly small splinter factions that had separated from larger ceasefire or non ceasefire organizations over the past decade. The Special Rapporteur has no information on how many delegates each of those groups had been invited to send.

16. Reportedly, 11 papers were submitted to the National Convention by various ceasefire groups, but the two main submissions were joint proposals from a 3 party grouping and a larger 13 party grouping that spelled out a variety of proposals relating to power sharing between their regions and the central Government. The Special Rapporteur has no details of those proposals, the outcome of related discussions in the Convention, or the scope of the agreement that was reportedly reached. Information from unofficial sources indicates that, during the National Convention meetings, there was disagreement with respect to federal based ideas proposed by the ethnic ceasefire parties and unitary based ideas proposed by Government supporters. The same sources say that, before the National Convention could adjourn in July 2004, a compromise had to be reached whereby the wording of the final reports of all the National Convention category groups had to be accorded with the “104 detailed basic principles” that were carried forward from the previous National Convention of 1993 1996. It thus remains to be seen, when the Convention resumes in 2005, how the interests of each of those groups will be combined in the interests of all the peoples of Myanmar.

17. Another important issue to be factored into the current situation is the impact on the ceasefire groups of the recent changes in the top military leadership. The former Prime Minister was known to be closely involved in many of the ceasefire agreements, whereby the ethnic parties were permitted to retain their arms, maintain their territories and engage in economic activity until a new Constitution was introduced. A critical time could be approaching. However, all the indications are that the ceasefire arrangements will continue under the current Government. The new leadership is sending out reassuring messages, reiterating that the policy on armed groups which “have returned to the legal fold” would remain unchanged, regardless of the recent change of Prime Minister. At the same time, such groups were urged to work for national development in the framework of the law and to join efforts to realize the Government’s political road map to democracy.

18. It should be noted that there are also a number of ethnic minority based armed groups and splinter factions of varying strength that have no peace agreements with the Government and remain outside the National Convention process. Those groups are mostly based on the Thai Myanmar or Bangladesh India Myanmar borders. Most are very small but some are significant in respect of both their history and their size, including the Karen National Union (KNU), the Karenni National Progressive Party and the Shan State Army [South]. Ceasefires should be established with those groups in order to enable them to join the National Convention. The prospect of future peace talks, however, is not assured. The recent attempt to pursue the SPDC KNU talks scheduled for 19 October 2004 reportedly resulted only in some informal talks in Yangon that were concluded prematurely because of the change of Prime Minister.

C. The participation of political parties in the National Convention

19. As in the previous National Convention (1993 1996), delegates to the reconvened Convention from political parties constituted one of the eight categories of participants. Of the 10 political parties which participated in the 1990 general elections and thereafter in the 1993 1996 National Convention, and which were still “legally registered” in 2001 (E/CN.4/2002/45, paras. 25 26), only 7 were present at the most recent Convention. Those included six ethnic nationality political parties, namely, the Kokang Democracy and Unity Party, the Union Kayin League, the Union Pa O National Organization, the Mro or Khami National Solidarity Organization, the Lahu National Development Party and the Wa National Development Party. Of the remaining two legal ethnic parties, the Shan Nationalities League for Democracy was invited but did not participate, and the Shan State Kokang Democratic Party was also absent. The National Unity Party (NUP) was the only legal non ethnic party at the Convention, although there were reportedly 11 “independent” representatives from the 1990 elections.

20. The NLD, another legal non ethnic party, which won the majority of seats in the 1990 elections, refused to join the reconvened National Convention because of the unwillingness of the SPDC to allow NLD offices to reopen or to release from de facto house arrest its Secretary General Daw Aung San Suu Kyi and Vice Chairman U Tin Oo. According to the aforementioned government memorandum of 29 October 2004, “the credibility of the National Convention has never been questioned by any quarter within the nation except by the NLD and its affiliate, the Shan NLD. The two parties declined the personally delivered invitations extended by the Convention conveners to participate in this important process. They have failed in their bid to sway public opinion away from supporting the National Convention”.

21. It appears that none of the deregistered political parties which stood in the 1990 elections, including those that won seats, were invited to participate in the National Convention. Those which are members of an informal umbrella organization known as the United Nationalities Alliance (E/CN.4/2003/41, para.14), supported the NLD decision not to join the Convention.

III. UPDATE ON THE SITUATION OF HUMAN RIGHTS

A. The exercise of fundamental rights and freedoms

22. Every political transition in the world has begun with the lifting of restrictions on the exercise of fundamental human rights, including the right to freedom of expression, association and assembly. The information the Special Rapporteur received during the reporting period indicates that the situation with regard to the exercise of those fundamental rights and freedoms in Myanmar has not substantially changed. Restrictions which continue to hamper the enjoyment of such basic human rights and freedoms should be relaxed in order to create an enabling environment for the National Convention process.

23. A number of recent cases of people being arrested, tried and sentenced to prison for peaceful political activity and the exercise of basic civil and political rights and freedoms have been brought to the attention of the Special Rapporteur. U Ohn Than, a 58 year old former political prisoner, was arrested on 21 September 2004 for staging a protest outside United Nations premises in Yangon, bearing a poster calling for a free and fair parliament and for a United Nations commission to investigate the events of 30 May 2003. Thet Wai (a) Pauk Sa, NLD Chairman from Sanchaung Township, was arrested on 22 September 2004 for providing assistance to U Ohn Than. Both were sentenced to two years of imprisonment at the Eastern High Court in Yangon, under article 505 (b) of the Penal Code: “intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility”.

24. A more recent case is the reported arrest by the local authorities on 5 November 2004 of U Han Sein, U Win Maung and U Than Htut, three NLD organizers at Danubyu in Irrawaddy division. They face prison terms of up to seven years if charged and convicted. It remains to be seen, however, whether the recent leadership changes in Myanmar will lead to greater tolerance for the peaceful expression of views and advocacy for democracy and human rights. In that regard, those new cases will be an important test.

25. While the offices of pro democracy political parties remain shut throughout the country, NLD continues to carry out some activities at its headquarters in Yangon, which it was allowed to reopen in April 2004. Reportedly, the Yangon Division NLD was recently restructured in a move which may be replicated, as appropriate, by other regional units of the party. Members of the NLD Central Executive Committee and the party's regional leaders from divisions and states were able to meet in Yangon on 16 November 2004, in order to discuss their activities in light of the latest developments within SPDC. The meeting was allegedly held with the consent of Daw Aung San Suu Kyi. Of note are some indications of reduced pressure from the local authorities on local NLD members, because of the recent changes within the top military leadership.

B. Political prisoners

26. The Special Rapporteur is concerned that the number of persons imprisoned for the exercise of their fundamental right to freedom of expression, opinion, information, religion, association and assembly, has remained essentially unchanged over the reporting period, with some 1,300 political prisoners at the time of the writing of this report. Those are estimated to include more than 50 women. The case of Daw Aung San Suu Kyi, NLD General Secretary, is particularly grave, given that she has remained under de facto house arrest since her arrest on 30 May 2003 and, as at 24 October 2004, her liberty had been restricted for nine years, if her previous periods of house arrest, from 20 July 1989 to 10 July 1995 and from 23 September 2000 to 6 May 2002 are taken into account.

27. In his press statement of 19 November 2004 the Special Rapporteur welcomed the fact that some 30 political prisoners had been freed in the context of the "suspension" of prison terms of 3,937 prisoners announced by the Government on 18 November 2004. That move was reported to have been made because of "irregularities" that might have been committed by National Intelligence Bureau agents.

28. Among those released were NLD MPs elect U Kyaw San, U Ohn Maung and U Toe Po, aged 72, 77 and 65 respectively. Also released were a number of students, including Min Ko Naing, also known as Paw U Tun, who was arrested for his leading role in the organization of non violent student demonstrations in the 1988 protests against military rule, when he headed the All Burma Federation of Student Unions. He had been held for long periods in solitary confinement and at the time of his release was being detained beyond the expiry of his prison sentence under an administrative detention law that allows imprisonment without charge or trial on executive order. Other students included Aung Myo Tint, Ko Chit Ko, Min Zaw Thein, Ko Moe Kyaw, Nyan Hla, Nyi Nyi Win and Sai Sithu. Also released were politicians and pro democracy activists from other walks of life, including lawyers, monks, teachers and medical doctors, namely, Ashin U Pinnya Zawta, U Aung Zin, Hkun Seing, U Htay Myint, Khin Maung Cho, Khun Sai, also known as Myo Htun, Kyaw Win Swe, Moe Zaw Tun, Ko Mya Thaug, Myint Soe, U Myo Myint, Myo Shwe, Ma Ohn Mar, Dr. Soe Than Maung, Thet Naing, Ma Tin Mar Yi or Ni, Ko Yar Kyaw, Yin Min Oo and Zaw Zaw Lin. In most cases where information was available, it appears that those persons would have qualified for release with time off for parole, having in the majority of cases served at least six years of a seven year sentence.

29. The Special Rapporteur also welcomes the release on 26 November 2004 of a further 10 political prisoners who were among the additional 5,311 prisoners whose release had been announced by the authorities on the previous day. The grounds for their release were the same as for the earlier group of

3,937 prisoners. On 29 November 2004, the State newspaper New Light of Myanmar reported that all 9,248 convicts had been released from various prisons around the country. Pending the clarification by the authorities of the details of those released, the Special Rapporteur hopes that those large scale releases include large numbers of political prisoners. In that regard, the Special Rapporteur requests from the Government a full list of all released prisoners, with the exact grounds for their conviction and release.

30. The Special Rapporteur is concerned by reports of the arrest of monks and novices for their involvement, real or perceived, in the non violent expression of dissent or opposition to the military regime. While it is difficult to confirm the exact number of monks in Myanmar prisons, estimates made by human rights groups indicate that some 300 monks and novices, including some nuns, remained imprisoned at the beginning of 2004, of which at least 100 had been arrested since 2003. Most were charged under section 5 (j) of the Emergency Provisions Act, while some were also charged under article 295 (offences relating to religion) of the Penal Code. Recent cases in point include 26 monks, of which 25 were novices aged 18 or 19, who were taken from Mahar Ghandaryone monastery in November 2003 and sentenced to 18 years of imprisonment by a tribunal in Insein prison in Yangon in January 2004 for their refusal to accept the alms offered by the military.

31. The Special Rapporteur continues to be concerned by the administrative detention of political prisoners beyond the expiry of their prison sentences. There are also very old, frail and ill prisoners, concerning whom the Special Rapporteur continues to receive reports of inadequate medical treatment, that has in some cases led to the death of prisoners. A very recent case is that of Zaw Myo Htet (a) Zaw Zaw who was sentenced in July 2003 to lifetime imprisonment in Insein prison for an alleged attempt to assassinate government leaders and for rallying people against the State. He died of amoebic hepatitis on 19 October 2004 at the age of 28. He had been suffering from tuberculosis and amoebic hepatitis while in prison, and was sent to the prison hospital on 28 September 2004. However, his condition continued to deteriorate, despite his transfer to the Yangon General Hospital for treatment. With that case, the number of political prisoners who have died while in prisons across the country has reportedly reached 93.

32. The Special Rapporteur takes note that the Government continues to cooperate closely with the International Committee of the Red Cross with regard to the conditions of treatment of the detained population, including political prisoners.

C. Administration of justice

33. The administration of justice, as described in previous Special Rapporteur reports, remained of concern during the reporting period. However, since the recent leadership changes, there have been a few developments indicative of change in that area.

34. On 22 October 2004, the 1983 law on the National Intelligence Bureau (NIB) was repealed. The reason given for the move was that the law was no longer in the interest of the people when the country was in the process of becoming a modern, developed and disciplinary nation. Subsequently, NIB structures, that previously included the Bureau of Special Investigation (BSI) and the Special Branch (SB) which dealt with political, economic and criminal matters, have been dismantled. Observers report that while the NIB no longer exists, BSI and SB are believed to remain in operation under the Ministry of Home Affairs, while military intelligence forms part of defence services, albeit its special powers have reportedly been restricted.

35. The Special Rapporteur is of the view that the recent large-scale prisoner releases prompted by the “irregularities” committed by NIB agents could be an initial step in the direction of addressing human rights issues in the area of the administration of justice, as described in previous reports. It is immaterial whether those releases include large numbers of common prisoners: the release of any unfairly detained or unjustly convicted persons must be welcomed. After so many months without

the release of substantial numbers of prisoners, this move by the Myanmar Government would contribute to the process of political transition if it were to include large numbers of political prisoners, would certainly help to create a more favourable environment for the reconvening of the National Convention, and would open the way to reform in the administration of justice.

36. The rectifying of any “irregularities” in the system would gain greater credibility if the process were transparent and impartial and if no one were regarded as above the law. In that context, the events of 30 May 2003 in Depayin should also be adequately addressed, and those found to be responsible should be brought to justice.

D. Human rights in ethnic minority areas

37. The Special Rapporteur remains very disturbed by continuing allegations of human rights violations in ethnic minority areas, particularly those affected by counter-insurgency operations, and by the presence in ceasefire areas not involved in counter-insurgency activity of large contingents of the armed forces. Civilians in those areas have reportedly witnessed widespread violations of economic, social and cultural rights, including the deprivation of means of livelihood through land and crop confiscation, the destruction of houses, excessive taxation and extortion. Continuing reports of the use of landmines, forced labour and sexual violence indicate that fundamental human rights are at risk in those areas. Most regrettably, not having been granted access to the country by the Government in the past 12 months, the Special Rapporteur has been unable to conduct a firsthand assessment of those allegations, but he hopes to be able to look into them when he is invited to return to the country.

38. The Special Rapporteur is particularly concerned by the situation in one ethnic area, namely, north-western Rakhine state. During the reporting period, mosques continued to be demolished, the freedom of movement of the Bengali-speaking Muslim minority remained excessively restricted and the vast majority of that minority remained de facto stateless.

39. Recent reports on the situation in Rakhine state indicate that, subsequent to the recent dismantling of military intelligence (MI) structures, a large part of the NaSaKa border forces, comprising the military, MI, police, immigration and customs, has been disbanded and replaced by units from other sections of the Myanmar armed forces. The NaSaKa forces were allegedly a major perpetrator of human rights abuses with respect, in particular, to taxation, extortion and forced labour. Some reports indicate that the early consequences of the dismantlement of the NaSaKa forces and MI have been decreases in taxes, marriage fees and travel authorization fees, and reduced in extortion and corruption. The Special Rapporteur cautiously welcomes those developments and will continue to follow the situation closely.

40. Conflicts, human rights abuses and a lack of protection have contributed over the years to large-scale internal displacement and flight into neighbouring countries. According to field surveys conducted in 2004 by human rights and assistance groups, the latest estimate of internally displaced persons (IDPs) in eastern border areas of Myanmar, namely, Tanintharyi division, Mon, Kayin and Kayah states, Southern Shan state and Eastern Bago division is some 526,000, the majority of whom are believed to be in settlements in ceasefire areas, while the remainder are in Government-controlled relocation sites or still in hiding in free-fire areas. Girls and women are estimated to comprise slightly more than half of the total IDP population. The latest figure represents a significant decrease from the 2002 estimate of 633,000, which may be caused by a number of factors, including sustainable return or resettlement, forced migration into urban and rural communities and cross-border migration. However, the estimated number of people allegedly displaced since the end of 2002 remains high at some 157,000, despite a marked reduction since the mid-late 1990s in the size of the population affected by forced relocation.

41. Such a high rate of civilian displacement suggests that harassment and abuses continue against the population of those areas, including ceasefire zones and, in particular, relocation sites.

IDPs are vulnerable in every aspect of their lives and, in particular, with respect to health care, education and access to food and safe drinking water. Child mortality and malnutrition rates among IDPs are believed to be double those of the national baseline rate. Their vulnerability is linked, on the one hand, to a lack of social protection and, on the other hand, to a lack of humanitarian and human rights protection caused by a conflict environment and specific patterns of abuse. In order of prevalence, those abuses include forced labour (57 per cent), extortion in the form of arbitrary taxation (52 per cent), travel restrictions (23 per cent), food destruction (17 per cent), arbitrary arrest (14 per cent) and eviction (12 per cent).

42. The Special Rapporteur has received reports of allegations of sexual violence against ethnic women, including, inter alia, Karens. In October 2004 the Special Rapporteur received information concerning preparations that were being made by the Myanmar Government to dispatch investigative teams to all the areas and sites connected with or relevant to the investigation of each alleged case. In view of the seriousness of those allegations, the Special Rapporteur offered, in his speech at the General Assembly on 28 October 2004, to carry out an independent assessment of such allegations in relevant parts of the country. In its memorandum of 29 October 2004, the Government noted that the allegations, “contained in expensive dossiers, are circulated by well-funded NGOs with links to armed terrorist groups and expatriate organizations”. The Government further claimed that the allegations “are part of an anti governmental agenda and are, in fact, propaganda of war waged with ill intent to slander and discredit the Myanmar Armed Forces, and to cause disunity and distrust among the national races”. At the time of writing, the Special Rapporteur had no further information regarding investigation of the above allegations. It should be recalled that he made a similar offer to the Myanmar authorities with respect to the allegations of sexual violence against Shan women, which the authorities failed to take up. Nevertheless, the Special Rapporteur notes that the Myanmar authorities continue to provide free access to the International Committee of the Red Cross in ethnic minority areas affected by the internal armed conflicts along the Thai border.

E. Child soldiers

43. While it is impossible to know the extent to which child soldiers are used in Myanmar, there continue to be credible reports about the recruitment and use of minors by the Myanmar armed forces and a range of non-State armed opposition groups. While much of the existing information is of an anecdotal nature, a number of cases have been documented through, inter alia, direct complaints to international organizations and diplomatic missions and follow-up on the forced recruitment of underage soldiers by family members and friends; credible reports of sentencing of underage soldiers for desertion; and media reports depicting images of soldiers who appear to be underage.

44. In 2004 the United Nations Children’s Fund (UNICEF) Representative in Yangon was invited by the Government to visit the two major army recruitment centres in Yangon and Mandalay, in order to be briefed on the recruitment process. The United Nations Resident Coordinator joined the Representative on his visit to the Mandalay recruitment centre, during which information was provided on a number of processes related to recruitment.

45. The Committee for the Prevention of the Recruitment of Child Soldiers, which was established by the Office of the Chairman of the State Peace and Development Council in January 2004 (A/59/311, para. 34), adopted in October 2004 a Plan of Action for the Implementation of the Objectives of that Committee. The Plan of Action, which does not specify the action to be taken, refers, inter alia, to the following measures: strengthened control of the recruitment process to ensure that no one under 18 years of age enters the armed forces; the discharge from military service and return to their parents or guardians of those found to be under 18 while training or in service; the provision of vocational training or other educational options and livelihood support, in particular for orphans, vulnerable children and those without guardians; an improved birth registration system; and

the dissemination of information to recruitment centres and the general public on the prohibition of recruitment of persons under 18 years. Since the adoption of the Plan of Action, no information has been available on whether the task force entrusted with its implementation, which includes the Ministers for Foreign Affairs, Home Affairs, Labour and Social Welfare, Relief and Resettlement, has taken steps to develop a more detailed operational plan or to follow up implementation of the existing plan. However, some new members of the Government have indicated the Government's continued interest in and commitment to working on this issue in collaboration with UNICEF.

IV. COOPERATION WITH THE UNITED NATIONS COUNTRY TEAM AND OTHER ASSISTANCE COMMUNITY MEMBERS

46. The initial outcome of the household poverty survey conducted by the United Nations Country Team as part of an exercise to map vulnerabilities in Myanmar suggests that more than half of the population has been forced to adopt coping strategies that are rapidly impoverishing them. In recognition of that reality and of the fact that the United Nations Development Programme (UNDP) programmes have reached a mere 3 per cent of the population, UNDP plans to expand its operations from 24 to 40 townships and to establish its presence in ceasefire areas. The Special Rapporteur welcomes that development and hopes that the Government will cooperate in that important initiative. Cooperation with respect to aid to vulnerable populations, especially in former combat zones, is in the interests of both the international community and Myanmar's security forces. Sustainable stability can only be reached through peace and eventual prosperity. The change of Government interlocutors and the arrival of a new set of actors responsible for United Nations operations, will he hopes, not seriously impede or delay the delivery to areas which are in need of urgent programme intervention. Similarly, he hopes that the increased difficulties various assistance partners now face from the recent changes will be resolved as soon as possible.

47. The Special Rapporteur took note of the fact that a human rights curriculum has been introduced in primary and secondary schools in Myanmar (A/59/311, para. 33). He understands that it has been developed on the basis of documentation from a range of international sources, including some technical materials from UNICEF.

48. UNICEF has continued to be involved in Myanmar in many areas relating to the protection of children against violence, abuse and exploitation (A/59/311, para. 40). In particular, it pursued assistance programmes in Kayin, Kayah, and Mon states on the border with Thailand in the areas of primary health care, basic education, water and sanitation, in accordance with its agreement with the Government; child protection activities are also increasing in several of those areas. UNICEF has also conducted training and awareness-raising on child rights and child protection for about 2,400 government Child Rights Committee members and community leaders in 7 states, 12 districts and 46 townships throughout the country, and provided capacity building training in psychosocial care and support for caregivers working with orphans and vulnerable children infected or affected by HIV/AIDS. Furthermore, studies which should be ready in the near future are being undertaken by UNICEF on the situation of children in several ethnic areas.

49. The creation of a Child Protection Day on the anniversary of the Convention on the Rights of the Child is part of the joint efforts of United Nations agencies, international NGOs and government ministries to raise awareness of the rights of the child throughout the country. On the fifteenth anniversary of the Convention in 2004, which also marked the celebration of Child Protection Day in Myanmar, the Government of Myanmar joined for the first time the United Nations and NGOs in commemorating the day.

50. A Juvenile Justice Inter-Agency Working Group with broad representation was established in June 2004, on the initiative of the Supreme Court, the Department of Social Welfare and UNICEF. The Working Group comprises, inter alia, members from the Supreme Court, the Office of the

Attorney-General, the Myanmar Police Force and Prison Department, the Department of Social Welfare and the National Committee on the Rights of the Child; UNICEF acts as its secretariat. A major national workshop was held on juvenile justice in Myanmar in July 2004, sponsored jointly by the Supreme Court and UNICEF, in collaboration with the Inter Agency Working Group, and a study has been conducted on the juvenile justice system and situation in Myanmar as a basis for future coordinated action. The Working Group has been meeting regularly in order to follow up specific recommendations with regard to the strengthening of the juvenile justice system in Myanmar. Based on the results of the work so far, key areas for planned future interventions related to juvenile justice include the strengthening of the policy and legal framework for juvenile justice and child protection; improved monitoring and data collection; investment in capacity-building, to enable justice and law enforcement officials to strengthen their work in the field of juvenile justice and child rights; and the adoption of specific measures to provide protection for children in conflict with the law.

51. The Government has a National Plan of Action for the Prevention of Trafficking in Persons in Myanmar, which has adopted a four-pronged approach to combating the issue, namely, prevention, prosecution, protection and repatriation, return and reintegration. The Government is also participating in the Coordinated Mekong Ministerial Initiative on Trafficking and has adopted a subregional action plan in that regard. The plan outlines the following areas for regional action: policy and collaboration; legal frameworks, law enforcement and justice; protection, recovery and reintegration; preventative measures; monitoring; and evaluation. On 29 October 2004, the Minister of Home Affairs, on behalf of the Government, signed the Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-Region with a view to providing the framework for close collaboration with neighbouring countries on the issue. The United Nations Inter-Agency Project on Trafficking in Persons, UNICEF and other United Nations and non-governmental partners are providing support to the Government for the implementation and follow-up of the national and subregional action plans.

52. The Special Rapporteur welcomes the continued cooperation of the Government with the United Nations High Commissioner for Refugees and, in particular, its approval of expanding human rights law training for government officials to include the police and the academic community (A/59/311, paras. 38-39).

V. CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

53. In the view of the Special Rapporteur, the pronouncements made and action taken by the current leadership in Myanmar do not yet appear to signal any new policy direction in respect of the National Convention process. He will continue to follow closely the process and will wait for its eventual resumption before evaluating the impact of the recent leadership changes on the future of the road map. The international community should also continue to urge Myanmar to take positive steps towards national reconciliation and democratization, with the full and meaningful involvement of all the parties concerned. It would, however, be unfair to refuse to acknowledge progress because the changes do not meet a maximalist scenario. While noting the slow progress in Myanmar's evolution towards a democratic State with full provision for the enjoyment of human rights, the Special Rapporteur hopes that it will continue in a steady and irrevocable manner.

54. The National Convention could promote further political moves towards the democratization envisaged in the road map set out by the Government. While the Special Rapporteur duly acknowledges the efforts exerted and achievements realized to date, he maintains that additional requirements are necessary if the objectives of the road map are to be fulfilled.

55. The Special Rapporteur has already articulated his concerns regarding the proceedings of and the inclusiveness of and participation at the reconvened National Convention (E/CN.4/2004/33, paras. 27-36 and A/59/311, paras. 7-16) and believes there is still scope for some adjustments to be made that would transform its next session into a genuine forum for achieving national reconciliation and political transition, with the participation of key representatives from all legitimate organizations. The Special Rapporteur believes that in order to bring about a more sustainable solution to the political process in the country, credible endeavours to ensure that NLD and other parties join the National Convention process should be made by all actors. He also believes that the process under way in Myanmar towards democratization should not be delayed, given that only a genuinely democratic system of governance, in which the concerns of different groups can be addressed, can lead to understanding, stability and progress for the country.

56. Given that a sizeable number of political prisoners still remain in prison, with many of them serving long terms, the Special Rapporteur, while welcoming the recent release by the Government of some such prisoners, stresses yet again that only the full and unconditional release of all political prisoners will pave the way for national reconciliation and the rule of law. The Special Rapporteur has noted in his previous reports that it would be extremely difficult or even impossible to launch a process of change without releasing political prisoners; discontinuing the imprisonment of people for merely speaking their minds or subjecting them to summary trials without providing legal assistance or the most basic elements of the due process of law.

57. The Special Rapporteur also wishes to reiterate that the restoration of freedom for political parties and ceasefire partners to operate and pursue peaceful political activity is a further prerequisite for a credible process of national reconciliation and political transition. Democratization cannot emerge from a unilaterally controlled, restrictive environment.

58. If the Government sincerely wishes to promote the cause of peace, development and justice in ethnic minority areas affected by armed conflict, it must look seriously into allegations of violations against civilians living in those areas. The Special Rapporteur believes that it is in the best interests of the Government to establish efficient mechanisms for the accountability of army personnel for alleged human rights violations, with a view to ensuring the protection of the civilian population. Allegations must be investigated, and those responsible for violations must be held accountable, prosecuted and judged. It is therefore important that the United Nations and the international community should deal consistently with human rights violations: there must not be one set of standards or requirements for State agents and another for armed groups. In his reports, the Special Rapporteur has always demanded that State agents and armed groups should be held equally accountable. In that regard, the issue of impunity relating to the events of 30 May 2003 in Depayin must also be adequately addressed and those who are found to be responsible brought to justice.

59. The Special Rapporteur remains convinced that there is an urgent need to re establish a common focus for the various United Nations and international community actors and agencies and to coordinate all political, humanitarian and human rights initiatives. It is more vital than ever before that all States, particularly those in the region, place serious emphasis on continuous dialogue and negotiation with the Government of Myanmar. Notwithstanding the recent changes in the Myanmar Government, the Special Rapporteur is of the view that all players should also continue to work together on such non political and/or social issues as are covered by assistance programmes with funding from the Global Fund, including HIV/AIDS prevention.

60. There is a pressing need in Myanmar to embark on a process of structured consultations on substantial policy issues. The normalization of political life would proceed

Report to the Commission on Human Rights, March 2004

UNITED NATIONS

Economic and Social Council

Distr. GENERAL

E/CN.4/2004/33

5 January 2004

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sixtieth session

Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS
IN ANY PART OF THE WORLD

Situation of human rights in Myanmar

Report submitted by the Special Rapporteur, Paulo Sérgio Pinheiro

Summary

The mandate of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar was established by the Commission in its resolution 1992/58 and extended most recently in resolution 2003/12. In its resolution the Commission requested the Special Rapporteur to report to the General Assembly at its fifty eighth session and to the Commission at its sixtieth session. The Special Rapporteur accordingly submitted an interim report to the Assembly (A/58/219). The present report is based upon the findings of his fifth fact-finding mission to Myanmar undertaken in November 2003 and information received by him up to 17 December 2003 and is to be read in conjunction with his interim report.

In discharging his mandate the Special Rapporteur has always taken into account the situation of all sets of human rights. In the present report, he highlights civil and political rights in the context of the process of political transition and democratization as he feels that it is necessary to evaluate the decisive events and new developments in the promotion and protection of those rights that occurred during the reporting period. He therefore focuses on many of the same issues now as at the time of his appointment three years ago as the progress between then and the first semester of 2003, albeit encouraging, was not sufficient and also because the events in Depayin of 30 May 2003 have resulted in a setback for human rights in Myanmar. In order to reverse the regression, all those who have been detained or put under house arrest since 30 May 2003 must be immediately and unconditionally released, the surviving victims and the families of those who lost their lives must receive compensation, and the offices of the National League for Democracy (NLD) must be reopened immediately.

The Special Rapporteur requests, as does the General Assembly, that the authorities of Myanmar initiate a full and independent inquiry, with international cooperation, into the Depayin incident. The results should be made public and those responsible must be held accountable.

The announcement by the new Prime Minister appointed in August 2003 of a seven point road map for the transition to democracy was acknowledged by some members of the international community as a positive initiative towards a process of political transition. By the time of the Special Rapporteur's last mission, the Government had announced the reconstitution of three bodies charged with preparing the reconvening of the National Convention: (i) the National Convention Convening Commission charged with overseeing the drafting of a constitution; (ii) the National Convention Convening Work Committee; and (iii) the National Convention Convening Management Committee. The Special Rapporteur took note that the membership of these bodies did not include any members

of NLD or any other political party, or representatives of ethnic nationalities.

During the mission, the Special Rapporteur collected sufficient insights into the current thinking and attitude of the State Peace and Development Council (SPDC) and others about the road map and, in particular, the National Convention. He was given to understand that the starting point of the National Convention would be the 104 Principles that had been developed by the previous National Convention; all political parties would be able to participate equally in the Convention as one of the eight eligible categories of participants; and there would be new elections held in accordance with a new constitution. In response to his specific question regarding NLD participation, the Special Rapporteur was informed that NLD would be expected to take part in the National Convention on an equal footing with other political parties and it was now up to NLD to come forward and join the process.

In the view of the Special Rapporteur, the implementation of the road map and the political transition to a civilian regime must be accompanied by real and tangible changes on the ground towards a genuinely free, transparent and inclusive process involving all political parties, ethnic nationalities and members of civil society. Any political transition process towards democracy that does not firmly entrench human rights principles as a basic concept cannot and will not be successful. The Special Rapporteur is convinced, as he expressed to all his interlocutors in the Government, that human rights principles should guide the road map not only in its substance or in the final phases, but during the whole process of its implementation, starting from preparatory steps.

For that reason, the Special Rapporteur believes that the most urgent requirements today are the lifting of all remaining restrictions on the freedoms of expression, movement, information, assembly and association; the repeal of the related "security" legislation; and the opening and reopening of all political parties' offices throughout the country. There should be no further arrests for peaceful political activities. The freedom of movement and political activity of Daw Aung San Suu Kyi and other leaders and members of NLD must be immediately restored in order to secure their early participation in the first stage of the National Convention.

Implementation of these initiatives will help create an enabling environment that would allow open and wide-ranging discussions among the Government, all political parties, ethnic nationalities, and representatives of a broad sampling of civil society sectors. The Special Rapporteur also believes that the same principles must be applied to the functioning of the National Convention if its success is to be ensured.

The Special Rapporteur welcomes the recent releases of political prisoners, but reiterates once more the need for the immediate and unconditional release of all political prisoners. He urges the Government to consider the past experience of political amnesties in the history of Myanmar and is of the view that a general amnesty would be the best path: release all political prisoners, who would then be able to play a positive role in the future political process of transition.

The Special Rapporteur has come across some indications that the practice of recruiting child soldiers may be widespread among government troops as well as among insurgent armies. The widespread forcing of civilians to undergo military training has been reported, but it is unclear what its legal basis is and purposes are.

He remains concerned about continuing allegations of serious human rights violations in ethnic minority areas, including Shan State. Despite his efforts to pursue the implementation of his proposed independent assessment in Shan State, an agreement on its proposed modalities has not yet been reached.

The suffering of the vulnerable in Myanmar is evident. The Special Rapporteur is aware of activities of the assistance community to address suffering in such areas as health, protection, education and employment. Much more needs to be done; the vulnerable of Myanmar cannot be made to pay for economic policies that do not place sufficient emphasis on the poor. He welcomes the initiative of the United Nations Country Team to map vulnerabilities in Myanmar and subsequently design a

strategy to address them.

The Special Rapporteur feels it necessary to share some preliminary findings on the impact of recent sanctions on the life of vulnerable people in Myanmar. Women and girls appear to be particularly vulnerable to the risk of being trafficked or exploited or of becoming illegal migrants, especially those who had left their villages to find work in factories and who now have no work and no place to go back to. He would note that the many decades of poor economic management by the Myanmar authorities is a significant factor in the hardship described in this report. The Special Rapporteur encourages the development assistance community to monitor developments in this field closely, particularly in the context of mapping vulnerabilities and designing a strategy to address them.

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Introduction

1. The mandate of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar was established by the Commission in its resolution 1992/58 and extended most recently in resolution 2003/12 (approved by the Economic and Social Council in its decision 2003/239).
2. In its resolution 2003/12, the Commission requested the Special Rapporteur to report to the General Assembly at its fifty-eighth session and to the Commission at its sixtieth session (para. 6 (a)). The Special Rapporteur accordingly submitted an interim report to the General Assembly (A/58/219). The present report is based upon the findings of his fifth fact finding mission to Myanmar undertaken in November 2003 and information received by him up to 17 December 2003 and is to be read in conjunction with his interim report.
3. In discharging his mandate the Special Rapporteur has always taken into account the situation of all sets of human rights. In the present report, he highlights civil and political rights in

the context of the process of political transition and democratization, the monitoring of which is included in the terms of reference of his mandate, as he feels that it is necessary to evaluate the decisive events and new developments in the promotion and protection of those rights that occurred during the reporting period.

I. VISIT TO MYANMAR AND RELATED ACTIVITIES

4. Following his letter to the Government of Myanmar dated 1 July 2003 in which he requested permission to undertake an urgent visit to the country with a view to assessing the situation firsthand in the aftermath of 30 May 2003, the Special Rapporteur had consultations with the Permanent Representative of Myanmar to the United Nations Office at Geneva, H.E. Ambassador U Mya Than, on 26 August. On that occasion, the Special Rapporteur was advised to seek a "regular mission" to Myanmar in November 2003 in order to enable him to prepare an update on the situation in Myanmar for the General Assembly. However, the Ambassador advised the Special Rapporteur that, in the light of the prevailing situation in the country, it would not be appropriate to press ahead with the Special Rapporteur's plan for an independent assessment of allegations of human rights violations in Shan State. On 29 August, the Special Rapporteur wrote to the Ambassador proposing to travel to Myanmar between 31 October and 8 November 2003. In the end, it was agreed that the visit would take place from 3 to 8 November.

5. This was the fifth fact-finding mission of the Special Rapporteur. It took place in a very different context from that of his past visits. Since his previous mission in March 2003 the human rights situation and the process of national reconciliation had been marked by significant setbacks, following the events of 30 May.

6. The Special Rapporteur received full cooperation from the Government in facilitating this mission, for which he expresses once again his appreciation. He was able to carry out his programme in its entirety and enjoyed complete freedom of movement and access to private persons and others of interest.

7. His main governmental interlocutors on this mission were the Prime Minister, General Khin Nyunt; Secretary-2 of SPDC, General Thein Sein; the Foreign Minister, U Win Aung, and his Deputy, U Khin Maung Win; the Home Minister, Colonel Tin Hlaing; the Head of Department of the Office of Military Intelligence, General Than Tun; the Director General of the Prisons Department; representatives of the governmental Human Rights Committee and the National Convention Convening Commission. The Special Rapporteur visited Insein Central Prison in Yangon, where he interviewed 19 political prisoners (see annex).

8. The Special Rapporteur had access to Daw Aung San Suu Kyi, General Secretary of the National League for Democracy (NLD), as well as three members of the NLD Central Executive Committee (CEC), who were under house arrest.[1] He also met with representatives of ethnic nationality parties and other political parties, the United Nations Country Team (UNCT), the diplomatic community, the international and local business community, the media, international civil society organizations, as well as the International Committee of the Red Cross (ICRC) and the Centre for Humanitarian Dialogue. He also visited the recently inaugurated exhibition on HIV/AIDS, which shows the efforts of the Myanmar authorities and the development assistance community in the fight against HIV/AIDS.

9. On his way to and from Myanmar, the Special Rapporteur stopped in Thailand (29-31 October and 9-10 November) for meetings with the Director-General of the Department of International Organizations and other officials at the Ministry for Foreign Affairs of Thailand, United Nations officials, representatives of the diplomatic and academic communities, the media and non-governmental organizations (NGOs). The Special Rapporteur and his team [2] also heard testimonies from individuals who had direct knowledge of the circumstances of human rights

violations that occurred before, during and after the 30 May 2003 events in Depayin.

10. On 11 November, the Special Rapporteur travelled to New York to introduce his interim report and to present to the General Assembly, in his statement on 12 November 2003, his initial impressions and findings from the latest mission, which are discussed further in the present report in the light of information received during and after the mission.

11. While at Headquarters, the Special Rapporteur met with the Acting United Nations High Commissioner for Human Rights, representatives of the Government of Myanmar and other States, and NGOs. He also held a press briefing for journalists.

II. HUMAN RIGHTS-RELATED DEVELOPMENTS

A. The events of 30 May

12. In his interim report, the Special Rapporteur documented the events that occurred on 30 May 2003 in Depayin as presented by the Myanmar authorities and other reliable sources and also shared his preliminary reading of the incident, based on the information available at the time of writing (see A/58/219, paras. 10-17, 23-25). During his last mission, he was able to supplement his knowledge about the incident through interviews with eight victims and eyewitnesses as well as discussions with the authorities and Daw Aung San Suu Kyi. He also had access to tapes and photographic evidence provided by the authorities and other reliable sources. At his request, the Special Rapporteur was provided with an unpublished report on the results of the official investigation. From what he heard and saw during this mission and based on eyewitness testimonies, he is convinced that there is *prima facie* evidence that the Depayin incident could not have happened without the connivance of State agents. The evidence that the Special Rapporteur has been able to collect indicates that, as pro-Daw Aung San Suu Kyi rallies were growing larger, in particular in the period between 25 and 30 May 2003, there was an escalation of threats, provocation, harassment, intimidation, bullying and orchestrated acts of violence with the involvement of those opposed to NLD and/or those who had some connection to Government affiliated bodies. The Special Rapporteur deeply regrets that the authorities did not handle the evolving situation peacefully and in accordance with human rights principles, thereby averting unnecessary loss of human life and suffering.

13. Pending the issuance of the Government's report, the Special Rapporteur feels that it is necessary to share his preliminary account of the incident, established on the basis of the information collected thus far through his own fact-finding. On the day of the incident (30 May 2003) at around 9 a.m., Daw Aung San Suu Kyi and her party left Monywa for Butalin town. On the way they stopped at Zawtika monastery to pay their respects to the monks. Upon arrival in Butalin in the early afternoon, Daw Aung San Suu Kyi gave a speech and organized ceremonies for the opening of the local township NLD office and the setting up of the party's youth wing. At around 6 p.m., the convoy left for Depayin town. On the way, they made a short stop in Saingpyin village where Daw Aung San Suu Kyi, to lend her moral support, greeted the villagers and visited the family of the NLD MP-elect,

U Win Myint Aung, who appeared to have been arrested a few days earlier for his role in preparing her visit. At about 7 p.m., the motorcade, comprising at least around 11 cars and 150 motorcycles, resumed the journey to Depayin.

14. By the time they arrived near Kyee village, at around 7.30-8 p.m., it was getting dark. Testimonies state that two or more monks, or people dressed as monks, appeared in front of the motorcade and asked Daw Aung San Suu Kyi to address the people. Violence erupted when approximately 50 people riding in a truck that was tailing the motorcade began to attack the convoy. They were joined by others from more than 10 buses and trucks, each carrying 30-40 people that had been following the convoy since it left Butalin, their headlights on lighting up the scene. The motorcade seemed to hesitate; then, as if on command, the people dressed as monks began to smash

the vehicles' windows with bamboo stakes, including the vehicle in which Daw Aung San Suu Kyi was riding. The truck drivers seemed to have been forced by local authorities to participate.

15. The attackers were civilians and wore white armbands, including the ones dressed as monks. People wearing such armbands had been seen prior to the incident in a smaller village and photos of the site of the attack taken a few days later show white armbands strewn around the field. There seemed to have been one or more leaders giving orders to the attackers. The violence was directed both against those in the convoy and the 200-500 villagers who had gathered to greet Daw Aung San Suu Kyi and her party. Some of those in the convoy stayed in their cars and some got out of their cars and tried to hide in the fields; both groups were attacked. The attackers used sharpened bamboo and wooden stakes and iron rods. The attackers also hit people with stones, reportedly harassed women, ripping off their blouses and stripping off their jewellery, and also took people's personal belongings from the cars. The attackers reportedly shouted, "Do not call us Kyantphut any more", Kyantphut being a derogatory term used to refer to members of the Union Solidarity and Development Association (USDA), a pro Government mass organization. According to testimonies, there were between 50 and 70 people lying on the road, either injured or dead. By 9 p.m., the violence had ended.

16. It is reported that after the situation had calmed down, about eight vehicles, including trucks, arrived at the site of the incident. Their passengers covered the bodies with blankets and put them on the trucks. Some of those removing the bodies were allegedly wearing military uniforms. They also cleaned the road with branches they ripped off nearby trees.

17. Reportedly, "scouts" had been sent ahead of the convoy in a car to collect information. They were arrested by uniformed police officers and taken to a government compound near a checkpoint where they were searched by the police, handcuffed and locked in a room. Then, in the evening, they were put on a truck where they spent the night. From the truck, they could not see the actual attack on the convoy, but allegedly heard screams and the sound of people being beaten. They themselves were not beaten, but were threatened with long-term imprisonment; some were threatened with a gun. At the checkpoint, the person allegedly giving orders and addressed as "major" was dressed partly in a military uniform.

18. Daw Aung San Suu Kyi was travelling at the front of the motorcade in the cab of a pick up truck with two other persons; more people were in the open bed of the truck. When the truck was attacked, one of her companions pushed Daw Aung San Suu Kyi's head down and covered her with his body while the driver pushed onto Ye-u, a town beyond Depayin. At the entrance they were stopped by a bar across the road.

19. Daw Aung San Suu Kyi and her companions were then taken to Ye-u police station where they remained in what appears to be a guest room until 1 a.m. Later that morning, she was told that arrangements had been made to take her somewhere else. At that point she realized that U Tin Oo and some of the others from the convoy who had been left behind were at Ye-u as well. When she refused to go without the others, policewomen carried her to a car. They started driving, stopping twice, first at the 6th Tank Battalion rest room and then at an army guest house in Minbu. They drove for 24 hours, reaching Insein prison at 8.20 a.m. on 1 June. There she was kept in a small house in the prison compound until 24 June, when she was moved to Ye Gaung Yeiktha in Ye-Mon army camp. She left the camp on 16 September, when she went into hospital for an operation. She remained in the hospital 10 days and returned home on 26 September.

20. The events of 30 May and the related developments described by the Special Rapporteur in his interim and the present reports constituted regression in the situation of human rights and became a key factor in the change of attitude of the international community towards Myanmar. SPDC was the subject of unprecedented international condemnation, which resulted in increased international sanctions against the country.

21. Effective redress of the human rights violations that occurred during the incident would provide a moral compass to guide the country forward on the path to national reconciliation and democratization. It is not a question of seeking revenge, or taking a partisan political stance. Missing this opportunity for reconciliation could lead to more negative developments. The Special Rapporteur therefore proposed to SPDC that he conduct an independent assessment of the Depayin incident under his mandate, or assist in carrying out a full and independent inquiry.

B. Political prisoners

22. Despite the Special Rapporteur's repeated calls on the Government to refrain from new arrests, he received reports that there had been approximately 250 new arrests since 30 May 2003. However, the latest governmental figures cite 153 people arrested in connection with the Depayin incident of whom 125 have so far been released, including the 8 prisoners released on 9 November 2003, the day after the Special Rapporteur's departure from the country, and another 16 freed on 5 December. His estimate, based on cross checking the figures from various sources, is that the number of remaining detainees appears to be higher than the official figure.

23. The Special Rapporteur welcomes other releases of prisoners, including a group of 58 persons released on humanitarian grounds on 18 November 2003 comprising 49 women either pregnant or with young children, and 9 prisoners over 65 years old; none of them was a prisoner of conscience. Moreover, he also welcomes the release from nearly six months of house arrest of five senior members of NLD: Hla Pe, Nyunt Wai, Than Tun and Soe Myint were released on 28 November and Lun Tin on 29 November. The Special Rapporteur hopes these releases will be followed immediately by the unconditional freeing of all other political prisoners.

24. The grounds for arresting these individuals remain highly arbitrary, based on the legislation criminalizing the exercise of basic rights and the freedoms of expression, information, movement, assembly and association, including the use of some provisions of the Penal Code. A case in point is that of Zaw Thet Htway, editor of the sports magazine First Eleven and a member of the Democratic Party for a New Society, arrested with Aye Myint, Zaw Zaw, Zar Naing Htun, Ne Win, Shwe Mann, Than Htun, Myo Htway and Nai Min Kyi.[3] All nine were reportedly arrested on 17 July 2003 and convicted and sentenced to death on 28 November 2003 by a Yangon court martial under article 122/1 of the law on high treason for supposedly trying to murder the SPDC leaders. It is reported that a government official, Colonel San Pwint, announced on 26 July that the security services had thwarted a planned series of bombings. These persons were also accused of having contacts with political organizations in exile. The Special Rapporteur raised this case with the Myanmar authorities on 4 December 2003 through an urgent appeal sent jointly with the Special Rapporteurs on extrajudicial, summary or arbitrary executions and on freedom of opinion and expression.

25. The Special Rapporteur reiterates the need for a general amnesty for all political prisoners as a "barometer" of a sound political transition (see more on amnesty in his report E/CN.4/2002/45, paras. 41-47). In the political history of Myanmar, there have been examples of amnesty laws which could encourage the Government in pursuing such an initiative at this juncture.

26. Concerning the circumstances surrounding the present situation of Daw Aung San Suu Kyi, the Special Rapporteur was informed by the authorities that she is no longer being detained under any provision of "security" legislation. However, her telephone line remains cut and security arrangements concerning her remain in place. In effect, her circumstances are those of someone who has been placed under house arrest. She made it very clear to the Special Rapporteur that she would not accept freedom for herself until all those arrested since 30 May 2003 had been released. To his knowledge, the authorities have not yet made any offer to release her, but at the same time they claim that they are in regular contact with her and that the contacts are positive.

C. The National Convention

27. The Government of Myanmar has started preparations for the reconvening of the National Convention that has been adjourned since 1996. Reviving the National Convention is the first step under the seven-point road map for national reconciliation and democratic transition presented by the new Prime Minister, General Khin Nyunt, on 30 August 2003. The other elements of the road map are: (i) step-by-step implementation of the process necessary for the emergence of "a genuine and disciplined democratic system"; (ii) drafting of a new constitution; (iii) its adoption through a national referendum; (iv) the holding of free and fair elections; (v) the convening of elected bodies; (vi) the building of a "modern, developed and democratic nation" by the State leaders elected and the government organs formed by the legislative body.

28. At the time of the announcement, the Special Rapporteur noted that these steps represented very general and broad objectives, with no specifics or time frames. Moreover, these political objectives are conditional on the achievement of peace and stability, national unity and economic development, all formidable tasks with which the successive Governments in Myanmar have been struggling. It was also unclear what role, if any, NLD, which won the 1990 general elections, and other pro-democracy parties would be permitted to play in the future political process. In addition, there were no indications of how the National Convention would be established, or when it would convene.

29. By the time of the Special Rapporteur's last mission, the Government had announced the reconstitution of three bodies mandated to prepare the reconvening of the National Convention: (i) the 18-member National Convention Convening Commission (NCCC) charged with overseeing the drafting of the Constitution, chaired by the newly appointed Secretary-2 of SPDC, General Thein Sein (on 6 September); (ii) the 35-member National Convention Convening Work Committee (on 2 October); and (iii) the 43-member National Convention Convening Management Committee (on 21 October). The Special Rapporteur took note that these bodies did not include any members of NLD or any other political party or representatives of ethnic nationalities. Mass rallies had also been organized throughout the country in support of the road map by USDA, in which it was alleged that people were forced to participate. There were also reports about the meeting SPDC held with ceasefire groups to discuss the National Convention.

30. During his last visit, the Special Rapporteur collected sufficient insights on the current thinking and attitude of SPDC and others about the road map and, in particular, the National Convention. He had lengthy discussions with the Chair and other members of NCCC. He was informed that the above-mentioned three bodies had held their first joint meeting on 5 November 2003. He was given to understand that the starting point of the National Convention would be the 104 Principles that had been developed by the previous National Convention; all political parties would be able to participate equally in the Convention as one of the eight eligible categories of participants; and there would be new elections held in accordance with a new constitution. In response to his specific question regarding NLD participation, the Special Rapporteur was informed that NLD would be expected to take part in the National Convention on an equal footing with other political parties and it was now up to NLD to come forward and join the process. The Special Rapporteur's reading of the indications he received from various interlocutors is that the results of the 1990 elections are unlikely to be considered. In addition, the process of the National Convention has yet to embrace those elements that are conducive to a genuinely free, transparent and inclusive process involving all political parties, ethnic nationalities and elements of civil society.

31. After his mission, the Special Rapporteur took note that on 16 December 2002 the Minister for Foreign Affairs of Myanmar, at a meeting in Bangkok, stated that SPDC had set a time frame for the road map and that some steps of the road map, including the National Convention to draft a new constitution, would be implemented in 2004.

32. The Special Rapporteur is aware of how complex is the task of bringing all components of society together in a spirit of mutual respect, cooperation and equity, which he believes should find its full expression through a democratic constitution after 15 years of constitutional vacuum in Myanmar. The first constitution was adopted in 1947, before independence, while the second was introduced in 1974 during the Government of Ne Win. After taking power on 18 September 1988, the present military Government dropped the 1974 constitution. However, the work to draft a new constitution was never completed by the previous National Convention owing to the lack of "procedural" democracy and violations of the human rights of the participants in the Convention, as well as the absence of an "enabling" general environment in the country. If there is to be a new National Convention, lessons must be learned from past experiences, and the process must be guided by human rights principles if there is to be any chance of success. A discussion about democracy, after all, should take into consideration and respect basic international democratic and human rights principles.

33. The historical record of human rights abuses committed during the previous National Convention (1993-1996) was well documented by previous Special Rapporteurs. The human rights of the participants in that Convention - the rights to freedom of expression, assembly, association, and movement, and the right to freedom from arbitrary detention - were regularly violated. If SPDC wants to promote a genuine process of political transition to a democratic Government, there are some fundamental human rights requirements that must be fulfilled. Delegates to the Convention should be freely chosen and represent the full range of political parties and ethnic minority groups and should proportionally reflect the results of the 1990 elections. They must have the freedom to speak freely at the Convention (for instance, without first being "cleared" by the Chairman), to meet others without hindrance, to bring in and distribute documents and other materials. They must be able to challenge peacefully and protest against procedures and other limitations set down by the authorities. Delegates must also have freedom of movement, and especially not be confined to their dormitories and be able to return to their constituencies to consult during the Convention. They must not be arrested for their peaceful activities carried out in relation to the Convention. Political parties or other groupings must not be expelled from the Convention for what they say or advocate peacefully. Political parties should not be deregistered or otherwise disqualified from participating in the Convention.

34. Political rights and freedoms must be respected in order to create an enabling environment conducive to a successful democratic transition. The implementation of human rights reforms set out by the Special Rapporteur in his reports and letters to the authorities of Myanmar will help create a climate or enabling environment that would allow open and wide ranging discussions among SPDC, all political parties, ethnic nationalities, and representatives of a broad sampling of civil society sectors. These require the lifting of all remaining restrictions on the freedoms of expression, movement, information, assembly and association and the repealing of the related "security" legislation. The release of all political prisoners and the opening and reopening of all political parties' offices must be considered as an immediate priority. All political parties must have freedom to carry out peaceful political activities. At the moment, the only political party able to conduct its activities is the National Unity Party, aligned with SPDC. The remaining 9 of the 10 legally registered political parties exist in name only because of the restrictions in place. There should be no further arrests for peaceful political activities. The freedom of movement and political activity of Daw Aung San Suu Kyi and other leaders and members of NLD must be immediately restored in order to secure their early participation in the first stage of the National Convention if SPDC is genuinely serious about democratic transition.

35. Human rights principles should be incorporated in the new constitution of Myanmar. While it is up to the people of Myanmar to decide their own structure of government, there are certain human rights and rule of law principles that should be an integral part of any constitution in the twenty-first

century. These principles should include explicit human rights guarantees for both civil and political rights and economic, social and cultural rights; non-discrimination; the independence of judiciary and other mechanisms of accountability; and remedies for citizens for abuse of power by officials. There are many good examples of constitutions in the region, including those of Thailand and the Philippines, which could be studied.

36. The Special Rapporteur notes the agreement in principle of the authorities of Myanmar at all levels to his proposals for incorporating human rights and freedoms from the early stages of any process leading to political transition. The Special Rapporteur expects that credible indications would be given as to when and how these human rights reforms would be implemented in order to confirm the authorities' commitment to their stated agreement.

D. Conditions of detention

37. During the reporting period, the Special Rapporteur has continued to monitor conditions of detention and the treatment of political prisoners in various detention facilities (for his previous report on this subject, see E/CN.4/2003.41, paras. 21-24). He is pleased to report that the political prisoners interviewed in Insein prison during his last mission were not subjected to harassment, threats or punishment as a result of being interviewed by him or his team in March 2003. However, he remains concerned about the practice of so-called "debriefing" by Military Intelligence officials, despite indications that this is no longer a systematic practice, as it is now used only with some political prisoners, and that it does not seem to involve the use of physical threats.

38. The Special Rapporteur welcomes the slight improvements in the conditions of detention of convicted political prisoners in Insein prison since his visit in March 2003. The prisoners whom he interviewed are now able to receive journals and newspapers, in addition to religious books. Medicines and health care continue to be provided regularly to the elderly prisoners, although at times the quantity of medicines is reportedly insufficient.

39. Concerns remain, however, about disparities in the conditions of different blocks in terms of the quality of food and the lack of basic necessities such as mosquito nets, as well as the practice of solitary confinement, detention in locations far from prisoners' homes and the lack of privacy during family visits. For instance, prisoners remain permanently isolated in their cells and contiguous yards and are not allowed to walk in the corridors or outside the compounds where their cells are located. This isolation has devastating effect, especially for elderly political prisoners. The Special Rapporteur remains particularly concerned about the practice extending the detention of political prisoners who have already completed their prison sentence by placing them under "administrative detention" under section 10 (a) of the 1975 State Protection Act. This practice continues to be applied even to very elderly and infirm prisoners. Although the Special Rapporteur is pleased to report that their spirit is strong in spite of their long imprisonment, he condemns the practice as cruel and unacceptable and cannot accept the view of the authorities that this measure is provided for by national law. He therefore reiterates his recommendation that such legislation be repealed as it is in clear contravention of international human rights standards.

40. The Special Rapporteur wishes to record his concern about the continuing ill-treatment of detainees in pre-trial detention, especially allegedly in the Military Intelligence interrogation centres. Detainees are still being subjected to various forms of physical mistreatment, such as being blindfolded and handcuffed, having to stand on one leg and with their arms up, or being beaten not only with hands but also with bamboo/rubber sticks. In addition, practices amounting to "mental torture" during pre-trial detention are also widespread, with deprivation of sleep, and sometimes also of food, during interrogations and denial of proper medical attention.

41. The Special Rapporteur continues to be very concerned about detainees either in pre-trial detention or during trial who are kept in incommunicado detention. Before and during trial, they are not allowed to receive visits and sometimes even parcels, from their families. In most cases, families

are not even informed of their whereabouts. The time between the arrest and the start of the trial is too long, and in many cases detainees are informed of the charges against them only when their trial starts. In addition, the right to a fair trial continues to be denied to political detainees. More often than not, they do not have access to lawyers or, if they do, are not allowed sufficient time to consult with their lawyers to prepare their defence adequately. In most cases, they meet their lawyers, if any, on trial days.

42. Concerning common prisoners, the Special Rapporteur is concerned about reports indicating the existence of practices that can be characterized as inhuman conditions of detention. Common prisoners are reportedly used as porters unless they have the means to bribe prison staff in order to avoid it. The Special Rapporteur received reports that the Ministry of the Interior appears to acknowledge this practice as it lists in its official records the mention "porter camps".

E. Religious violence

43. The Special Rapporteur continues to be concerned about reports of instances of religious intolerance in Myanmar. The Special Rapporteur addressed in detail reported instances of violence against Muslims in 2001 (see E/CN.4/2002/45, paras. 66-68).

44. In 2003, incidents of religious intolerance reportedly started in May and it appears that there has been an escalation of religious violence across the country since October, including the alleged burning of villages, mosques and houses as well as the killing and wounding of people. It is reported that these acts of religious violence have been mainly carried out against Muslim communities and were deliberately instigated. According to some reports, "bogus" monks were used during these events, some of them reportedly seen carrying mobile phones and guns. The Special Rapporteur has also received information that although complaints had been lodged with the relevant authorities, no legal action, including investigations, was apparently ever taken. Reportedly, as a result of these incidents, Muslim communities have been displaced. The Special Rapporteur was able to verify during his last mission the nature and source of this violence. He therefore wishes to note that it is still too early for him to say whether the recent expressions of religious intolerance and violence are more than unacceptable cyclical events or have a political dimension.

45. The Special Rapporteur has also continued to receive reports on de facto discrimination on the basis of religion. For instance, reports indicate that Muslims are discriminated against in job opportunities and those within the civil service tend not to be promoted. Muslims also face more difficulties in obtaining identification papers if they declare their religion, and they have limited freedom to produce and disseminate Islamic books and other publications.

46. In his discussions with the Government on this matter, the Special Rapporteur was informed that the authorities had taken many initiatives to protect the religious minorities against discrimination and harm, be they Muslims or followers of other faiths, and that the necessary actions had been taken against "ill-disciplined Buddhist monks" under the existing laws.

F. Independent assessment of the situation in Shan State

47. The Special Rapporteur remains concerned about continuing allegations of serious human rights violations in ethnic minority areas, including Shan State. Despite all his efforts to pursue the implementation of his proposed independent assessment in Shan State (see E/CN.4/2003/41, paras. 35-41, and A/58/219, paras. 27-36), an agreement on its proposed modalities has not yet been reached.

48. The Special Rapporteur was informed by the authorities during his last visit to Myanmar about the reasons for the delay in replying to his proposed modalities. In the view of the Government, some provisions were either too intrusive or unfeasible in view of the security situation on the ground. Therefore, more consultations with the Office of Military Intelligence were necessary to evaluate the proposal.

49. The Special Rapporteur raised the matter with relevant Military Intelligence officials. He personally handed over to them his latest interim report which contained, inter alia, the proposed modalities along with a detailed account of his contacts with the Myanmar authorities on the issue of the Shan assessment.

50. The Special Rapporteur takes this opportunity to record once again the importance of this assessment for the people of Myanmar and reiterates his readiness to undertake it. He hopes the Government of Myanmar will give his proposal serious consideration, as called for by the General Assembly in its latest resolution on the subject, resolution 58/247.

G. Child soldiers

51. During the reporting period the Special Rapporteur has continued to follow the issue of child soldiers (see E/CN.4/2003/41, paras. 31-34). The Special Rapporteur wishes to express his deep concern about reported cases of boys forcibly recruited by the military in Myanmar over the past year or two. They range in age from 14 to 16 years old and were sent to support military activities in some ethnic areas. It appears that, owing to their young age, these boys were not directly involved in combat activities, but were assigned tasks such as guard duties and carrying military equipment. They were eventually captured by armed groups and brought to Thailand. Currently, there are serious concerns for their safety as well as that of their families. The Special Rapporteur therefore urges the United Nations, in cooperation with the relevant authorities of Thailand, to find promptly positive solutions in these cases.

52. Pending a more thorough assessment in this field, the Special Rapporteur is unable to report the exact dimensions of the practice of forcible recruitment of child soldiers in Myanmar. However, the worrying indications that he has come across suggest that this practice may be widespread among government troops as well as among insurgent armies. In this regard, he repeats the recommendations contained in the above-mentioned report and welcomes the invitation of the Government of Myanmar to the Special Representative of the Secretary-General for Children and Armed Conflict to visit the country.

H. Compulsory military training for civilians

53. The Special Rapporteur is deeply concerned about what is reported to be widespread forced military training of civilians. It is unclear what its legal basis is and purposes are. This training appears to have become systematic since May 2003, affecting government employees and their families as well as the general population (i.e. those with no links to the government service). It is alleged that every township has to send a certain number of persons to this training, mainly men between 18 and 40 but sometimes also women. Civilians reportedly must attend this training for one month part-time or two weeks full-time, and to endure the economic hardship caused by absence from work. Moreover, in some cases, they are also required to cover the cost of training and weapons such as bamboo sticks. Upon completion of the training, their names are registered and they may be called back at any time. This training appears to be different from the concept of people's militias, which dates back to earlier decades, as it puts more emphasis on developing organizational ("mobilizational") rather than military skills.

III. OTHER ISSUES

A. Cooperation with the United Nations Country Team and other assistance community members

54. The suffering of the vulnerable in Myanmar is evident. The Special Rapporteur is aware of activities of the assistance community to address suffering in areas such as health, protection, education and employment. Much more needs to be done; the vulnerable of Myanmar cannot be

made to pay for economic policies that do not place sufficient emphasis on the poor. The Special Rapporteur welcomes the initiative of UNCT to map vulnerabilities in Myanmar and subsequently design a strategy to address them.

55. The Special Rapporteur has followed the situation of HIV/AIDS in his several reports.

During his last mission he visited the recently inaugurated exhibition on HIV/AIDS to observe the efforts of the different partners of the development assistance community in addressing the social consequences of HIV/AIDS. He was impressed by the Government's public acknowledgement of the problem and its cooperation with the development assistance community to prevent and fight HIV/AIDS. He was also impressed by the presence of many schoolchildren at the exhibition and the involvement of monks in raising awareness about HIV/AIDS.

56. The Special Rapporteur is pleased to report that the Global Fund to Fight AIDS, Tuberculosis and Malaria has allocated US\$ 98.5 million to Myanmar over a period of five years. The Special Rapporteur strongly encourages that the Government takes this opportunity to strengthen its cooperation with UNCT.

57. The Special Rapporteur was impressed by the work of the United Nations community and its partners in Myanmar, including the cooperation between the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Myanmar Human Rights Committee to conduct human rights training for government officials. This is the first such cooperation between the United Nations and the Myanmar authorities. The Special Rapporteur also welcomes the dialogue between UNHCR and the Government on the issue of forced labour in Rakhine State. This cooperation has produced some localized policy change as well as a decline in forced labour between 2001 and 2003. Considering the progress in Rakhine State, for which full credit has not yet been given to the relevant authorities, the Special Rapporteur encourages the Government to replicate these successes in other parts of the country in cooperation with the United Nations system, including the International Labour Organization.

58. The Special Rapporteur would like to suggest that UNCT explore additional forms of cooperation, for example, in the area of economic reforms and sustainable livelihood options, should the political transition arrive at a positive outcome.

59. The Special Rapporteur notes that SPDC has continued to cooperate with ICRC. The Government of Myanmar informed him that at the time of his last mission, ICRC had made 234 visits to prison facilities. He welcomes the agreement by SPDC to a proposal by ICRC, supported by the Special Rapporteur's mandate, to ensure its presence in several states and divisions affected by conflict.

B. Effects of sanctions

60. The Special Rapporteur has repeatedly stated that the imposition of sanctions is a matter that pertains to the policies of Member States and that he does not see his role as advising Governments on this matter. Nonetheless, he feels it is incumbent upon him to note that sanctions have been imposed on Myanmar for the last 14 years and that the new ones imposed by the United States of America in July 2003 provided for visa restrictions on additional Myanmar government authorities for travel to the United States, as well as for the freezing of assets, an import ban and - most significantly - a ban on the provision of financial services, including remittances and trade facilitation, by any United States citizen.

61. The Special Rapporteur took note of a report and information submitted by the United States Department of State in October 2003 to the International Relations Committee of the United States Congress regarding the effects of these sanctions. Reportedly, those measures, in particular the financial services ban, immediately disrupted the economy of Myanmar. The import ban hit the garment sector the hardest and the Government has been unable or unwilling to assist affected businesses or their employees. The ban on imports from Myanmar had already led by then to 30,000-

40,000 layoffs in the garment industry and it was estimated that ultimately 100,000 people could lose their jobs. It was noted that this would lead to significant unemployment and a possible rise in economic migrants' seeking illegal work inside Myanmar or across the border in Thailand and China. Most of them would be young women who have no other way of earning a living and some would be forced, or duped, into the sex trade and prostitution.

62. During his last mission, the Special Rapporteur received further information from reliable sources regarding the effects of the sanctions. Suspension of exports to the United States, combined with consumer boycotts in Europe and a generally dismal economic situation for manufacturers and foreign investors, has allegedly resulted in the closure of at least 62 factories, mostly in the garment sector, in the Hlaing Tharyar and South Dagon townships of Yangon, leaving about 50,000 people without jobs, the vast majority of them women, many the only breadwinner in the household. Women and girls indeed appear to be particularly vulnerable to the risk of being trafficked or exploited or ending up as illegal migrants, especially those who left their villages to find work in those factories and now have no work and no place to go. The Special Rapporteur would like to reiterate that these are only preliminary findings on the impact of sanctions on the life of vulnerable people in Myanmar, and the many decades of poor economic management by the Myanmar authorities is a significant factor in the hardship described. However, the Special Rapporteur would like to encourage the development assistance community to monitor closely developments in this field, particularly in the context of mapping vulnerabilities and designing a strategy to address them.

IV. CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

63. Looking back at the period between May 2002 and May 2003, when many people had some hope, albeit mixed with uncertainty, the Special Rapporteur has the impression that opportunities were missed to build on the earlier confidence-building efforts. Lack of sufficiently solid bonds of mutual confidence led to mistrust instead of growing confidence.

64. He wishes to note that he is still focusing on many of the same issues today as he had at the time of his appointment, as progress between that time and the first semester of 2003, although encouraging, was not sufficient and also because the events of 30 May have been a setback for human rights in Myanmar. He reiterates that ensuring the well being of its people with due respect for human rights and fundamental freedoms is a primary job of any Government. It is as important as ensuring peace and stability in the country, and is a prerequisite for the achievement of justice and sustainable development in any part of the world. In this regard, the Special Rapporteur requests SPDC to give serious consideration to implementing the recommendations for human rights reforms set out in his reports.

65. The Special Rapporteur requests, as does the General Assembly, that the authorities of Myanmar initiate a full and independent inquiry into the Depayin incident, with international cooperation. The results should be announced publicly, those responsible should be held accountable and redress should be afforded for victims. There should also be guarantees that those who cooperate in establishing the truth about Depayin will not be subjected to reprisals or intimidation.

66. In order to reverse the regression, all those who have been in detention or under house arrest since 30 May 2003 should be immediately and unconditionally released. In addition, compensation for the surviving victims and the families of those who lost their lives should be considered. NLD offices should be reopened.

67. The Special Rapporteur reiterates, as he expressed in his meetings with SPDC, that the freedom of movement and political activity for Daw Aung San Suu Kyi and other leaders and members of NLD must be restored immediately. This decision will contribute to securing their early participation in the first stages of the National Convention and send a powerful signal that SPDC is genuinely serious about democratic transition.

68. The appointment of the new Prime Minister in August 2003 and his announcement of the seven-point road map were acknowledged by some members of the international community to be a positive initiative towards a process of political transition. In the view of the Special Rapporteur, the current political proposal of SPDC, which posits a road map towards political transition to a civilian regime, must be accompanied by real and tangible changes on the ground towards a genuinely free, transparent and inclusive process involving all political parties, ethnic nationalities and elements of civil society.

69. Any political transition process towards democracy without human rights principles being firmly entrenched as a basic concept is doomed to failure: this is the main lesson drawn from many cases of successful extrication of military regimes in all parts of the world. The Special Rapporteur is convinced, as he has expressed to all his SPDC interlocutors, that human rights principles must guide the road map, not only in its substance or in the final phases, but also throughout the whole process of its implementation, starting from the preparatory steps.

70. The Special Rapporteur believes that the most urgent and basic requirements today are the lifting of all remaining restrictions on the freedoms of expression, movement, information, assembly and association; the repealing of the related "security" legislation; and the opening and reopening of all political parties' offices throughout the country. Those initiatives will help create a climate or an enabling environment that would allow open and wide-ranging discussions among SPDC, all political parties, ethnic nationalities and civil society. The Special Rapporteur also believes that the same principles must be applied to the functioning of the National Convention and will be essential for ensuring its success.

71. The Special Rapporteur reiterates once more the need for the immediate and unconditional release of all political prisoners. He thinks that the Government could rely on the past experience of political amnesties in the history of Myanmar and that a general amnesty would be the best path, releasing all political prisoners who then would be able to play a positive role in the future political process of transition.

72. Lessons should be learned by all sides and that knowledge applied by all those who really care for the future of Myanmar. Effective redress for human rights violations always provides a moral compass to guide the country forward on the path of reconciliation and democratization. It is time that all concerned returned to dialogue and nurturing mutual understanding.

Notes

[1] U Aung Shwe, U Nyunt Wai, and U Soe Myint.

[2] His staff travelled to Mae Sot on 31 October 2003.

[3] As indicated in the annex, the Special Rapporteur met two of them (Aye Myint and Ne Win) during his last visit to Insein prison.

Annex

DETAINEES INTERVIEWED BY THE SPECIAL RAPPORTEUR IN INSEIN PRISON (ON 5 NOVEMBER 2003)

1. May Win Myint
2. Maung Maung Lay
3. Win Ko Ko
4. Lwin Ko Latt, also known as Win Ko
5. U Aye Myint
6. Aye Kyu, also known as Monywa Aung Shin
7. U Tun Myint
8. U Htwe Myint

information and the press are, however, still in place;

(b) There is now an apparent consensus within the State Peace and Development Council (SPDC) regarding the numbers and categories of political detainees and they have continued to be released. In general detention conditions have improved, although incrementally, in recent years. Physical ill-treatment of political prisoners, such as beatings, stopped where it had previously occurred and elderly prisoners have received regular medical attention; however, in several areas, political prisoners continue to be worse off than criminal offenders. Areas where further attention are required include the quality of food, the reported beating of common prisoners, and access to qualified medical attention and treatment, especially in emergencies;

(c) Political arrests since July 2002 have followed the pattern of “un-rule of law”, including arbitrary arrest, prolonged incommunicado detention and interrogation by military intelligence personnel, extraction of confessions of guilt or of information, very often under duress or torture, followed by summary trials, sentencing and imprisonment;

(d) Against the background of general respect for the practice of religion, there are local or regional variations. Respect for religious freedom appears to be better in places closer to central authorities than in remote or counter-insurgency areas;

(e) The voluntary and/or forced conscription of children into the armed forces and the various ways in which they are used by these forces is an issue in Myanmar;

(f) There appear to be serious problems with the way the army and armed groups treat civilians in ethnic counter-insurgency areas. These problems will not disappear by denying them and they should be recognized and addressed properly if they are to be resolved. Allegations will continue to be made as long as violations continue to occur. The way to address this issue would be to investigate allegations in a credible manner, to establish the facts, to take action against the perpetrators, to establish procedures to prevent their recurrence, to ensure control over army units and to compensate the victims. The Special Rapporteur took note of a communiqué issued on 4 November by the SPDC giving an initial positive reaction to his proposals regarding the investigation of allegations of human rights violations in ethnic areas, including allegations of rape in Shan State. He has sought clarification about the terms of the invitation to the United Nations to visit the region and reiterated his readiness to conduct an independent assessment under his mandate;

(g) In response to the precarious humanitarian conditions in Myanmar, the United Nations country team is preparing a framework document which is expected to function as a blueprint for direct action.

Principled engagement should remain the policy option concerning Myanmar embracing, among other elements, dialogue, support for change, empowerment of community, promoting civil society, and the enlargement of the presence and the capacity of United Nations agencies. To speed up progress towards peace and national reconciliation, it is more necessary than ever to build a rational discourse on policy and strategy alternatives. It is past time for the apparent stalemate that has so far characterized the contacts between the SPDC and the NLD to be overcome. Greater progress in the promotion and protection of human rights will help create an adequate atmosphere to break the impasse.

Member States and international organizations must follow the lead of domestic actors concerning the political transition. He therefore continues to urge the international community to engage with Myanmar even before the SPDC introduces democratic reforms.

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Introduction

1. The mandate of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar was established by the Commission in its resolution 1992/58 and extended most recently in resolution 2002/67 (approved by the Economic and Social Council in its decision 2002/269).
2. In its resolution 2002/67, the Commission requested the Special Rapporteur to report to the General Assembly at its fifty-seventh session and to the Commission at its fifty-ninth session, keeping a gender perspective in mind when seeking and analysing information (para. 8 (a)). The Special Rapporteur accordingly submitted an interim report to the General Assembly (A/57/290 and Corr.1). The present report is based upon the findings of his third fact-finding mission to Myanmar undertaken in October 2002 and information received by him up to 10 December 2002 and is to be read in conjunction with his interim report.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Fact-finding mission

3. The Special Rapporteur conducted his third fact-finding mission to Myanmar from 17 to 28 October 2002. As during his previous missions, he received full cooperation from the Government, for which he expresses once again his sincere appreciation. He was able to carry out his programme in its entirety and enjoyed complete freedom of movement and access to private persons and others of interest.

4. While in Yangon, the Special Rapporteur met with the Secretary 1 of the State Peace and Development Council (SPDC); the Foreign Minister and his Deputy; the Home Minister; the Head of Department of the Office of Military Intelligence; the Chief of the Bureau of Special Investigation; the Directors-General of the Prisons and the Police Departments; the Chiefs of the Special Branch and the Criminal Investigation Departments; and members of the governmental Human Rights Committee. The Special Rapporteur visited Insein Central Prison, where he interviewed confidentially 16 prisoners, including recent political prisoners and those whom he had met during his previous visit in February 2002. He also had meetings with the General Secretary and members of the Central Executive Committee of the National League for Democracy (NLD), representatives of ethnic and other political parties, the United Nations country team, the diplomatic community, international civil society organizations, members of the international and local business community, as well as religious leaders and recently released political prisoners.
5. The Special Rapporteur travelled to Hpa-an (capital) and Kya-in-seikkyi township in Kayin (Karen) State from 23 to 25 October, where he met with local civilian and military authorities and visited the state court and district- and township-level police offices, including lock-ups. He also met with representatives of two ceasefire groups, and Buddhist and Christian religious leaders. On his way to Yangon, the Special Rapporteur stopped in Mawlawmyine, capital of Mon State, where he met with the Commander of the South-Eastern Command responsible for Mon and Kayin States and visited the local NLD office. Finally, on 27 October, he also travelled to Bago Division to visit Thayarwaddy prison where he interviewed 11 prisoners.
6. The Special Rapporteur followed his mission to Myanmar with a four-day visit to Thailand (29 October-1 November), during which he had meetings with the Deputy Permanent Secretary of the Ministry for Foreign Affairs, United Nations officials, and representatives of the diplomatic community, the media and non-governmental organizations (NGOs). He also travelled to Chiang Mai to hear the preliminary results of research developed by his team in the context of his mission to gather directly, and in a systematic manner, first hand testimonies from victims of, and witnesses to, human rights violations, and other persons who may have direct knowledge of the circumstances or context of such violations in the Shan, Kayin (Karen), Kayah (Karenni) and Mon ethnic areas of Myanmar. The purpose of this research project was to provide a solid background based on firsthand empirical survey to enable the Special Rapporteur to build up his own knowledge and understanding of the situation in these areas.
7. On his way to and from Myanmar, the Special Rapporteur had consultations with the Special Envoy of the Secretary-General to Myanmar.

B. Other activities

8. After his mission, the Special Rapporteur travelled to New York to introduce his interim report and to present to the General Assembly, in his statement on 6 November 2002, his initial impressions and findings, which are elaborated further in the present report in light of information received during and after the mission.
9. While at United Nations Headquarters, the Special Rapporteur met with several representatives of the Myanmar authorities, other States, NGOs and private individuals who imparted their views and information on the situation of human rights in Myanmar.
10. The Special Rapporteur wrote four follow-up letters to Myanmar authorities (on 13, 19 and 28 November and 10 December) regarding his cooperation with them in the implementation of his mandate, including on the issues relating to the proposed investigation under his mandate of allegations of sexual violence against women in Shan State and on conditions of arrest, detention and release of detainees, including the recent instances of political arrests and imprisonment.
11. During the reporting period, the Special Rapporteur sent five urgent appeals (including two jointly with the Special Rapporteurs on torture and on freedom of opinion and expression) and two

allegation letters jointly with the Special Rapporteurs on extrajudicial, summary or arbitrary executions, on the human rights of migrants, and on the right to food.

II. ENJOYMENT OF BASIC FREEDOMS AND HUMAN RIGHTS

A. Freedoms of association

12. A very important step by the SPDC was the release of Daw Aung San Suu Kyi, which, according to her, has been unconditional. Following her release on 6 May 2002, the General Secretary of the NLD and her party have enjoyed some freedom of movement, assembly and expression within their precincts and the framework of their party activities. She has been able to travel extensively in the country without restriction. She has started to reorganize the party, to meet her followers, to deliver public speeches, and to open new offices (so far, 66 NLD offices have been opened throughout the country). So far, none of her followers, be they party organizers, activists or sympathizers, has been subjected to intimidation or harassment, though surveillance continues unabated, but in a somewhat more courteous manner devoid of direct pressure. Military intelligence personnel systematically monitor the NLD and all other political activities. Such personnel continue to be conspicuously present in front of the NLD office, monitoring movements in and out, photographing visitors, and often visiting them to question them about their contacts and discussions. What these security agencies seem to want is to know what is going on in order to maintain complete control of the situation and avoid any activity that may “get out of hand”. They appear to be haunted by the spectre of social unrest.

13. While it is clear that the political space is being gradually reopened for the NLD to revive its activities, the extent to which it will be opened remains to be seen. The Special Rapporteur presumes that the regime that applies to the NLD is also valid for the eight other political parties which, in addition to the pro-Government National Unity Party, were not deregistered after the 1990 elections. The Special Rapporteur met representatives of several of these parties, none of which has resumed its legitimate activities, citing fear as the reason.

14. The Special Rapporteur also met representatives of parties that were deregistered and that refer to themselves as “national politicians” in order to be allowed to participate in what the SPDC calls “national politics”. This term seems to refer to political activities sanctioned by the SPDC, in contrast to “party politics” which contest its legitimacy. The Special Rapporteur also met with the United Nationalities Alliance, an informal umbrella organization founded in July 2002 by eight nationality parties that participated in the 1990 election.[1]

B. Freedom of expression, information and the press

15. Restrictions on the freedom of expression and information are still in place. The NLD has yet to receive a licence for a printing equipment to publish and disseminate party or political information, for which it applied in May 2002. For the time being, Daw Aung San Suu Kyi only holds a licence, renewable every six months, to operate the two computer printers to which she has access at the NLD central office. In Mawlawmyine (capital of Mon State), the Special Rapporteur visited the NLD branch whose chairman, along with his son, had been released earlier this year. Prior to their arrest, they had been operating a professional printing house that was closed under what appears to be a ridiculous pretext. The Special Rapporteur was informed that whereas the court had long ago ordered the reopening of his printing house, it was still sealed.

16. A free press has yet to become a social reality in Myanmar. Every publication in Myanmar is subjected to censorship through the Ministry of Home Affairs Printers and Publishers Registration Board. There was no reporting of the release of Aung San Suu Kyi except in The Myanmar Times, a private weekly newspaper with a circulation of around 250,000. The Special Rapporteur thinks that freedom of press in Myanmar might be a way of developing confidence on all sides. Access to

information is also an essential component of a successful development strategy. To reduce poverty it is essential to liberate access to information and improve its quality. A free and independent press is able to provide a way for citizens to be heard and help build national reconciliation, but it is crucial to remember that the media are in essence a business: their survival depends on the overall economic activity. One of the key questions for the SPDC is to determine the steps that could be taken to establish free and independent media.

C. Political prisoners

17. The SPDC appears to have accepted the figure established by the International Committee of the Red Cross (ICRC) of 1,448 “security detainees” (as of 21 October 2002) whose detention involves a political or security element, even if they were convicted for criminal offences. Apparent consensus within the SPDC regarding numbers and categories of such detainees provides a clearer basis for mutual understanding. The Special Rapporteur called for their release before the end of the year, or at the latest by his next mission. He was informed that this would be unlikely but that releases would continue. The Special Rapporteur also reiterated his call that those who are imprisoned for their real or imputed peaceful opinions or activities (who appear to constitute the vast majority) should be released, immediately and unconditionally. Concerning those against whom there is credible evidence of involvement in violent acts, their release could be considered through an amnesty in the context of national reconciliation.

18. On 21 November 2002 the first group of 115 prisoners, including members of the NLD and other “security” detainees, was freed; this was welcomed by the Special Rapporteur in his press statement. In his view, it demonstrated the continuing good will of the SPDC to ease the political atmosphere and marked the largest single group release of prisoners since the beginning of the process of confidence building between the SPDC and the NLD in October 2000. Should all 115 prisoners be released, this would bring the total number of releases to some 950 in the past two years, comprising about 550 political detainees and 401 pregnant women or mothers with young children.

19. The release of all political prisoners is one of the criterion by which the seriousness of the process of political transition and national reconciliation will be measured. At the current rate of an average of 27 releases per month, it will take about four years to release the remaining prisoners. The Special Rapporteur is aware of one interpretation according to which the slow pace of releases reflects the fact that political prisoners are hostages of political dialogue and their release is being used as a bargaining chip to delay the process of national reconciliation. This may well be. But in spite of the continuing contacts between the SPDC and the NLD, no structured substantive political dialogue has started yet. So what purpose does their detention serve? Such interpretations, if wrong, can only be disproved by convincing action - by further mass releases in the near future, contributing to the process of credible change in the political and human rights climate in the country which is essential for national reconciliation to take place.

20. These releases should also be unconditional. At present, political prisoners are released conditionally under section 401 (1) of the Criminal Procedure Code providing for the suspension of their sentence to the extent that they agree not to engage in activities construed as threatening “public order”. Several prisoners whom the Special Rapporteur met have declined to be released under these conditions. He was also informed that prior to their release, several NLD members were advised by military intelligence personnel that they could resume their party activities if they wished but that they were obliged to report any contact by or knowledge of activities of “underground”, that is illegal, opposition movements; should they fail to do so, they would have to serve their remaining term in addition to a new sentence. This practice is contrary to human rights standards and undermines the spirit of political détente that the SPDC is seeking to promote.

D. Conditions in prisons

21. As during previous missions, all the prisoners interviewed by the Special Rapporteur (see annex) confirmed that their general detention conditions had improved in recent years. This reflects the positive commitment of the authorities and the constructive cooperation with the ICRC since May 1999. The Special Rapporteur was pleased to learn from prisoners themselves that there had been no retaliation against persons interviewed during his previous missions, in accordance with the assurances received from the SPDC. He is only concerned that some of those interviewed persons were questioned by military intelligence personnel afterwards about the reason and content of his discussion with them. This practice may be perceived as an attempt to intimidate them and discourage some of them, or others, from further cooperation with him.

22. The Special Rapporteur also welcomes the fact that physical ill-treatment of political prisoners, such as beatings, had stopped where it previously occurred, and that elderly prisoners, such as U Win Tin and Dr. Salai Than Tun, have received regular medical attention and daily doctor's visits. The Special Rapporteur took note that the Prison Department is seriously considering giving political prisoners access to writing and reading materials other than religious books and to facilitate access to educational materials for those who wish to pursue their studies. Obviously, their release would resolve these problems.

23. Several areas where further attention would be required include the quality of food, the reported beating of common prisoners and the access to qualified medical attention and treatment, especially in cases of emergency. Since July 2002, four political prisoners have died in detention (Mai Aik Pan, U Aung May Thu, U Sai Pa and U Maung Ko). These deaths were allegedly due to delays in getting clearance from authorities regarding access to urgent medical assistance. This brings to 74 the total number of deaths in detention of political prisoners since 1988. The Special Rapporteur understands that in the case of common prisoners, the situation is worse and that their death rate in prison and labour camps is abnormally high. This is an issue which he intends to follow up on during his next mission. He was also informed that, on several occasions, very sick common criminals had been temporarily taken out of prison just prior to his visit or a visit by the ICRC, so that their poor state of health would not be noticed. This reportedly took place in Myitkyina, Insein and Thayarwaddy prisons.

24. In several areas, political prisoners continue to be worse off than criminal offenders. For instance, they appear to be often deliberately sent to prisons far from their homes. This makes family visits very difficult or impossible and adversely affects their conditions of detention since prisoners largely depend on family support to sustain themselves in prison. Also, several of them continue to be held in solitary confinement which undoubtedly has adverse implications for their health. Further, they are not permitted privacy during family visits and cannot benefit from sentence remissions under existing law. Another source of serious concern is the continued practice of indefinite administrative detention of political prisoners beyond the term of their sentence under section 10 (a) of the 1975 State Protection Act. To the Special Rapporteur's knowledge, as of 20 November 2002, there were at least 26 persons in this situation. All these situations are in contravention of international human rights norms. They would be solved once and for all if all these persons were to be released. This would benefit all other prisoners and prison authorities who would then have to concentrate on criminal offenders only.

E. Recent political arrests

25. The limited number of political arrests between October 2000 and June 2002 had given the impression that the repression of peaceful political activities had somewhat softened. This seems to have been due to a large extent to the climate of political expectancy generated by the process initiated two years ago. It was also due to the efficiency of the system of surveillance, the related widespread fear this instilled in people and their caution in exercising their limited rights to

undertake political activities. The 6 May 2002 statement by the SPDC was interpreted by many Myanmar citizens as a signal that a page effectively had been turned and that the space for political activities was being reopened. This has led to the formation among active students and other educated individuals, of literary, religious, welfare and other groups and associations aimed at participating in a peaceful manner in the process of transition. These groups also began to publish and disseminate leaflets, bulletins and journals. These activities resulted in a series of arrests that have taken place since July and involved about 50 students, teachers, lawyers and other peaceful activists.

26. The Special Rapporteur has already expressed his surprise and concern to the SPDC in relation to the renewed political arrests and detentions which followed the pattern which was described in his report to the General Assembly (A/57/290), including arbitrary arrest, prolonged incommunicado detention and interrogation by military intelligence personnel, extraction of confessions of guilt or information, very often under duress, followed by summary trials, sentencing and imprisonment. Several of those arrested since July were subjected to diverse forms of ill-treatment at the time of arrest or during interrogation. These practices constitute torture because they contain three key definitional elements: severe suffering, committed with the intent to extract information or confession or to punish, by a State agent acting in official capacity.

27. All but five were released after several days in police custody during which military or police intelligence officers questioned them about their activities, contacts and suspected connections. They were discouraged from pursuing these activities under the threat of imprisonment and made to sign pledges that they would not engage in activities deemed to be detrimental to public order and stability. Among the five, who were charged under section 5 (j) of the Emergency Provisions Act, are students Thet Naung Soe and Khin Maung Win. They were arrested last August for having distributed leaflets calling for the release of fellow students detained earlier and expressing support for the process of political transition and national reconciliation. Thet Naung Soe also staged an individual and silent demonstration. They and others undertook these peaceful activities after they listened to the 6 May statement by the SPDC. The Special Rapporteur has repeatedly raised their and other cases with the SPDC since his urgent appeal of 2 September and he interviewed them in prison on 20 October. He was shocked to learn that they had been sentenced to 14 and 7 years of imprisonment, respectively.

28. These arrests violate the peaceful exercise of fundamental human rights, which is indispensable to a successful transition. Transition requires domestic and international support, which in turn requires confidence. These arrests undermine confidence in the process that has been embarked upon. They cast serious doubts about the SPDC's intention to "turn a new page".

F. Freedom of religion

29. The Special Rapporteur has the impression that against the background of a general respect the practice of religion, there are local or regional variations. Respect for religious freedom appears to be better in places closer to central authorities than in remote or counter insurgency areas. He has no clear answer why. Perhaps it is because of insufficient control by the central Government of local authorities or neglect with regard to the respect due certain faiths. Chronic problems involving Muslims, especially but not only in Rakhine State, continue to be reported. The Special Rapporteur is aware of the involvement of officials of the Office of the United Nations High Commissioner for Refugees (UNHCR) in this respect and plans to look at the issue more closely during his next mission.

30. During his mission the Special Rapporteur met with ministers and community leaders of several Christian churches as well as with Buddhist monks. He heard that to build a church or a community centre Christians need to get permission from the authorities. It appears that even if they are authorized to do so by central authorities, they must still go through all the administrative levels

down to township where difficulties are frequent; in case of refusal they have to follow their complaint all the way up again through the same levels.

G. Child soldiers

31. After the debate on children and armed conflict on 20 November 2001, the United Nations Security Council unanimously adopted resolution 1379 (2001) which contains clear provisions concerning the inclusion of child protection in the work of treaty bodies and United Nations mechanisms. The Special Rapporteur thinks that it is necessary that his mandate should begin to examine the question of the recruitment and use of children in Myanmar both by the army and by armed groups. Among non-State armed groups that have been reported to recruit child soldiers are the United Wa State Army, the Shan State Army-South, the Karen National Liberation Army, the Karenni Army, the Democratic Karen Buddhist Army, the Kachin Independence Army, and the Mon National Liberation Army.

32. In the Special Rapporteur's view the voluntary and/or forced conscription of children into the armed forces and the various ways in which they are used by these forces is an issue in Myanmar. He has continued to receive reports in this regard, among them the Child Soldiers 1379 report by the Coalition to Stop the Use of Child Soldiers (November 2002) and "My Gun Was As Tall As Me" by Human Rights Watch (October 2002), which were published after his mission. The attitude of the Special Rapporteur vis-à-vis these reports is the same as that concerning similar reports: both contain allegations of forced conscription of children as soldiers which he wants to investigate, among other alleged violations.

33. The Special Rapporteur was able to collect some information during the mission reflecting the existence of child soldiers in Myanmar, though he has not yet been able to establish the exact dimensions of the problem. He considers that many recommendations proposed in the above reports constitute useful leads for the serious examination of this issue by all parties to the conflict. Some of the suggestions can help a calm and objective examination of the ways to better implement the rights of children in that difficult area, for instance, to develop reliable systems to verify the age of individuals recruited and to put in place comprehensive birth registration. In this regard, the Special Rapporteur will be more than happy to collaborate with Myanmar authorities in seeking international cooperation with relevant agencies, such as UNICEF, and NGOs. A move by the SPDC in this direction would be a very positive development.

34. He believes it is important that the SPDC recognize the issue and start working towards addressing it, including through acceding to the relevant Optional Protocol to the Convention on the Rights of the Child and the Worst Forms of Child Labour Convention 1999 of the International Labour Organization, which defines the forced or compulsory recruitment of children as one of these. At the same time, the SPDC could engage in constructive discussion with the Committee on the Rights of the Child in the context of the examination of its second periodic report on the implementation of the Convention and consider any other measures as may be necessary.

III. INDEPENDENT INVESTIGATION OF ALLEGATIONS OF HUMAN RIGHTS VIOLATIONS IN ETHNIC AREAS

35. One of the major consequences of insurgency on the border between Myanmar and Thailand since the 1980s has been the generation of internally displaced persons (IDPs). Insurgency involves the entire population. This kind of warfare affects civilians as the distinction between combatants and non-combatants is very difficult to make. What is dramatic is the fact that the civilian population in the areas of ethnic insurgency in Myanmar, in spite of their individual choices, are inevitably drawn in to the conflict. The army tends to see the refugees/IDPs as enemies and the refugee camps as rear-guard from which to attack the country. In

consequence, every investigation of human rights violations in the war zones is considered as a war of wards against the SPDC.

36. The Special Rapporteur thinks that it is time to overcome this impasse whereby any consideration of well-founded allegations of human rights violations automatically is seen with suspicion as an accusation against the SPDC. He thinks that the peaceful exposure of violations will be a contribution to national reconciliation and peace that may open the path to accountability, a basic requirement for building the rule of law.

37. Serious human rights violations have undoubtedly occurred and continue to occur in the areas where armed groups operate. These violations have been primarily attributed to the army. There is also evidence that groups operating from neighbouring countries and with outside support show little regard for the life and security of civilians. Their continued armed activities in these areas provoked counter-insurgency measures by the army, which has had devastating consequences for the local population.

38. The question of independent investigation of allegations of human rights violations in the ethnic counter-insurgency areas was one of the specific issues addressed by the Special Rapporteur during the reporting period. Special attention was paid to the issue of investigating allegations that Shan women had been systematically raped by Myanmar military personnel in the report "Licence to Rape", published by the Shan Human Rights Foundation (SHRF) and the Shan Women's Action Network (SWAN) in May 2002. In this regard, during his last mission, he received detailed briefings on three investigations into the recent allegations of rape in Shan State conducted by the Myanmar authorities for a period of three months. He was also invited to travel to Shan State, which he opted to decline as a short visit would have been inappropriate for conducting a serious assessment of the alleged violations there. On his way back from Myanmar, the Special Rapporteur met with the authors and researchers of the above report and his research team interviewed a number of victims of and witnesses to incidents of rape in Thailand.

39. In preparing for his mission, the Special Rapporteur had followed the matter closely. He first noted that the SPDC rejected the allegations as fabrications without looking into them at press conferences held on 12 and 30 July; a press briefing on 23 August was an example of "double thinking" in the sense that the Deputy Foreign Minister concluded that "preliminary" findings had shown that the allegations had been fabricated by the authors of the report in connivance with the Shan United Revolutionary Army (SURA), at the same time pledging to "leave no stone unturned" in the investigation; and lastly, the two members of the National Working Group on Women's Affairs who visited OHCHR on 11 October stated that they had not seen the original Shan rape report.

40. The details of the three investigations given to the Special Rapporteur during his mission were as follows:

(a) The first investigation report (by a "special team of security personnel") concluded (after meeting 94 officers and soldiers from 24 battalions, 27 members of the judiciary, police and hospital staff, 6 NGOs and 195 villagers) that "preliminary investigations and findings show that almost all of the allegations were highly exaggerated and their main purpose was to hurt the prestige of Myanmar and the Myanmar Armed Forces";

(b) The second report (by the Chairman of the "Myanmar National Women Committee to Combat Trafficking" (the Deputy Minister for Home Affairs) under "the guidance of Gen. Khin Nyunt") concluded that "there is no proof" to support the "allegation of the SURA narco-terrorists" after a five-day investigation mission in "43 localities";

(c) The third report (by a team of the Myanmar National Working Committee on Women's Affairs led by Dr. Daw Khin Win Shwe (Gen. Khin Nyunt's wife)) concluded after a five day visit during which it met 650 government officials in two districts and 250-300 village elders in two village tracts, that "it is clear that the accusations are unfounded". There were "no rape

cases committed by military personnel between 1996 and 1999 and in 2002”, but there were “three cases in 2000 and 2001” the perpetrators of which were sentenced to 5 to 10 years.

41. The Special Rapporteur also received briefings regarding two specific allegations, namely, the execution of five villagers in Kalein Padaw village, Thanbyuzayat township, Mon State and of 12 villagers in Htee Law Bler village, Kya-in-seikkyi township, Kayin State, conducted by the SPDC from July to October 2002.

42. While recognizing these important efforts, the Special Rapporteur explained to the SPDC that, having been undertaken by military and other SPDC personnel, the investigations lacked the independence required to be convincing and credible. The actual investigations were apparently conducted by personnel with no special skills or experience in investigating human rights allegations, and who were probably unaware of the minimum standards required for a credible inquiry. From the reports, one can assume that they were conducted in such manner that very few people would probably dare to testify out of fear of reprisals against them or their families (prearranged, large, collective and public meetings with local officials, village elders and villagers, organized by security/military personnel with military escorts; village elders were allegedly requested to gather villagers or risk being fined; villagers were asked to sign a document denying the allegations of rape). To the Special Rapporteur’s knowledge, very few efforts were made to interview individual villagers in a manner that would ensure the confidentiality of the interview and the protection of the witnesses afterwards. It is not clear - except in one case - whether effective interpretation was provided to ensure proper communication. Language problems, including translation of names of places and individuals (both victims and soldiers), may have been a complicating factor. The implied methodology and the factual evidence described do not support the conclusions of the investigations.

43. Having explained that, the Special Rapporteur proposed that the SPDC explore several options to establish a credible mechanism for investigating these and numerous other allegations of violations in ethnic minority areas and underlined the importance of making an early commitment to that effect. These options are the following, in order of preference:

(a) An independent assessment team under his mandate, the precise terms of reference of which would need to be thoroughly discussed and agreed upon. This team would look into the recent allegations of human rights violations against Shan women. It could also look into the recruitment and use of children as soldiers as well as other allegations of human rights in ethnic minority areas;

(b) An international commission of inquiry, which would require a new mandate from the United Nations;

(c) A balanced national inquiry mechanism which would involve the SPDC and other interested parties in Myanmar. The NLD has expressed its willingness to participate if such a body were to be established. The United Nations could provide technical assistance to help set up such a body if required.

44. As a matter of priority, besides the need for an independent assessment of the allegations of human rights violations in ethnic minority areas, the Special Rapporteur proposed that the SPDC consider allowing an adequate International Committee of the Red Cross presence in all conflict areas of the country. The ICRC could then assess the situation on an ongoing basis, report confidentially to the authorities and work out with them appropriate measures to ensure the security and protection of the civilian population, wherever needed. Access by the ICRC to detention facilities has helped to improve conditions in prisons and the treatment of prisoners. The ICRC presence in conflict areas would help address issues of the kind raised in the recent and other allegations of serious human rights violations and it could also start disseminating international humanitarian law to combatants. The ICRC has both the mandate and adequate capacity in Myanmar (40 international and 220 local staff) to do this.

45. The Special Rapporteur took note of a communiqué issued on 4 November by the SPDC giving an initial positive reaction to these proposals. He welcomed the SPDC's invitation to the ICRC "to visit with an adequate presence the Shan State Region". He hopes that the initial contacts made by the ICRC with local authorities and people in these areas following this invitation will pave the way for developing cooperation and implementing its humanitarian mandate there. He also wrote two letters to Myanmar authorities seeking clarification about the terms of invitation to the United Nations in the same communiqué.

46. As he stated in his presentation at the General Assembly last November, and based on his own research into the situation of human rights in ethnic areas, there appear to be serious problems with the way the army treats civilians in ethnic counter-insurgency areas. This problem will not disappear by denying its existence and should be recognized and addressed properly. Allegations will be made as violations continue to occur. The most reasonable way to address this issue would be to investigate these allegations in a credible manner, to establish the facts, to take action against the perpetrators, to establish procedures to prevent their recurrence, to ensure control over army units and to compensate the victims. The Special Rapporteur requests that the SPDC cooperate with him in conducting an independent assessment under his mandate. He reiterates his readiness to discuss the terms of reference concerning independence, timing, composition of the team, transparency of procedures, investigating methods, and protection of witnesses during the investigation. It is essential that there be a clear acceptance by the SPDC of a *modus operandi* based on international standards and including sexual violence against Shan women in the terms of reference, and possibly including a review of the findings by the Special Rapporteur's team in Thailand and of allegations of other human rights violations in ethnic minority areas. This exercise could be launched during his next mission to Myanmar in the first months of 2003 and the United Nations, through OHCHR, would provide technical assistance to help set up the Special Rapporteur's investigation team.

IV. OTHER ISSUES

A. Challenges of transition and development

47. It is essential to understand the pyramid-shaped structure of the military hierarchy in Myanmar and of the society, in order to understand how the military leadership sees the situation; only then can the international community contribute to progress on issues such as the move towards long-awaited democracy and development of the nation. The SPDC members believe that they have achieved much since 1989: ceasefires with many insurgent groups, infrastructure development, opening up to a market economy and foreign investment, diplomatic initiatives (e.g. membership of the Association of South-East Asian Nations), positive developments in the area of human rights mentioned by the Special Rapporteur in his previous reports (see E/CN.4/2002/45). According to third-party views, it is true that there has been more development, peace and stability in more areas than before and there is more freedom (in relative terms).

48. The Special Rapporteur believes that the international community, especially those Member States that have historic ties with Myanmar, must abandon every illusion of quick solutions for extremely complex structural and cultural problems that for the last 50 years have blocked political and economic progress in Myanmar; nothing can be imposed. The Special Rapporteur thinks that the International Crisis Group in its Asia Briefing (27 September 2002) has phrased this requirement, with which he entirely agrees, very successfully:

"... the aim should be to unlock frozen patterns of behaviour and thinking inside the country by encouraging new actors, policies and ideas - and paths to democracy, military professionalism, a strong market economy and broader social development that can actually reach this destination. There is a need to abandon the kind of thinking that sees any progress

achieved under the military government as an obstacle to democratization and therefore something to be neither supported nor encouraged or even acknowledged. The reality, whether Western policymakers feel comfortable with it or not, is that the military leadership is more likely to compromise in an atmosphere of progress than it is under siege. It is, after all, five decades of self-imposed isolation that has created the mindset against which the domestic opposition and international supporters are now struggling”.

B. Humanitarian aid

49. In response to the precarious humanitarian conditions in Myanmar, the United Nations country team is preparing a report entitled “A humanitarian review and framework for action in Myanmar” (working title) to find ways to better meet the needs of the people. The document will enable the United Nations country team to speak with one voice on its analysis of the country situation and to put forth a framework for a response. The framework is expected to function as a blueprint for direct actions with maximum impact. The objectives of the strategic framework are: to raise awareness of the current situation; to influence policies; to mobilize resources; and to strengthen partnerships with stakeholders. It is expected that this document would provide the most up to date analysis of the basic needs of the population at this stage of political transition and urge the international community to consider being actively involved, which could lead to positive political developments. A final report is expected to be issued in the first quarter of 2003.

50. On the issue of HIV/AIDS, Myanmar has been cooperating with UNAIDS. In March 2002, a joint workshop was held to assess the HIV/AIDS situation in the country. The Government has informed the Special Rapporteur that according to UNAIDS there was a total of 177,279 people living with HIV/AIDS at the end of 2001 in Myanmar, most of whom were in the higher risk groups and at the border areas.

V. CONCLUDING OBSERVATIONS

51. The Special Rapporteur is convinced that to help enhance the dialogue between all political actors in Myanmar with a view to speeding up progress towards peace, it is necessary more than ever to build a rational discourse on policy and strategy alternatives that are effectively possible. It is perhaps necessary to bear in mind that to create international policies conducive to change in a world where human rights after 11 September 2001 tend to be given a back seat, it must be recognized that the willingness and the capacity of the international community are very limited indeed.

52. It is high time to replace the high expectations of the ideal game scenario and the writing of constitutional models with a down-to-earth discussion of less prescriptive requirements which will be able to stimulate a real process of change. It is crucial to follow, understand and strengthen the internal forces within Myanmar, as in the end only they will be able to bring about possibilities for change. To this end, instead of continuing to complain that little has changed in the past 14 years in terms of power and influence inside the SPDC, the army and society, it is time to take stock of, acknowledge and evaluate the ongoing effects of incremental change which have taken place. On all sides it is possible to see movement in terms of contacts and exchange of information between the SPDC and the NLD during the last two years. But it should still be insisted that a road map for substantive dialogue and setting out objectives for both sides is essential for progress towards democratic transition

53. The international community must have its eyes wide open to see the nuclei of change. It should continue its dialogue with all sides - the SPDC, the NLD, other parties and ceasefire groups. Its influence will be greatly determined by domestic factors and it must make every effort to establish an “enabling environment”. Member States and international organizations

must follow the lead of domestic actors concerning the political transition. At the time that the NLD General Secretary and her colleagues are beginning to operate, it is of fundamental importance to be pragmatic and to work within the compromises and negotiations defined by the NLD with other political parties, ethnic groups and civil groups. Even if at first sight these arrangements will not yet be able to fulfil the basic requirements of consolidated democracies, this has also happened in the democratization process of many new democracies in the world. Let us not refuse to acknowledge progress because the changes do not fulfil a maximalist scenario.

54. On the other hand, it is time to leave behind the illusion that after the political transition the apparatus and agents of the State will magically disappear. As in any democratic transition in the twentieth century, even after authoritarian regimes, many of the bureaucrats running the country such as judges, public prosecutors and army officials will stay in place. There were many political dialogues in other South-East Asian countries that were completed before they faced the demands for participatory democracy, namely elections, labour standards and human rights. Accordingly, the Special Rapporteur is of the view that the sooner the international community is ready to assist, the better and smoother the change will be in Myanmar. He therefore continues to urge the international community to engage with Myanmar even before the SPDC introduces democratic reforms. He believes that the peoples of the country should not be held hostage to political transition. Every political transition in the world is a process, sometimes a tortuous and slow one, and it would be unrealistic and naive to expect an instant regime change in Myanmar.

55. The policy option now should be engagement, not isolation. By principled engagement - as he has indicated many times before - the Special Rapporteur understands, among other elements, a dialogue, support for change, empowerment of community, strengthening of autonomous civil society elements, and the enlargement of the presence and the capacity of United Nations agencies. By insisting on the need for greater engagement of the international community, he is not urging it to step up financial support to the SPDC or to consider the suspension of economic or political sanctions; it is not part of his mandate to advise Member States on this matter.

56. With regard to allegations of the rape of women in Shan State and of other human rights violations against civilians living in ethnic minority areas affected by armed conflict, if the SPDC sincerely wants to promote the cause of peace, development and justice there, it must look seriously into these allegations. The Special Rapporteur believes it is urgent that the SPDC establish efficient mechanisms for holding army personnel accountable for the alleged human rights violations with a view to ensuring the protection of the civilian population in ethnic areas. It is time to finish the war of words. Denial is the worst path for national reconciliation: allegations must be investigated, prosecuted and judged and those responsible for the violations convicted and sentenced. The Special Rapporteur believes that the SPDC could turn this opportunity into momentum for a peaceful solution and dialogue with ethnic minorities and bring them into the national reconciliation dialogue, thus ensuring national ownership of the process and demonstrating that Myanmar is serious about finding out the truth, protecting its people against abuse of power, and bringing the perpetrators to justice. To support this initiative, it is important that the United Nations and the international community be consistent in dealing with human rights violations: there cannot be one set of standards or requirements for the SPDC and another for armed groups.

57. The Special Rapporteur acknowledges as an important development the opening of an ILO Office in Yangon and the appointment in October 2002 of the ILO Liaison Officer to cover all activities relevant to ensuring the prompt and effective elimination of forced labour in the country. It would now be a very positive move for the SPDC to confirm its commitment to

end forced labour by strengthening its cooperation with the ILO and allowing it free access throughout the country.

58. It is past time for the apparent stalemate that has so far characterized the contacts between the SPDC and the NLD to end. The Special Rapporteur is convinced that greater progress in the promotion and protection of human rights will be conducive to the creation of an atmosphere that will break the impasse. As he has said in his previous reports, there can be no credible political transition in Myanmar without starting to implement concrete measures. Some are connected to the exercise of civil and political rights such as the immediate and unconditional release of all political prisoners, including through a general amnesty. This also includes the lifting of restrictions on the ability of political parties and groups having concluded ceasefires with the Government to conduct peaceful political activities openly without any risk of retaliation or punishment. The Special Rapporteur thinks that this measure is of significant importance because, in the absence of substantive political settlements and economic growth, the ceasefires have not in themselves been able to change the situation on the ground for most of the victims of previous conflicts. There is a pressing need to embark on a process of structured dialogue on substantive policy issues with the involvement of other actors (representatives of ethnic nationalities and other political parties) in the national reconciliation dialogue. This process must be accompanied by the launching of reform of the State apparatus, which could contribute progressively towards making the rule of law prevail in the “un-rule of law” which presently affects most of the population in Myanmar. With the cooperation of the international community and multilateral organizations, it is necessary to continue to take bolder steps to reform the system of administration of justice and to build mechanisms of public accountability for abuses committed by State officials. Of course, the transition process will not be complete without free elections. With respect to economic and social rights, it is imperative to establish some form of “humanitarian aid” vehicle involving the United Nations and national actors, the SPDC and the NLD, as well as other relevant actors as appropriate.

Annex

List of persons interviewed by the Special Rapporteur during his visits to Insein and Thayarwaddy prisons. Interviews with the following persons were conducted confidentially (i.e. without the presence of a prison guard or official):

Detainees in Insein prison (interviewed on 20 October 2002)

Recent cases [since February 2002 visit]

1. Aung Thein
2. Kyaw Naing Oo
3. Thet Naung Soe
4. Khin Maung Win
5. Ko Hla Htut Soe
6. Maung Maung Aye aka Ko Baydar
7. U Aye Zaw Win
8. Aye Ne Win
9. Kyaw Ne Win
10. Zwe Ne Win

Interviewed during February 2002 visit

11. Dr. Salai Tun Than
12. U Win Tin
13. Daw May Win Myint

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Executive summary

The mandate of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar was established by the Commission in its resolution 1992/58 and extended most recently in resolution 2001/15 (approved by the Economic and Social Council in its decision 2001/251). In its resolution the Commission requested the Special Rapporteur to report to the General Assembly at its fifty-sixth session and to the Commission at its fifty-eighth session. The Special Rapporteur accordingly submitted an interim report to the General Assembly (A/56/312). The present report is based upon the findings of his first fact-finding mission to Myanmar undertaken in October 2001 and information received by him up to 15 December 2001 and is to be read in conjunction with his interim report.

The Special Rapporteur welcomes several positive initiatives addressing some of the human rights concerns of the Commission in which the Government of Myanmar has been engaged since the start of the ongoing confidence-building contacts with Daw Aung San Suu Kyi in October 2000 under the auspices of the mandate of the Special Envoy of the United Nations Secretary-General for Myanmar. These include the operation of the governmental Committee on Human Rights; the dissemination of human rights information for the police and public officials; releases of political detainees, including elected members of Parliament; the reopening of offices of legal political parties; attention to conditions in prisons and continued international monitoring and cooperation in this area; efforts to address the problem of forced labour and cooperation in this regard with the International Labour Organization (ILO); peace-building and development work in border areas through ceasefire

agreements with armed groups; promotion of reform of higher education and combating the spread of HIV/AIDS.

While welcoming the above-mentioned developments, the Special Rapporteur is mindful that progress is fragile given the fact that human rights violations in Myanmar occur within the context of two related and overlapping factors: long-standing insurgencies, ethnic and otherwise, and the suppression of the re-emerging democracy movement since 1988. Serious human rights violations still reportedly occur in the country, especially in areas of conflict between the army and armed groups, but on a different scale than before; this remains to be assessed by the Special Rapporteur, in view of a changing context in the country marked by ceasefires and the gradual opening of the Government to the outside world. The challenge now, besides calling for more international awareness of what is wrong, is how to encourage the confidence-building process without ignoring the large-scale human rights violations and seeking to eliminate them through change. In concrete terms, the report calls for bolder moves to carry forward the present process, which should include as a matter of priority the following steps in the areas addressed in the report:

- (a) The enhancement of the country's human rights capacity to an extent that corresponds to the need for the prevention and monitoring of human rights violations and for the State agents involved to be held accountable;
- (b) The full and unconditional release of all political prisoners;
- (c) The substantial enlargement of the space in which civil society, political parties and ethnic groups can function by creating non-discriminatory conditions for the exercise of basic political freedoms;
- (d) The equal application of minimum standards for the treatment of prisoners, addressing at the same time the pockets of vulnerability among the prison population such as the sick, the elderly, juveniles and women, especially those with children and who are pregnant;
- (e) The allocation of more resources to the reform of the education sector, in particular tertiary education, and better targeting of investments to address critical areas such as teacher training and strengthening even the material base of universities and institutes;
- (f) Broad-based social mobilization and advocacy for preventive and curative action against HIV/AIDS integrated into a national comprehensive and sustained campaign led by the highest levels of authority and supported by appropriate international assistance;
- (g) Broadening the focus of efforts to combat violence against women to cover violence in the community, particularly in areas of conflict between the army and armed groups where the most serious forms of violence against women are reported;
- (h) The use of maximum restraint in military activities in respect of international humanitarian law relating to the protection of civilians and prisoners, and consideration of alternative avenues to resolving differences, i.e. through political dialogue in the mutual respect of their rights by all parties to the conflict: the Government, its armed forces, and armed opposition groups;
- (i) Addressing the humanitarian situation more adequately, with the commitment of the Government going hand in hand with the involvement of the National League for Democracy (NLD) in the planning and managing of international humanitarian assistance. The report concludes that it is time for the Government of Myanmar to start a substantive dialogue with the leaders of the NLD and all other political parties and ethnic nationalities, since only through the building of an all-inclusive, accountable and transparent process will it be possible to preserve and consolidate peace and national reconciliation and to restore democracy.

Introduction

1. The mandate of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar, established by the Commission in its resolution 1992/58 of 3 March 1999 and extended most recently in resolution 2001/15 of 18 April 2001 (approved by the Economic and Social Council in its decision 2001/ 251 of 24 July 2001), requires the Special Rapporteur to establish direct contact with the Government and people of Myanmar, including political leaders

deprived of their liberty, their families and their lawyers, with a view to examining the situation of human rights in Myanmar and following any progress made towards the transfer of power to a civilian Government and the drafting of a new constitution, the lifting of restrictions on personal freedoms and the restoration of human rights in Myanmar.

2. In its resolution 2001/15, the Commission requested the Special Rapporteur to report to the General Assembly at its fifty-sixth session and to the Commission at its fifty-eighth session, keeping a gender perspective in mind when seeking and analysing information (para. 7). The Special Rapporteur accordingly submitted an interim report to the General Assembly (A/56/312). The present report is based upon the findings of his first fact-finding mission to Myanmar undertaken in October 2001 and information received by him up to 15 December 2001 and is to be read in conjunction with his interim report.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Fact-finding mission

1. Methodology

3. The Special Rapporteur is of the view that it would be impossible to tackle all human rights issues and problems in Myanmar at the same time. Accordingly, he selected for his first fact-finding mission issues which are of priority to his mandate and can be documented easily (given the limited time of the visit), and in a manner which will maintain dialogue and build confidence with the Government and develop a process of consultation and partnership with other relevant players. He also took into consideration the areas of concern that are already understood by the Government and are among its own priorities, which thus could be addressed in a spirit of cooperation. At the same time, the Special Rapporteur sought to look at the issues that concern the majority of the population and are in the nature of long-term structural problems. He thus focused on establishing an initial framework of cooperation and operating principles, visiting prisons and labour camps, interviewing political and other detainees confidentially, beginning to assess basic security conditions and the exercise of fundamental civil and political rights, and starting to look into the basic rights to health and education.

4. The Special Rapporteur recognizes the urgency in improving the situation of human rights on many fronts. However, he is of the view that given the limited resources of his mandate and notwithstanding the need to act on behalf of the urgent and best interests of the victims of human rights violations, to have a positive impact his mandate requires a long-term approach, each mission focusing on selected issues to be investigated and documented. Each new visit will update issues looked at previously and address new ones, thus allowing sufficient time to ensure their proper assessment both in terms of the scale of the problem and the quality of the documentation.

5. A basic requirement for this mandate is consultation and dialogue with the Government, political parties, including those of ethnic nationalities, and the society at large. This is what the Special Rapporteur has initiated in order to build a constructive partnership with all those, both inside and outside Myanmar, who aspire to contribute towards promoting and protecting human rights and the well-being of the people in the country.

6. With regard to the protection of witnesses and sources of information, the Special Rapporteur had obtained from the Government written guarantees prior to the mission as well as repeated assurances during the mission that no one would be subject to any form of pressure, intimidation or violence before, during or after the mission. This was complemented by an indirect approach whereby the Special Rapporteur sought information from the least vulnerable but knowledgeable sources in the country such as United Nations agencies, aid organizations, diplomats and religious leaders.

2. Programme

7. The first fact-finding mission of the present Special Rapporteur was planned to comprise a one-day consultative visit to Singapore on 8 October 2001 and a 12-day proper fact-finding in Myanmar from 9 to 20 October 2001, followed by a 6-day additional fact-finding in Thailand from 21 to 26 October 2001. While in Singapore, the Special Rapporteur met with Mr. Bilahari Kausikan, Second Permanent Secretary of the Ministry for Foreign Affairs, as well as academics, journalists and individuals knowledgeable about the situation of human rights in Myanmar.

8. During his stay in Yangon (9-12 and 17 October), the Special Rapporteur had an intensive programme, entirely defined by him, of 31 meetings (see annex I). Among them, was an important meeting with Lieutenant-General Khin Nyunt, Secretary-1 of the State Peace and Development Council (SPDC) who assured the Special Rapporteur of the full cooperation of the SPDC and invited him to go to any place he wanted and meet anyone he wished, which he did. The Secretary-1 stated that he wanted to make the mission a success and stressed that the SPDC was genuinely committed to improving the well-being of the population. He acknowledged the need to improve human rights and engage in political transition now that peace had been achieved in several parts of the country and development was taking place. He expressed concern at the lack of understanding outside the country about the progress achieved in those areas. Among other senior government officials, the Special Rapporteur met with the Ministers for Foreign Affairs, Home Affairs, Labour, Health, and Education, the Chief Justice, the Attorney-General, the Chairman and members of the Human Rights Committee, and the Deputy Minister for Foreign Affairs. He also visited educational, religious, academic and other institutions.

9. The Special Rapporteur was received privately by Daw Aung San Suu Kyi, Secretary-General of the National League for Democracy (NLD). He also had meetings with representatives of groups having entered into a ceasefire with the Government (hereafter ceasefire groups) and ethnic nationality parties that are members of the Committee Representing the People's Parliament (CRPP). He met as well with representatives of 6 United Nations agencies, 24 foreign embassies, 11 international non-governmental organizations (NGOs) and the International Committee of the Red Cross (ICRC), the delegate of the Centre for Humanitarian Dialogue, a number of representatives of the local and international business communities and media agencies.

10. During field trips (13-16 October) to several regions of the country chosen by the Special Rapporteur, the mission team visited Lashio (Shan State), a Wa ceasefire area (town of Namtit), the new border town of Muse, the Lashio prison, Mandalay, the NLD office there, the Mandalay central prison, Hton-Bo labour camp and a university in Sagaing Division.

11. On 17 October, the visit had to be suspended owing to the sudden illness of the Special Rapporteur. As a consequence, visits to Kachin State, Insein prison, a labour camp near Yangon and other higher education institutions were cancelled, as were some interviews with recently released political prisoners and the Thai part of the mission. At the request of the Special Rapporteur, his team stayed on in Yangon until 20 October, as originally planned, and met with the NLD Central Executive Committee at its headquarters, as well as other international NGOs and the United Nations Resident Coordinator.

12. The Special Rapporteur received full and unhindered cooperation on the part of the Government of Myanmar during the mission, for which he expresses his sincere appreciation. All of his specific requests for meetings were met and his movements in the country were facilitated appropriately. During his visit he enjoyed freedom of movement and freedom of access to private persons and others of interest. The documentation and information requested were provided promptly and fully. The Special Rapporteur also thanks very warmly the medical staff of the Mandalay General Hospital for their competent care and kind attention.

B. Other activities

13. After his fact-finding mission to Myanmar, the Special Rapporteur prepared a brief oral report on his initial impressions and findings, which he presented to the General Assembly in his statement on 9 November 2001. Accordingly, the present report elaborates in more detail the points referred to in the statement, in light of information received during and after the mission.

14. While at United Nations Headquarters to present his report, the Special Rapporteur met with several representatives of the Myanmar authorities, other Governments, NGOs, and also private individuals who imparted their views and information on the situation of human rights in Myanmar.

15. Upon his return from the mission the Special Rapporteur wrote two letters to the Government of Myanmar regarding his cooperation with it in the implementation of his mandate. In his letter of 30 October 2001 addressed to the Minister for Foreign Affairs, he stated:

"This mission was the first step in a process of opening that I hope will continue and amplify This was the first opportunity to assess human rights conditions in an objective and impartial manner. I am encouraged by what I have seen so far and by the spirit of cooperation that I have encountered. I regret that we had to suspend this very important first step but I am glad to report that I am feeling better now and hope to return to Myanmar soon"

"I regard my mission as a partnership with Myanmar, your Government, [and] opposition and civil society, to analyse problems together, look for and discuss solutions and mobilize international support for implementing them. I believe that this is the best way for me to contribute to the promotion and protection of human rights in Myanmar, but that I can only make it a success if I can count on your cooperation. Again, my first mission is an encouragement to me."

16. In his letter of 7 December 2001 addressed to the Permanent Representative of Myanmar to the United Nations Office at Geneva, the Special Rapporteur reiterated his wish to return to Myanmar to pursue his fact-finding mandate and indicated that he would like it to be in February 2002. On the same day, the Special Rapporteur had a follow-up meeting with the Permanent Representative in Geneva.

II. HUMAN RIGHTS-RELATED DEVELOPMENTS

17. In his interim report and statement to the fifty-sixth session of the General Assembly, the Special Rapporteur welcomed the fact that the Government of Myanmar had been supporting several positive initiatives by way of addressing some of the concerns of the Commission on Human Rights since its confidence-building contacts with the NLD leader in October 2000 under the auspices of the mandate of the Special Envoy of the United Nations Secretary-General for Myanmar. These include the operation of the governmental Committee on Human Rights; the dissemination of human rights information for the police and public officials; the releases of political detainees, including elected members of parliament. The re-opening of offices of legal parties; attention to conditions in prisons and continued international monitoring and cooperation in this area; efforts to address the problem of forced labour and cooperation in this regard with the International Labour Organization (ILO); peace-building and development work in border areas through ceasefire agreements with armed groups; promotion of reform of higher education; and combating the spread of HIV/AIDS. Progress and remaining problems in the above-mentioned areas are addressed in the following paragraphs.

18. It should be remembered that human rights violations in Myanmar occur within the context of two related and overlapping factors: long-standing insurgencies, ethnic and otherwise, and the suppression of the re-emerging democracy movement since 1988. Serious human rights violations still reportedly occur in the country, especially in areas of conflict between the army and armed groups, but on a different scale than before; this remains to be assessed by the Special Rapporteur, in view of the changing context marked by ceasefires and the gradual opening-up of the Government to the outside world. The challenge now, besides calling for more international attention to what is

wrong, is how to deal with the confidence-building process and the slow opening: encouraging and fostering it without ignoring the large-scale human rights violations and seeking to remedy them through structural change.

A. Activities of the governmental Committee on Human Rights

19. During his mission the Special Rapporteur had the opportunity to continue his interaction with the Chair and members of the Human Rights Committee (HRC), whom he met previously during his exploratory mission to Yangon in April 2001. The HRC is chaired by the Minister for Home Affairs and has eight subcommittees composed mainly of government officials. The Special Rapporteur was informed that in the future its composition will be changed to include more people from the nongovernmental sector and its Chair will be a civilian. It was explained that the HRC was an interim body leading to the National Human Rights Commission (NHRC), established in accordance with the Paris Principles, which is seen as a key component of the national action plan in the area of human rights. The plan would be drafted on the basis of human rights research initiated by various subcommittees of the HRC. Its preparation and implementation would be a two-phase process: namely, the period before its establishment and the period after. According to government interlocutors, other main components of the plan during the first phase will include: (i) the training of national specialists in the area of human rights; (ii) the dissemination of human rights through, *inter alia*, training activities and publications; and (iii) preparation for accession to more international human rights treaties. The Special Rapporteur took note that the steps for the second phase would be based on the outcome and decisions of the national human rights workshop and the Vienna Declaration and Programme of Action.

20. The HRC has carried out a number of activities since the Special Rapporteur's previous visit. One of them was the preparation of new human rights awareness tools including two books designed for policy-makers (*What Are Human Rights?* and *Human Rights Principles and Practices: A Global Perspective*) and the translation of an Australian human rights manual for use in future workshops. Other activities included human rights workshops in Yangon and Mandalay. The workshops concentrated not only on basic human rights principles and practices but also on thematic areas with a special focus on the Myanmar context, such as women's rights, child rights, forced labour, and human rights and the police. Thus, one of the last workshops held in Yangon in October 2001, "The Human Rights in Law Enforcement", was specifically targeted at the police. The issues dealt with included an introduction to human rights law; human rights standards applicable in the area of law enforcement, including arrest, detention, prevention and detection of crime; use of force and firearms; and command and management training. In November 2001, there was a seminar on child rights. In January 2002, it is planned to convene a workshop on economic, social, and cultural rights, the first of its kind in Myanmar, with the participation of representatives of the academic and nongovernmental community.

21. There have been 11 human rights workshops in Myanmar thus far, held with the support of the Government of Australia and corporate funding (*i.e.* from multinational oil companies). The Special Rapporteur understands that more corporate actors have indicated support for future training activities. All the workshops relied not only financially but also substantively on external support, with the exception of some recent ones where national instructors who had been trained at previous workshops worked together with international resource persons. He was told that in the future, a main focus would be on the training of trainers with a view to developing a core of national human rights specialists who would then conduct follow-up training activities in order to reach not only policy-makers and government officials, but also the general public.

22. The Special Rapporteur was informed that capacity-building through a series of successive workshops was appreciated by the Government and benefited, *inter alia*, the research activities of the HRC. He understands that the HRC subcommittees are currently engaged in the study of existing

international human rights standards and conducting research in their respective areas in particular the compatibility of national laws and practices. Thus, the subcommittee on child rights was coordinating the preparation of the second periodic report on the implementation of the Convention on the Rights of the Child and was studying the Optional Protocol to the Convention on children in armed conflict.

23. The Special Rapporteur commends all these initiatives aimed at building human rights capacity for government officials and the intention to establish a national human rights institution within the framework of the Paris Principles. However, he would like to point out that another basic requirement for the promotion and protection of human rights is the freedom to organize, participate in and express oneself through autonomous civil society organizations. The Special Rapporteur hopes these efforts to enhance human rights capacity will translate into the prevention and monitoring of human rights violations and that State agents involved in such violations will be held accountable.

B. Civil and political rights

1. Freedom of political association

24. During his fact-finding mission, the Special Rapporteur attempted to obtain the most accurate and up-to-date information on the situation of political parties in Myanmar. In his effort to do so, he met with the NLD top leadership, including Secretary General Daw Aung San Suu Kyi, Chairman U Aung Shwe, Vice-Chairman U Tin U, and the Secretary and Spokesperson U Lwin. He also met with representatives of ethnic nationality parties that are members of the CRPP. The Special Rapporteur's team also had 21/2 hours of discussion at NLD headquarters with the party's Central Executive Committee. The team also visited the NLD office in Mandalay and met there with a large group of NLD members (45) representing the Mandalay Division Organizing Committee and 11 townships (North-West, Amarapura, Sintgaing, Dadar, Pathaingyi, North-East, South-East, South-West, Myitthar, Yamethin, Thabeikkyin), who had gathered on that day for their regular meeting.

25. Of the 200 parties that registered for the 1990 elections under the Political Parties Registration Law (State Law and Order Restoration Council (SLORC) Law No. 4/88 of 27 September 1988), only 10 remain registered with the Multi-Party Democracy General Elections Commission in 2001. They include the NLD, the National Unity Party (NUP), and eight others representing ethnic nationalities: the Kokang Democracy and Unity Party (KDUP), the Union Kayin League (UKL), the Union Pao National Organization (UPNO), the Myo or Khami National Solidarity Organization (MKNSO), the Shan National League for Democracy (SNLD), the Shan State Kokang Democratic Party (SSKDP), the Lahu National Development Party (LNDP) and the Wa National Development Party (WNDP).

26. All the remaining parties were de-registered by the Multi-Party Democracy General Elections Commission quite some time ago and accordingly cannot carry out political activities. Many of those parties seem to have only a vague knowledge of the grounds and procedures on the basis of which this happened. 2 The Special Rapporteur understands that some of those parties would want to be re-registered.

The Government should therefore consider revisiting the existing laws with a view to creating non-discriminatory conditions for the exercise of the right to freedom of political association.

27. To date, the NLD has been allowed to reopen some 25 of its original 40 branch offices in Yangon Division. The Mandalay NLD headquarters and two other township offices that are located in its premises are functioning normally. The NLD had also been authorized to send party organizers to prepare for the reopening of offices in Mandalay, Mergui and Ayeyarwady Districts, according to NLD spokesperson U Lwin. The approval process for the reopening of these offices has been handled on a case-by-case basis. As the Special Rapporteur understands, it, to open a party office

there must be at least five members, office space and a signboard; once these requirements have been met, permission is sought from the authorities through the NLD central office in Yangon. To his knowledge, four other parties (SNLD, KDUP, NUP and LNPD) also have opened party offices in Yangon, Lashio and Kentung. He presumes that the five other legal parties are also allowed to do so. These developments are welcome.

28. The Special Rapporteur is concerned, however, that unnecessary, discriminatory and stringent restrictions continue to hamper the exercise by legally registered political parties of the fundamental human rights of freedom of assembly, association, expression, information and movement: those parties need prior permission from the SPDC to open party offices. Whereas the NUP (widely regarded as close to the SPDC) is allowed to publish party materials, the NLD and other parties still cannot and do not have permission to operate photocopiers, mimeographs or fax machines, which require government licences; their office telephone lines are disconnected; they can hold monthly meetings in office premises but public gatherings require prior permission. He heard also of official pressures on party members and organizers to resign their membership and on landlords to refuse to rent office premises to political parties.

29. The Special Rapporteur understands that the top NLD officials are subject to systematic surveillance by military intelligence personnel, with their movements, contacts and communications closely monitored. Lower party members are also closely watched, but apparently less systematically. Such restrictions, if they exist, are not conducive to the atmosphere of trust and confidence that is necessary to pave the way for effective and mutually respectful political dialogue and cooperation. It is essential that all political parties and ethnic nationalities enjoy the basic political freedoms.

2. Freedom of expression and information

30. Freedom of expression is controlled by more than half a dozen laws, the violation of which, may be, and in fact is, widely sanctioned by 3 to 20 years in prison. 3 There are numbers of people still in prison for having peacefully expressed their views verbally, through participation in peaceful demonstrations or in activities of political parties, for having written about human rights or political issues in the country, or for reading or possessing written materials deemed illegal. Among them, for instance, is a teacher interviewed by the Special Rapporteur, who was sentenced to seven years in prison for reportedly possessing a book written by a foreign author analysing transitions from authoritarian to democratic regimes.

31. The Special Rapporteur joins the Special Rapporteur on freedom of opinion or expression in voicing concern regarding the plight of individuals who were imprisoned for the peaceful exercise of the right to freedom of expression. He believes that the release of all persons detained for the peaceful expression of their views should be among the priorities of the SPDC if it is to pursue its confidence-building efforts in a convincing manner.

32. All domestic print and electronic media are State-controlled, except the recently established bimonthly English-language Myanmar Times. However, the Special Rapporteur understands that it is, too, subject to censorship, formal or self-inflicted, as correspondents are instructed by military intelligence personnel as to how certain subjects are to be covered. During his mission the Special Rapporteur became aware that there appears to be no formal censorship of the content of what the incountry-based correspondents of foreign media write. At present, there are 21 foreign news agencies in Yangon, compared with 9 in 1989, of which 19 use local reporters; 1 uses a resident foreign reporter and another one a visiting reporter, both from the region. Among them there are only two women. Though the number of foreign media representatives has more than doubled, the conditions of operation remain restricted and should therefore be improved. Only a few of them have e-mail and fax machines, there is no Internet they do not have permission to have photocopiers, and the Government does not give accreditation to foreign photographers.

33. In general, the Government has been very selective in providing access to e-mail and the Internet. As of early 2001 there were reportedly about 3,000 e-mail users; by September 2001, reports indicated a slight increase to 4,000. 3. Political prisoners

34. The issue of political prisoners has been a priority matter for the Special Rapporteur since his first contact with the Myanmar Government. The release of all political prisoners is important, not only as an end in itself but also because it is regarded by the NLD leadership as a prerequisite for moving to the next phase of talks with the SPDC. The Special Rapporteur firmly believes that the unconditional release of all political prisoners will effectively pave the way to a dialogue, national reconciliation and democratization based on the rule of law.

35. As at 15 December 2001, 211 political detainees had been released since the beginning of the year, most of whom were NLD members. Among them were 39 NLD elected MPs who had been detained for two years and eight months without charge or trial in government "guest houses" (mostly military barracks), and other elected MPs sentenced to various prison terms. During his last mission the Special Rapporteur met with Dr. Saw Mra Aung, aged 83, senior member of the CRPP, who described conditions of detention in his "guest house" as good compared with those of other MPs, which were more rudimentary and the cost of which had, in many cases, to be supported by their families.

36. These releases are very welcome. 4 They represent, however, a small percentage of the estimated total and there is a long way to go if releases continue at the present slow rate. 5 While the Special Rapporteur understands that the SPDC, the NLD and other political parties may have different understandings of what constitutes a political prisoner, he wishes to recall that he regards as such anyone who is held in connection with real or suspected political opinions, affiliation or activities. Under this definition, there remain at least 1,500 political detainees in Myanmar. They include about 800 NLD members, an estimated 300 members of other political parties, students, as well as other political prisoners with no known political affiliation or held in connection with armed opposition groups. Among them there remain 17 MPs arrested in 1990 or in the mid-to late 1990s, of whom 15 are from the NLD (U Saw Ooreh, U Doe Htaung, Dr. Myint Naing, U Toe Po, U Ohn Maung, Dr. Zaw Myint Maung, U Ohn Kyaing, U Soe Myint, U Kyaw Khin, U Khin Maung Swe, U Sein Hla Oo, Dr. Than Nyein, Daw May Win Myint, U Naing Naing, and Khun Myint Htun) and 2 from the Mon National Democratic Front (Dr. Min Soe Lin and Dr. Min Kyi Win). Among the remaining political prisoners there are at least 100 women. One of them is a 47-year-old woman, a medical doctor and a mother of two, interviewed in the Mandalay prison, who was sentenced to seven years in prison for possessing two books deemed illegal: Aung San Suu Kyi's collection of essays, *Freedom from Fear*, and the other, an essay analysing transitions from authoritarian to democratic regimes by a foreign author.

37. In his statement to the General Assembly, the Special Rapporteur deplored the fact that the released did not appear to include student leaders or activists. Since then, the SPDC released one student -Yin Htwe, one of the All Burma Federation of Student Unions (ABFSU) leaders (on 12 December) -whose sentence expired in 1999 but who had continued to be detained. Many more student leaders of the 1988 demonstrations and the 1996 and 1998 protests are still in prison or exile such as, for instance, student Thet Win Aung, a 29-year-old member of the ABFSU who had been sentenced to 59 years in prison for having peacefully demonstrated in favour of the improvement of the education system and human rights.

38. During his last mission the Special Rapporteur reiterated his call for the release of all political prisoners. In pursuance of the understanding he had reached with the Government during his April 2001 visit, he submitted for the consideration of the SPDC a list of 49 prisoners for release, including all remaining imprisoned elected MPs, 12 humanitarian cases of persons who are either old, sick, or detained beyond the term of their sentence (see annex II), and 13 persons whose continued detention is related to an alleged attempt to communicate human rights information to the

United Nations (see annex III). The Special Rapporteur believes that it is essential that the Government guarantee the safety of persons contacted and interviewed by the present and previous Special Rapporteurs.

39. The Special Rapporteur received consistent testimonies that following their release elected MPs and other senior political detainees are under close surveillance and must report any travel outside their home village or town to military intelligence personnel. After his mission the Special Rapporteur was informed that this practice has been relaxed. He heard as well of pressures on recently released prisoners to resign from the NLD and stop political activities in exchange for economic privileges. The Special Rapporteur urges the Government to ensure that released political prisoners will not be rearrested or subjected to harassment and will be able to participate freely in the political process.

40. It is encouraging that political arrests seem to have declined dramatically. So far, the Special Rapporteur knows of one, possibly another three, political arrests since the beginning of contacts between the SPDC and the NLD in October 2000. Ms. Gracy, an ethnic Chin and Baptist pastor accused of supporting the armed Chin National Front, was reportedly sentenced to two years in prison with hard labour in April 2001 and taken to Kalaywa camp near Sagaing where her brother is also detained. The three others -U Shwe Saw Oo and U Tha Tun Aye (both 48 years old, lawyers) and U Khin Maung Gyce (50 years old, trader) -are members of the Arakan League for Democracy who were reportedly arrested in March 2001 and are currently detained in Sittwe prison awaiting trial. Some cases of detention of youths because of their activities in the NLD had been reported to the Special Rapporteur, but it seems that they were released after two weeks.

41. Noting the very slow pace of releases and the large number of remaining political prisoners, the Special Rapporteur stresses the importance of finding ways to speed up the process. The idea of an amnesty that has been proposed by some players could offer one possible avenue. In legal terms, an amnesty is an executive/governmental act that wipes away both the sentence and crime of an entire class or classes of people. It is not to be confused with a pardon which aims at specific individuals and does away with both crime and sentence. The power to commute is part of the power to pardon.

42. Amnesties have often been used in various countries to resolve past differences, open up the political climate and encourage participation (of political opposition), and thus do not imply that anything morally wrong was done. They also give a sense of historical closure in that they are premised on a desire to forgive and move along. A pardon is usually a traditional prerogative of the King - or, in modern States, the Head of State - to demonstrate generosity and/or ease domestic tensions (in prisons or in political life) and is usually issued on regular and auspicious occasions.

This said, an amnesty may be declared to coincide with a national, religious or symbolic date -such opportunities can be identified in Myanmar's political culture. In this regard, there are precedents in recent Myanmar history, which can provide useful "traditional" references. The experience of other countries could also provide acceptable sources of inspiration in Myanmar.

43. At least four categories of political detainees could be the beneficiaries of an amnesty in Myanmar: convicted prisoners; those under pre-trial detention; persons simply put in prison without charge or trial (arbitrary detention), and those who remain in detention after the completion of their terms. In the last category, there are reportedly at least 51 political prisoners who are being detained under article 10 (a) of the 1975 State Protection Act. The most well known of these cases is Paw U Tun, a student leader, who has remained in detention two years after he completed his 10-year prison sentence in 1999.

44. An amnesty for political prisoners in the context of political transition in Myanmar would demonstrate the Government's good-faith commitment to open up the political system and pave a solid way towards national reconciliation. Myanmar ownership of the act is a very important aspect, so that it is a national/domestic political event which has a full local dimension and political

significance. It should thus not just be a concession to outside pressure, even if amnesty does have the effect of relieving that pressure.

45. It is important to remember that an amnesty has two fundamental principles. First, it restores all beneficiaries to their full citizenship rights: all rights enjoyed prior to the arrest must be restored; any property confiscated must be returned; there should be no rearrest on the same grounds; and the question of compensation for the losses suffered because of the imprisonment may be considered. Second, an amnesty should be unconditional. And non-discriminatory. There should be no strings attached in terms of the beneficiaries having to recognize that they have acted wrongly. Their release should be unconditional and they should not be made to promise to refrain from any (peaceful) political activity after release. Their release should not result in disadvantage to them in areas such as employment, the exercise of their civil and political rights, access to higher education for their children, etc.).

46. In Myanmar, there is a provision in law which is currently used for the purpose of release, against a written pledge by a prisoner that he/she will not engage in political activities. Section 401 (1) of the Criminal Procedure Code reads: "When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced". In practice, a number of political prisoners were released under this section and had to sign a statement that they would not engage in any political activity.

47. On the question of legality in principle, a court decision, should only be quashed by another legal decision adopted by the legislator or the judiciary. This is problematic given the legal and lawmaking system in Myanmar. In this respect, the need to ground the decision in law and to protect the integrity of the prosecuting authority and process must be balanced against the need to ensure the best possible mechanisms of national "reconciliation", which differ so much from country to country. In any case, prisoners who have not been charged and tried, and are thus arbitrarily and administratively detained, may simply be let go.

4. Conditions in prisons

48. Prison conditions had been reported to be very poor for many years and most reports received by the Special Rapporteur indicate that prison conditions as a whole are still inadequate. He therefore endeavoured to examine the actual conditions in prisons, both from the perspective of the authorities and of the prisoners, and also as a part of a broader assessment of the judicial system, its independence, and work with concerned authorities and partners on ways to improve the administration of justice. In order to do so, during his fact-finding mission to Myanmar the Special Rapporteur obtained from the Minister for Home Affairs permission to select detention facilities to visit and prisoners to interview confidentially; these standard operating procedures for prison visits would enable an independent assessment of prison conditions. The Special Rapporteur also sought and received guarantees that the persons whom he interviewed would not be subjected to any harassment or reprisals. He notes with gratitude full cooperation received in this regard from prison authorities.

49. The Special Rapporteur visited the Lashio and Mandalay prisons and Hton-Bo male labour camp and was able to access there all facilities, including cells/wards/ barracks. He also interviewed privately a dozen detainees with complete freedom (see annex IV). If the mission had not been suspended, the Special Rapporteur would have visited the Myitkyina prison (Kachin State), the Insein central prison and a second labour camp and continued to interview detainees there. The basic information about the detention places visited is summarized below.

50. The Lashio prison was built in 1971 and subsequently upgraded to a level-A prison with a capacity of 1,000 prisoners. At the time of the visit on 13 October 2001, there were 966 inmates, of

whom 122 were females and 72 were under pre-trial detention. All prisoners were common law offenders. The prison had 78 male and 7 female staff.

51. The Mandalay prison is a central prison with a capacity of 5,000 prisoners. It used to be located in the palace and was moved to the current premises in 1982. As at 16 October 2001, it had 4,499 inmates, including 150 "security" detainees, of whom 3,900 were convicted (3,072 males and 828 females) and 599 were under pre-trial detention (512 males and 87 females). The youngest prisoner was 18 years old, the oldest 80, and most prisoners were 30-50 years old. There were also 43 little children with their incarcerated mothers. The main objective of the Mandalay prison was said to be skills training to facilitate the rehabilitation of prisoners through voluntary work in a variety of workshops. For females there were workshops for embroidery, knitting, sewing, tapestry and traditional cigarette (cheroot) making; for males there were workshops for cotton dying, chicken breeding, fabric hand-weaving, production of chicken cages and ploughs, etc.

52. The Hton-Bo male labour camp was established in 1979 at the foot of the mountains near Mandalay. It has a capacity of 900 prisoners, but at the time of the visit on 14 October 2001 there were only 279 inmates, all common law offenders, and 90 staff. According to camp authorities, the system of camp administration was essentially the same as in the prisons except that prisoners in labour camps are hired for development work for which they receive more benefits such as reduction of prison terms, remuneration, and better food. The prisoners' main occupation is rock quarrying for road construction.

53. In terms of overall conditions, the prisons and detainees visited by the Special Rapporteur and his team looked clean and tidy. Political detainees appeared to be separated from common criminals, men from women, and juveniles from adults. The Special Rapporteur's initial impression, based on in situ visits and discussions with prison authorities and private interviews with detainees, is that there have been incremental improvements, both in prisons and labour camps, in the areas of sanitation, food, access to basic medicine and medical treatment, and family visits in recent years. These improvements can be linked to at least two factors: (i) the introduction in 1997 by SPDC Secretary-1 of a set of 11 reform instructions to prison authorities; 6 and (ii) access granted to the ICRC in May 1999 to conduct its protection mandate in all prisons and labour camps.

54. The 11 instructions were written on the wall very visibly in each of the detention places visited. At the request of the Special Rapporteur their full text was provided after his mission. The document is called "Points of Reforming the Prisons in Myanmar" dated 7 July 1997. It reads as follows:

"(1) to supervise the prisons' security systematically and not to leak out the information from inside to outside because of incorrect news produced by destructive elements; (2) to perform prevention of infectious diseases in the prisons, spraying disinfectants, medical check-up of the inmate in collaboration with the relevant departments; (3) to ascertain that drains in the prisons are free of foul smells and impurities; (4) to provide for clean and favourable living conditions for the inmates, in a humanitarian spirit; (5) to keep up with the effort for the development of the inmates' mental and social factors; (6) to prevent overcrowding, to ensure good ventilation by accommodation of inmates separately; (7) to oversee systematically their health situation; (8) to carry out any necessary improvement and reformation; (9) to treat the inmates with a view to maintaining national solidarity; (10) to report any necessary amendment in the prison manual; and (11) to adopt certain internationally acceptable and modern practices of prison administration."

55. An additional set of nine instructions was issued by Senior General Than Shwe, Chairman of the SPDC, on 22 January 1999, whereby prison authorities were ordered:

"(1) to ensure the inmates become good citizens after their release; and to help them escape from lower life by transforming the prisons into Rehabilitation Centres and to get rid of their prisoner complex; (2) to provide family wings so that the inmates can live with their families, for their health and education, and to open dispensaries and schools that will remain useful to the village when the camp is closed; (3) to give five acres, farming implements and investments to them after their release

if they decide to settle in the area; (4) to assist in the production of goods for the country; (5) to be in touch with the world to arrange newspapers, journals, TVs and radios for them; (6) and to allow those inmates to visit their families during vacation seasons, provide them travelling warrants and part of their savings; (7) to provide accommodation and jobs if their families want to stay together with the inmates; (8) to help the neighbouring villages by sharing agricultural methods and to assist the needy and the elderly; and (9) to add the objective of 'Striving in the interest of the people' for the Ministry of Home Affairs." A complete assessment of the actual implementation of the instructions has yet to be provided to the Special Rapporteur.

56. The cooperation between the SPDC and the ICRC appears to be exemplary, based on fair and constructive working relations, and the Special Rapporteur strongly hopes that it will continue and develop further. He was encouraged to receive positive feedback about the ICRC visits and assistance in all three detention places that he visited.

57. In concrete terms, the Special Rapporteur heard from prisoners that food has improved somewhat, both in quantity and quality, at least in the places he visited. There was more use of oil and meat and greater access to drinking water. Mandalay prison and Hton-Bo labour camp had their own water purification systems. Sometimes boiled water was also made available in tanks. In prisons meat curry (or an egg for vegetarians) was said to be served once a week, while in labour camps it was provided at least twice, 7 sometimes even more, with a sufficient quantity of rice. 8 However, the Special Rapporteur's impression is that the quality of food in prisons is still inadequate given the reported high rate of malnutrition.

58. Attention to sanitation and health has also improved somewhat, with biweekly or weekly medical check-ups, better supply of basic medicines and access to washing/shower facilities, disinfecting of toilets, provision of bins in wards and soap for inmates. Families may visit as often as they can afford it. Access to newspapers/books and recreation facilities has also seen some improvements.

59. The Special Rapporteur is not sure, however, that prisoners in labour camps can actually benefit much from recent improvements in view of their extremely tiring and heavy work in the quarries. A daily work quota is 100 baskets of rocks; each basket brings 100 kyats, of which, according to prison authorities, 10 per cent was set aside as remuneration for prisoners and given them upon release. 9 The prisoners work every day, from 6.30 a.m. to 11.00 a.m. and from 1.00 p.m. to 5.00 p.m., except for a half-day rest on Sunday afternoon. They usually march to and from the quarry, which takes about 30 minutes. In addition, the Special Rapporteur understands that they are chained 24 hours a day for the first six months, though at the time of his visit they did not have chains.

60. The Special Rapporteur has received allegations that corruption is frequent and physical abuse of prisoners occurs, but he was not in a position to assess their extent. His initial impression was that physical ill-treatment in pre-trial detention by military intelligence appears to be endemic, while it is not systematic once detainees are transferred to prisons. In this regard, the weakness of the system seems to lie not so much in bad instructions, but in failing to enforce respect for the rules and instructions; this means that a lot depends on the management, chain of command, personalities and education of prison staff.

61. The Special Rapporteur also heard of discriminatory treatment of certain categories of prisoners. As he understands it, political prisoners, for instance, do not benefit from remission entitlements, do not have access to recreation facilities, receive less medical attention and need therefore to rely on medical supplies from their families, have limitations on family visits (once every two weeks for 15 minutes in the presence of guards), cannot read newspapers, and can only read strictly censored religious books but not after 4.00 p.m. They are usually kept in special security cells, which have two compartments: an inner one (measuring about 8 x 10 feet) for sleeping/eating and an outer one (about 8 x 13 feet) for bathing/walking. An iron door separating the compartments is open from 7.00 to 12:00 a.m. and from 2.00 to 5.00 p.m. Prisoners are usually not chained and not assigned to labour camps. The Special Rapporteur heard that prisoners convicted of drug abuse are also subjected to

discriminatory treatment, which is in a way a kind of extra punishment. Thus, as he understands it, such prisoners in camps are chained for the first 12 months, not 6 months like other prisoners, and they are not usually sent to hospitals because the latter are reluctant to receive drug-abusers. Apart from the need to ensure the equal application of minimum standards for the treatment of prisoners, the Special Rapporteur notes the need to address the pockets of vulnerability among the prisoner population such as the sick, the elderly, juveniles and women, especially those with children and pregnant women.

62. The Special Rapporteur was also informed that there was a high mortality rate among labour camp inmates, mainly due to physical exhaustion and inadequate medical care. He believes that many aspects of the labour camps are incompatible with the United Nations Standard Minimum Rules for the Treatment of Prisoners. He strongly hopes that the Government will consider promoting changes in the penal legislation which will make it possible to close such hard labour camps and transfer the inmates to other establishments. The Special Rapporteur also received a list of about 68 political prisoners who are reported to have died in prison since 1988. The issue of death in detention is a complex area, one which he intends to examine closely, along with the other areas of concern mentioned above, during his next missions.

63. The Special Rapporteur believes that the cooperation extended to him by the Government of Myanmar in relation to prison visits indicates that Myanmar authorities are willing to open their jails to independent human rights scrutiny and are ready for cooperation in order to improve further conditions therein. Overall, incremental improvements in prison conditions are very welcome, but problems remain which need to be addressed comprehensively.

5. Freedom of religion

64. Myanmar is a country of religious diversity. During his meeting at the Ministry of Religious Affairs, the Special Rapporteur was informed that Buddhism (89.3 per cent) Christianity (5.6 per cent), Islam (3.8 per cent) and Hinduism (0.5 per cent) are the four recognized religions in Myanmar, while numerous other religious beliefs and practices exist, often closely intermingled with the major ones, especially among ethnic nationalities. The four main religions are represented by 12 Christian, 4 Muslim and 4 Hindu religious groups/organizations. Buddhist monks' organizations operating at all levels are united under the Sangha. Corresponding to the richness of religious diversity is a rare landscape of 51,468 monasteries, 3,265 churches, 2,266 mosques, and 466 Hindu temples. There are about 475,000 Buddhist monks and about 25,000 nuns.

65. The Ministry of Religious Affairs is mandated to work for the promotion of religious freedom, "purification, perpetuation and promotion of Therawada Buddhism", and preservation of Myanmar's traditions and cultures. It has existed since independence; after the reorganization of ministries in 1962, it was combined with the Ministry of Home Affairs in 1962 until it was recreated as a separate ministry in 1992. The prime objective of the Ministry is to protect and promote the exercise of the right to freedom of worship in a spirit of mutual respect and tolerance. The Special Rapporteur was informed that to this end, the Ministry organizes yearly financial aids/grants to Buddhist, Christian, Muslim and Hindu communities, arranges for religious leaders to attend religious seminars/conferences abroad, helps leaders of other religious communities to obtain free travelling passes, assists missionaries from other religions to extend their permits to stay in the country, and provides mediation in case of religious disputes. The Special Rapporteur was also informed that religious books and periodicals are allowed to be published for the respective communities and religious texts, objects and tapes can be imported for religious purpose. Ceremonies celebrating Christmas Eve and Easter for Christians, the birthday of the Prophet Mohammad for Muslims and Deepawali for Hindus are allowed to be held every year. Talks on the occasion of holy days can also be broadcast over Radio Myanmar.

66. The Special Rapporteur fully supports the policy of the Government of Myanmar aimed at promoting the right to freedom of worship, which is consistent with the spirit of human rights values and principles. In this respect, he is particularly worried at the reported violence against Muslim communities in 2001. Muslim individuals, houses, shops and mosques were allegedly attacked resulting in an unknown number of deaths and injuries, and widespread looting and destruction of property and religious buildings in Sittwe (February), Toungoo, Kywebwe and Saw (15-17 May), and in Pyi, Pakkoku, Bago, Taunggu and Inthada (mid-October). Several arrests were reportedly made, 34 in connection with the riots in Pyi, Toungoo and Bago. A curfew was imposed in several localities. The SPDC has confirmed that the riots occurred but released no information. Local reporting or communication seems to have been discouraged. Muslim communities have since been subjected to intense security surveillance, freedom of assembly has been restricted and travel restricted or banned. The Special Rapporteur has also heard allegations that in some cases, tensions may have been encouraged by local authorities who intervened only at a late stage to stop the violence. If these allegations are true they are a matter of serious concern. In the current volatile international context following the 11 September attacks in the United States, all efforts should be made to defuse such tensions, which, in the context of Myanmar, may spill over into wider unrest and violence. This appears to be one of the reasons why the SPDC reportedly declared on 15 October a 45-day state of emergency, and stepped up security measures throughout the country.

67. In his letter of 5 November 2001 to the Permanent Representative of Myanmar in Geneva, the Special Rapporteur sought clarification regarding the above-mentioned allegations. Earlier, on 18 June 2001, the Special Rapporteur on freedom of religion also wrote to Myanmar Government regarding the ethnic riots in Toungoo in May.

68. The chronic ethnic and religious tensions and violence in the north-western State of Rakhine are a matter of particular concern. It is a complex issue requiring attention, which the Special Rapporteur intends to look into at an appropriate future opportunity. Similarly, the reported restrictions on the right to worship imposed on the Christian minorities, particularly in Chin State, will also be the subject of attention.

69. Inter-ethnic/religious tensions are a matter of prime concern in a country whose extremely rich human, historical, political, linguistic and cultural diversity poses the constant political challenge of making these differences coexist in a peaceful, dynamic and constructive manner. The complex dialectics of unity and diversity is a central challenge to the current nation-building efforts in Myanmar. Either unity is pursued in a spirit of tolerance which respects differences, or there will be a risk undermining its very efforts for peace and stability.

6. Forced labour

70. The Special Rapporteur is pleased that the mission of the High-Level Team (HLT) of the International Labour Organization (ILO) had the full cooperation of the authorities. He thinks that this demonstrates the commitment of the Government of Myanmar to comply with its international obligations and effectively end forced labour.

71. The Special Rapporteur takes note of several aspects regarding the enforcement of the forced labour ban in Myanmar as reported by the HLT: no cases of forced labour have been prosecuted because either people have no faith in the independence and effectiveness of the courts or the police, or they are afraid of the consequences of complaining in view of the absence of an independent route for complaint. People prefer to use administrative means; there have allegedly been 38 instances of administrative action against perpetrators of forced labour but no action under the Penal Code.

72. The Special Rapporteur also takes note of the tentative conclusions in the HLT report which noted "a very moderately positive evolution in the situation".¹⁰ It appears that there has even been reduction in the use of forced labour, but the process does not appear to be sustainable and there is much regional variation. Forced labour on civil infrastructure projects appears to have ceased.

Violations are greatest in the southern Shan State and eastern parts of Kayin State as well as northern Rakhine, where the military are active.

73. The Special Rapporteur thinks that the report reflects accurately the Government's commitment to eradicate forced labour and the problems involved in carrying this out. He would like to draw attention to the fact that forced labour is closely connected with problems which largely stem from inadequate resources at the disposal of the Government and the people of Myanmar for resolving the issues which they are facing, including continuing insurgencies in border areas, drug smuggling, and the slow pace of developing a democratic future for the country. He also understands that these problems are exacerbated at the same time by some lack of support and understanding by the international community and the urgent need for government officials and others to become fully aware of contemporary international norms as Myanmar emerges from 40 years of international isolation.

74. The Special Rapporteur appreciates the care the HLT took in identifying weaknesses that must be addressed by the Government. Among them is the lack of consistent publicity through the media and via government officials about Order No. 1/99 and the Supplementing Orders along with explanations of their implications, in the relevant languages. There is a need for a thorough, comprehensive and consistent review of the procedures for prosecution and administrative actions to be taken in the case of complaints to ensure enforcement of the relevant norms.

75. The Special Rapporteur thinks that the Government must seriously consider and implement a proposal for the establishment of an independent ombudsman and the opening of an ILO representative office in Yangon. An ILO presence in Myanmar can contribute to effective and durable cooperation with the authorities. He thinks that it is also necessary to launch systematic training on labour standards and human rights law for the military and government personnel.

76. There are, of course, issues in the report which require further thought and consideration as they have significant resource implications. The Special Rapporteur notes that the report acknowledges that poverty and the lack of sufficient budgetary allocations for the protection of social and economic rights are at the root of the problem of forced labour in the country. The lack of assistance from the international community coupled with declining government revenues, noted the report, means that the capacity of the Government to implement more fundamental structural and programmatic reforms is constrained.

77. Finally, the Special Rapporteur shares the particular concern expressed in the report in regard to the involvement of the military in the use of forced labour. This concern stems from, inter alia, reports from the three regions of the country which pose the largest security problems for the people of Myanmar. He has also taken note that the allegations of forced labour are linked to the "selfreliance" policy of the government armed forces. The report notes that the absence of mechanized equipment, including helicopters, leads to civilians being required to porter. It is suggested that the number of troops be reduced in order to alleviate resource requirements. But a modern, smaller army will also need a great deal of capital investment and recurrent expenditure in order to achieve the level of security which the situation requires, and no such resources exist.

78. The Special Rapporteur thinks that human development and economic modernization must take place to defeat the poverty that is at the root of Myanmar's many problems. Rational management of the economy and more budgetary allocations for the protection of economic, social and cultural rights must be top priorities in tackling those problems. In order to maintain the pace of reform, assistance and support from international organizations and the United Nations system is also required. Capacity-building measures must be taken to strengthen the fiscal and administrative capacities of the Government to ensure that the necessary resources and personnel are available to maintain momentum.

C. Economic, social and cultural rights

1. Tertiary education

79. During his fact-finding mission, the Special Rapporteur started looking at the situation of education at the tertiary level. During his next mission he intends to take up the situation of basic education. Tertiary education had been deteriorating since Ne Win came to power in 1962 and had suffered from many years' isolation, stagnation and repression. By 1988 the Government had become concerned about student unrest and began to implement a policy similar to Ne Win's which involved geographical dispersing of institutions and reducing terms of study for students. After 1988 all civilian universities, except universities for distance learning and foreign languages, and many colleges began to be closed down and by 1999 they had been shut for up to eight years. As a result, was an enormous backlog of students waiting to start and/or finish their degrees. Such a backlog, coupled with inadequate resources for education, presented a huge challenge for the authorities who in the last couple of years have started making a number of reform efforts to rectify the situation.

80. Gradual reopening of institutes of higher learning started in 1999. Institutions of medicine for third year to final year medical students were reopened in January 1999; universities for third year to fourth year engineering students in December 1999; Yangon University for final year students in June 2000. In July 2000, all remaining classes at all universities and institutions were reopened. In parallel, efforts have been made to build new institutes of higher learning and to upgrade and modernize existing education facilities. The duration of courses has been reduced by one year at all institutes and universities except for those of medicine and dentistry. Though the duration of courses has been shortened, syllabuses remain the same.

81. At the meeting with the Minister of Education, the Special Rapporteur was informed that there were 124 institutes of higher learning in the country with a student population of 555,203 in 2001, compared with 31 institutes in 1988 with about 134,000 students. These institutes are administered by 11 different ministries, including those responsible for education, health, culture, forestry, agriculture and irrigation, livestock breeding and fisheries, cooperatives, science and technology, religious affairs, the civil service selection and training board, and progress of border areas and national races and development affairs. Although the ministries are autonomous in the administration of their respective institutes, they follow a uniform policy regarding qualifications and curricula, which is determined by the University Council headed by the Minister of Education and composed of representatives of these ministries. According to the Minister, institutes and colleges are now open in every state and division, and two more universities and one college will be opened in 2002 in Yangon, Kyaukse and Bamaw, respectively.

82. In reply to the Special Rapporteur's question about the reasons for relocating tertiary education institutions to new satellite towns and spreading them across the country, he was told that this had been done to improve their accessibility and increase their capacity. An explanation was provided with reference to Yangon University, which was initially designed to receive 8,000 students. Now two new universities exist in its place: the East Yangon University in Tarwa, Thanlyin (with 3,417 students in 2001) and Dagon University in Dagon, a new satellite town (with 13,530 students in 2001). Another one -the West Yangon University -is planned to be opened in June 2002 in Htantabin. Not only are those campuses far from the one in the centre of the city, but access to the latter is now restricted; the Yangon University main campus now takes only post-graduates and diploma students (5,189 in 2001).

83. In the Special Rapporteur's view, a quadrupling of the number of students can be linked to at least two factors: (i) the opening of tertiary education facilities across the country should have contributed to easier physical access, and (ii) the popularity of distance education continues to increase, particularly among those who are not qualified enough to attend professional institutes such as medical, engineering and computer schools, and it is cheaper and easier to obtain a

bachelor's degree while combining study and work. 11 This observation is supported by enrolment figures in recent years. In 1999 the number of distance education students was about 178,000 as opposed to the total number of about 140,000 students enrolled in all other tertiary institutions in the country; in 2001, these figures were about 350,600 and 204,600, respectively. Distance learning is administered by the Yangon and Mandalay Universities of Distance Education and is based on an "e-education system" whereby lectures are transmitted to "learning centres" throughout the country and coursework is done by correspondence.

84. In the course of his mission, the Special Rapporteur observed some of the examples of the Government's efforts to upgrade and modernize education facilities. Thus, he visited the large and brand new buildings of the Union Solidarity and Development Association (USDA), 12 which runs parallel non-formal education courses across the country. He also visited the new Buddhist Missionary University, which was opened in 1998 as a centre for higher learning of the theory and practice of Theravada Buddhism under a special Government-sponsored project. It is unique in a sense that all students admitted to this university benefit from full scholarships covering all costs, including tuition, books, accommodation and boarding. As at October 2001, there were 146 students, including 76 from 16 foreign countries, and 34 members of the faculty. According to the project, the university should be able to receive 1,200 students in 10 years.

85. The Special Rapporteur also visited Yangon University where in contrast he noted a need for significant investment to improve its overall infrastructures. It was encouraging however, to see that the university had a modern computer lab and its Department of Historical Research had access to the Internet. During his visit he saw students working in the computer lab. He was informed that apart from the above-mentioned department, only the Department of Higher Education, the Education Resource Bureau and the Minister of Education had access to the Internet. He also learned that after the installation of appropriate equipment a wider circle of institutes would have direct access to the Internet, which could happen next year.

86. The Special Rapporteur's team visited the University for Development of National Races in Sagaing, which, having been established in 1964, was upgraded to the university level in 1991 and had impressive new infrastructure. As at October 2001, there were 1,050 students representing all national races of Myanmar and 380 teaching staff. The university had a very well-established material base, which was perhaps due to the fact that it had been under the direct control of the SPDC Chairman. There the team saw, among other things, fully equipped computer and language labs, a CD-ROM library and modern classrooms; this was very encouraging to see, but at the time of the visit they could not be used because there was no electricity supply. The team asked to see the library but it was closed on that day. The team was shown a video, according to which the preparation of students at this university was based on combining education from books with work practice with a view to nurturing good leaders who bear in mind the "three main national causes of Myanmar: non-disintegration of the Union; non-disintegration of national solidarity, and perpetuation of national sovereignty".

87. Despite the greater number of institutes of higher learning opened since 1999 and recent efforts to upgrade some education resources, the increase in the number of non-distance education students has been 2.7 times less than that of distance education students. A number of factors may have contributed to this. Among them, the Special Rapporteur can name the severe financial and human resource constraints such as lack of teachers and a relatively weak material base (for instance, books, libraries, science laboratories, access to the Internet, drinking water and electricity supply), with the exception of a few institutions such as those he visited and described above; this leads to poor quality education, thus discouraging students from enrolling. The tuition fee, which is 500 kyats per month (less than US\$ 1) for the traditional universities and 1,500 kyats for the whole year for universities of distance education may also be a contributing factor.

88. The Special Rapporteur has received information about political conditions for admission to universities and poor professional training of education personnel. Reportedly, all students attending institutes and universities are required to submit official recommendation letters issued by a local authority (ward/village-level peace and development councils) as well as by a local police station testifying that they are not involved in politics and are of good moral character. He was also informed of tight security surveillance of campuses, a "brain drain" from the public education sector to the growing private sector (for the minority who can afford it) and of children of political detainees being denied access to higher education despite having adequate academic results. He has also received information that the military ensure that its associates obtain a tertiary education, inter alia through their own institutes of learning such as the Defence Services Academy and well-equipped military legal, medical and engineering universities. Well-to-do families and their relatives may also send their children abroad for university education. The Special Rapporteur hopes to be able to look into these areas in a constructive manner during his next mission.

89. The Special Rapporteur is encouraged to note the remarkable rate of female enrolment at the tertiary level. In many institutions the admission of female students is on the basis of a fixed gender ratio. For instance, female student admission is 50 per cent in computer schools and institutes of education and 40 per cent in engineering schools. In many places, female students even outnumber males, which is the case, for example, in institutes under the Ministry of Culture where the gender ratio is currently 483 female students as opposed to 231 males. The same ratio in institutes under the Ministry of Education is 61.3 per cent women and 38.7 per cent men.

90. The Special Rapporteur could not find information from government sources about the exact proportion of the State budget allocated to the education sector, but he was told that the education budget was the next largest, after that for infrastructure, with more funds directed to tertiary education than for basic education. According to the latest figures from other sources, government spending on tertiary education has declined from 0.25 per cent of GDP in 1994/95 to 0.17 per cent in 1999/2000, which is extremely low by international standards, especially given the seriousness of the challenge of reforming higher education. 13

91. Overall, the Government's efforts in reopening all institutes of tertiary education, building new and upgrading existing education facilities, and promoting female enrolment are very encouraging. The Special Rapporteur is of the view that the Government should consolidate its gains through the allocation of a far greater level of resources with a focus on filling the existing establishments with better quality education. To do so, there should be better targeting of investments to address critical areas such as teacher training and strengthening evenly the material base of universities and institutes.

2. HIV/ AIDS

92. The speed at which HIV/AIDS has spread in Myanmar is a matter of great concern. Briefings that the Special Rapporteur had received during his fact-finding mission from the United Nations Country Team, the Ministry of Health and NGOs painted a truly alarming picture. With an infection rate of about 2 per cent, Myanmar stands second in rate of infection in the region. Taking the UNAIDS estimate of over 500,000 people who may already be infected, almost 1 in every 100 persons may be in danger.

93. The Government has been combating the HIV/AIDS problem through a multisectoral approach. Education programmes for the public as well as risk populations are being implemented in the country. Support for syndromic management of sexually transmitted infections, a 100 per cent condom use programme, prevention of mother-to-child transmission, a blood safety programme, and care and counselling for people living with HIV/AIDS is initiated by the Government with the assistance from United Nations agencies and international NGOs. These efforts will need to be significantly intensified in a determined and concerted manner as a matter of high priority as the next

five years will be critical in determining the future trajectory of the epidemic. Unless that is done now, HIV/AIDS will become a major problem in the country as it may kill in a matter of years more people than all internal conflicts have in several decades. It is primarily the young generation which will bear the brunt of the epidemic. Only through broad-based social mobilization and advocacy for preventive and curative action integrated into a national comprehensive and sustained campaign led by the highest levels of authority, with appropriate international assistance, can this epidemic be curbed. In this respect, the Special Rapporteur welcomes the launching in October 2001 of the United Nations Joint Plan of Action on HIV/AIDS in Myanmar for 2001-2002. The implementation of the plan will require approximately \$16 million, of which \$4.6 million have so far been made available by co-sponsoring United Nations agencies.

94. Given new challenges posed by the spread of HIV/AIDS, public spending on health should be appropriate. It was worrying that government spending on health care had declined from 0.38 per cent of GDP in 1995/96 to 0.17 per cent in 1999/2000. 14 However, the Government claims that its health expenditure in 2000/01 has gone up to 0.305 per cent of GDP.

III. OTHER ISSUES

A. Ceasefires

95. Progress in achieving peace through ceasefires with various ethnic armed groups, accompanied by development efforts, was the remarkable success of the government initiatives (largely associated with the SPDC Secretary-1, Lt. General Khin Nyunt) during the 1990s. At the meeting in Yangon with leaders of former insurgent groups, the Special Rapporteur witnessed their appreciation of unprecedented peace and security which their people had been enjoying after the ceasefires. Recalling that their lands had been in turmoil because of armed conflicts for several decades, they seemed to be satisfied with the choice they had made on behalf of their people and sounded hopeful about their future economic and social development. The Karenni National People's Liberation Front, for instance, is one such group. It agreed on a ceasefire with the SPDC on 9 May 1994, but still keeps arms (about 2,000 men); its territory is structured into the Kayah State Special Region 2, and the people are engaged in agriculture, logging, mining, and construction of roads. 15 A leader of one splinter group of the Karen National Union, which exchanged arms for peace on 17 April 1998 and settled in the Payagon Special Region, informed the Special Rapporteur that the group had since implemented livestock breeding and agricultural projects for which, inter alia, it won a prize from FAO in 1999 for achievements in the poultry area; they used to live in small huts but now they had houses with electricity and larger plots of land.

96. In Shan State, the Special Rapporteur's team, because of the urgent need for his evacuation from Lashio to the Mandalay general hospital, quickly visited Namtit in the Wa Special Region and the border town of Muse. The team was able to observe how former conflict areas were being transformed into peaceful development zones with positive achievements in infrastructure development, trade and large-scale agricultural production. The mission would have visited another important ceasefire area in Kachin State if the visit had not been suspended.

97. During the mission the Special Rapporteur could not obtain the text of a peace agreement from any of the ceasefire groups he had met. He was given to understand that there is no political activity in ceasefire areas, and ethnic groups there have de facto autonomy in running their territories. The central Government is represented only by a military presence and development workers. Some of the groups retain their arms, which, however, does not cause security problems, according to government interlocutors, and all ceasefire groups work together with the Government on developing their respective regions. The Special Rapporteur believes that a regular, substantive and transparent access to those areas to conduct research is required before he can speak objectively and authoritatively about the multiple factors which contributed to these developments. The rights to

peace and security are fundamental human rights. Their enjoyment may contribute to laying the foundations of economic development, but the effective social benefits of such development need to be assessed and the political and institutional expression of what appears to be semi-or largely autonomous areas within the Union of Myanmar remains to be formulated.

B. Refugees and internally displaced persons

98. The Special Rapporteur continues to receive reports and allegations of serious violations of human rights of civilians in areas of conflict between the army and armed groups, particularly in eastern Kayin and Kayah States, southern Shan State, northern Sagaing Division, and Rakhine and Chin States. As usual in this type of conflict, it is the poor and defenceless population which is pressured, violated and victimized by different armed forces that cross their communities. Such violence is largely arbitrary, summary and indiscriminate. This results in large internal displacements and influxes of refugees across borders. The mandate of the Special Rapporteur requires the examination of these allegations in an impartial and objective manner, and he has started doing so. This is a meticulous process, which he intends to pursue during his next missions so as to establish gradually a credible factual account of the human rights situation in these areas.

99. These conflicts have devastated the lives of hundreds of thousands of people across Myanmar for far too long. An estimated 400,000 refugees are currently living in neighbouring countries. An average of 300-700 new asylum-seekers may cross into Thailand every month; this cannot continue. Some of the refugees are provided with temporary shelter and protection. The others live outside camps and without assistance support and have to look for means of subsistence as illegal immigrants, with the constant risk of being exploited, trafficked, or forcibly returned to Myanmar.

100. Reportedly, most of the asylum-seekers arriving in Thailand had previously lived for some time as internally displaced persons (IDPs). Independent monitoring or assistance to IDPs has so far not been authorized by the SPDC and it is thus very difficult to verify their number in Myanmar.

Unofficial estimates place the current number of IDPs in Myanmar at from 600,000 to 1 million persons, with around 300,000 in north-eastern Shan State, 100,000-200,000 in Kayin State, 70,000-80,000 in Kayah State, 60,000-70,000 in Mon State and about 100,000 in northern Rakhine State.

101. As soon as objective factors and credible guarantees are in place for voluntary, safe and dignified repatriation, the refugees should be allowed to return to Myanmar. The Special Rapporteur believes that both Myanmar and its neighbours have an obvious interest in resolving the matter of the ongoing insecurity along their common borders, with the related transnational issues of refugees, displaced persons, trafficking, and exploitation of natural resources. A peaceful settlement of these

matters is also in the interests of the Association of South-East Asian Nations (ASEAN) and the region as a whole.

C. Child soldiers

102. The Special Rapporteur thinks that the whole issue of the voluntary and/or forced conscription of children into the armed forces and the various ways in which they are used by these forces needs to be factually established on the basis of first-hand evidence. Reports that he has received show that much of the current knowledge of the issue seems to lack a solid factual basis for what is presented nevertheless as a widespread phenomenon and pattern. To raise the issue in a convincing manner requires thorough research, documentation, and establishment and verification of the facts, which the Special Rapporteur intends to start during his next fact-finding missions.

D. Violence against women

103. The Special Rapporteur raised the issue of violence against women during his meeting with the Myanmar National Committee for Women's Affairs (MNCWA), a national mechanism for women's

affairs. From the briefing received there and other related information in his possession, it is clear that the Government of Myanmar recognizes the existence of various forms of violence against women in Myanmar, but lacks accurate data to define comprehensively the situation across the country.

104. The Special Rapporteur was informed that from the limited information gathered from hospitals, the judiciary and police departments, it has been found that violence against women exists in Myanmar in two forms: domestic violence and violence in the community, with the former being more prevalent. As the first step in tackling the problem, in 1997 the MNCWA launched a nationwide survey on domestic (marital) violence. In 1997/98, a survey was conducted in Yangon Division, in 1999 in Mandalay, Magwe and Taninthryi Divisions and Shan State. Surveys have now been carried out in all the remaining states and divisions, but their findings have yet to be finalized at the national level. The preliminary findings of the research reveal that there is more mental violence than physical violence in the domestic context. Poverty, alcoholism, incompatibility with in-laws and adultery are reported to be main causes of violence. The majority of victims do not seek help from anyone in view of a social stigma against women making their personal affairs public. Some ask help from parents, and only a few from community elders or neighbours.

105. The Special Rapporteur was informed that as a follow-up to the survey, more than 24 counselling centres have been established in the country to provide help and support for the victims of domestic violence. The MNCWA also set up a committee to receive communications regarding the incidence of violence against women. In 2000 the committee received and channelled to appropriate departments 2,034 complaints.

106. Trafficking is seen by the MNCWA as a form of violence against women, and a special national task force comprising representatives of the Government and NGOs has been created to deal with the problem. So far its main focus has been on prevention and promotion of education and income-generation.

Under the Ministry of Progress of Border Areas and National Races, eight training centres have been established to provide vocational training to girls and women as a measure to address one of the root causes of trafficking. Rehabilitation/protection work has been limited in view of the scarcity of reported cases within Myanmar and the lack of the possibility to pursue cases outside the country. Accordingly, the extent of the problem remains unknown.

107. The Special Rapporteur welcomes the efforts of the Government of Myanmar to address the issue of violence against women and encourages it to broaden its focus to cover violence in the community, particularly in areas of conflict between the army and armed groups where the most serious forms of violence against women are reported.

E. Humanitarian aid

108. In his interim report and statement to the fifty-sixth session of the General Assembly, the Special Rapporteur noted the existence of a complex humanitarian situation in Myanmar, which threatens to worsen unless it is promptly and properly addressed by all concerned. Among the areas in most need of significant improvement is the situation of vulnerable groups, inter alia the poor, children, women and ethnic minorities and, in particular, those among them who have become internally displaced in zones of conflict between the army and armed groups.

109. In the view of the Special Rapporteur, the human, technical and financial means to address the situation effectively exist, domestically and/or internationally. In the wake of international sanctions, multilateral and bilateral assistance had shrunk and the United Nations has emerged as the largest source of aid, which is mainly humanitarian. At present, 68 per cent of official development assistance (ODA) is channelled through United Nations agencies operating in the country. 16 In this regard, the Special Rapporteur supports the call of the United Nations Country Team for an increase in ODA for Myanmar through the United Nations system and for a more consistent approach to the

issue of assistance to Myanmar on the part of the policy-making bodies of United Nations agencies (i.e. executive/governing boards).

110. The Special Rapporteur is aware that to address the humanitarian situation more adequately, the commitment of the Government should go hand in hand with the involvement of the NLD in the planning and managing of international humanitarian assistance. It is also necessary to have reliable data and look into the logistical aspect of humanitarian assistance. The creation of some sort of international assistance advisory body has been proposed by some as one possible way of securing the safe delivery of humanitarian assistance.

111. One proposed possibility was the establishment of a functional committee with a mixed composition under the patronage of the United Nations coordination system with the role of monitoring and evaluating assistance provided to Myanmar. Such a committee could be one element of the trust-building process initiated through the dialogue between the Government and the NLD, thereby linking national peace/reconciliation promotion and political consultation and participation of key stake-holders: the Government, the democratic opposition, ethnic groups, NGOs and women. At the same time, such a committee could create a favourable environment for international assistance to the country. The United Nations Country Team-sponsored programme on combating HIV/AIDS could be one possible entry point.

112. The Special Rapporteur welcomes the valuable assistance efforts of the international NGOs which operate among the most vulnerable groups in Myanmar with complete control over and monitoring of their assistance. In fact, at present their capacity for operation is much greater than the current level of aid channelled through them. There are 29 international NGOs operating in Myanmar, of which 16 are subcontracted by United Nations agencies. Assistance from these NGOs has increased from \$4.5 million in 1999 to more than \$7 million in 2000. 17 They provide direct services such as food, health care and shelter and/or support development projects that help build local capacities.

113. The Special Rapporteur is convinced that the humanitarian situation requires encouraging the international NGOs to develop their activities. In order for them to do so, it is essential that the relationship between the Government of Myanmar and the international NGOs operating in the country continue to improve. In this regard, he is concerned about recent restrictive measures affecting their operation. Last June there were reportedly two isolated incidents involving the brief detention of some NGOs staff. Last July the Department of Health instructed all those NGOs working with it that every time they travelled to the field, they must be accompanied by department staff. Since September 2001 the expatriate staff and their family members are no longer eligible for gratis visas and there are difficulties regarding the importation, purchase and registration of vehicles. In the last two to three months, NGOs were not allowed to have more than three staff for educational activities. The Special Rapporteur stresses the crucial importance of creating a positive environment for the operation of international NGOs and hopes that these restrictions will soon be rescinded. It is in the best interests of the SPDC to demonstrate to the international community that these organizations do operate freely, within the laws of the country, thus facilitating their access to funding and contributing to the alleviation of the existing humanitarian situation.

IV. CONCLUDING OBSERVATIONS

114. The Special Rapporteur does not underestimate the fragility of progress and that it sometimes may be hampered by the many factors that are involved in the present situation. While he recognizes that the complexity of the situation in Myanmar requires some patience, the confidence-building process is already one year old and in the opinion of many observers is going rather slowly. Undeniably, the political atmosphere in the country is very gradually improving and some basis of mutual understanding has begun to emerge between the SPDC and NLD. Precisely because of these positive signs, one would hope that the confidence building would be followed by bolder moves that

could lead the political initiatives engaged a year ago to the next phase.

115. It is important that the SPDC carry forward the present political process. In this regard, the Special Rapporteur notes the following:

- (a) The human rights capacity of the State must be enhanced in accordance with the need for the prevention and monitoring of human rights violations and for the State agents involved in those violations to be held accountable;
- (b) The full and unconditional release of all political prisoners should proceed more rapidly. Given the very slow pace of releases and the large number of political prisoners remaining, it is important to find ways to speed up the process;
- (c) It is necessary for the Government to promote a substantial enlargement of space for civil society, political parties and ethnic nationalities to function, by creating conditions for the full exercise of basic political freedoms. In particular, the Government should consider revising the existing laws on the organization of political parties with a view to creating non-discriminatory conditions for the exercise of the right to freedom of political association. Transition experiences elsewhere show that without effective progress towards the rule of law and impartial institutions, a political transition could result in a continuation of many exploitative and non-democratic practices and, quite possibly, a high level of violence.¹⁸ The people of Myanmar cannot wait for democratization to begin to rebuild and consolidate civil society organizations. Likewise, the international community should not wait for the conclusion of a transition process to support autonomous and independent projects that could contribute to the activation of civil society. Thus, it is more important than ever to ensure that political parties and civil society organizations function freely;
- (d) The Government must create conditions for the equal application of minimum standards for the treatment of prisoners, addressing at the same time the pockets of vulnerability among the prison population such as the sick, the elderly, juveniles and women, especially those with children and who are pregnant;
- (e) More resources need to be allocated to the reform of the education sector, in particular tertiary education and investments better targeted to address critical areas such as teacher training and strengthening evenly the material base of universities and institutes;
- (f) Broad-based social mobilization and advocacy is essential for preventive and curative action against HIV/AIDS; this should be integrated into a national comprehensive and sustained campaign led by the highest levels of authority and supported by appropriate international assistance;
- (g) The situation of human rights in Myanmar would benefit from broadening the focus of efforts to combat violence against women to cover violence in the community, particularly in areas of conflict between the army and armed groups where the most serious forms of violence against women are reported;
- (h) The Government, its armed forces and the armed opposition groups should exercise maximum restraint and respect international humanitarian law relating to the protection of civilians and prisoners, and consider alternative avenues for resolving their differences notably through political dialogue;
- (i) In order to address the humanitarian situation more adequately, it is crucial that the commitment of the Government go hand in hand with the involvement of the NLD in the planning and managing of international humanitarian assistance;
- (j) It is time to start a substantive dialogue with the leaders of the NLD and all other political parties and ethnic nationalities if the Government is serious about achieving national reconciliation and the restoration of democracy. Nothing can help Myanmar better in this regard than the building of democracy through an all-inclusive, accountable and fair process.

Notes

1 The CRPP was established by the representatives of the NLD and ethnic nationalities' parties

elected in the 1990 elections.

2 The Special Rapporteur was unable to assess whether de-registrations had been effected in accordance with the law.

3 Among such laws are the Emergency Provisions Act (1950), the Printers and Publishers Registration Act (1962), the Official Secrets Act (1948), State Law and Order Restoration Council (SLORC) Order 8/88 (1988), SLORC Order 5/96 (1996), the TV and Video Act (1996) and the Computer Science Law (1996).

4 The news about releases of political prisoners started to be announced officially for the first time in January 2001. It is, however, unclear to the Special Rapporteur why such announcements appear to be directed at audiences outside Myanmar, as he understands that none of these releases has been reported in the official media. 5 For instance, in October 2001 a total of 14 releases were reported (5 coinciding with the Special Rapporteur's visit, preceded by 1 and followed by another 8); in November, there were 8 more releases (all of them NLD members).

6 The prison system is governed by the 1894 Manual of Rules for the Superintendence and Management of Jails in Burma, Part I.

7 The daily diet for the staff and prisoners in camps is established by instructions issued on 6 February 1978, according to which prisoners should get every day 1 ounce of fish paste, 10 ounces of vegetables, 1 ounce of cooking oil and 4 ounces of dal, and 4 ounces of meat twice a week.

8 According to the "Instructions for Providing Diet for the Prisoners in the Camps and State Building Projects" issued on 24 May 2001, prisoners in camps have a new daily ration of rice of 28 ounces, increased from 26 ounces.

9 Remuneration appears to be different depending on the type of camps. According to notification No. 1/98 of 25 August 1998, 50 per cent of net profit gained from the New Life Agricultural Production Camps should be distributed among the labourers.

10 Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention (No. 29): report of the High-Level Team (GB.282/4), ILO Governing Body, 282nd Session, Geneva, November 2001.

11 Reportedly, the official policy also encourages distance learning to keep the student population dispersed.

12 The USDA was created under the patronage of Senior General Than Shwe in 1993. It has two wings: 9 million junior members (10-18 years old) and 8 million senior members (older than 18). The Special Rapporteur has been told that the USDA's most significant activity is "awarenessraising": training courses in thematic areas (e.g., social welfare, Myanmar culture, foreign relations, etc.). Another important activity is participation in "nation-building" projects. Participation in these activities was said to be voluntary. Besides being devoted mostly to social welfare, the USDA was referred to in 1997 by General Maung Aye as an "ancillary national defence force".

13 Asian Development Bank, "Economic Update. Myanmar", November 2001, p. 7.

14 Ibid., p.6.

15 Allegedly, some ceasefire groups also grow poppies.

16 Asian Development Bank, op. cit., p. 8.

17 Ibid.

18 International Crisis Group, "Myanmar: The Role of Civil Society", 6 December 2001, Asia Report No. 27, p. 28.

Annex I

Programme of the fact-finding mission of the Special Rapporteur

Tuesday, 9 October 2001

11.35 Arrival in Yangon, welcome by Ambassador U Win Mra, Director-General of the International Organizations and Economic Department, Ministry of Foreign Affairs

12.30 Briefing with the United Nations Resident Coordinator
14.00 Call on H.E. U Win Aung, Minister for Foreign Affairs
16.00 Call on H.E. Colonel Tin Hlaing, Minister for Home Affairs
17.15 Meeting with the ICRC Head of delegation
19.00 Dinner hosted by Ambassador U Win Mra

Wednesday, 10 October 2001

09.30 Call on H.E. U Aung Toe, Chief Justice
10.30 Call on H.E. U Tha Tun, Attorney-General
11.30 Call on H.E. U Than Aung, Minister for Education
14.00 Call on H.E. Major General Ket Sein, Minister for Health
15.30 Call on H.E. U Tin Winn, Minister for Labour
17.00 Meeting with Daw Khin Khin Tun, Director, National Archives.
18.15 Meeting with various members of the diplomatic community (representatives of Bangladesh, Nepal, Sri Lanka, India, China, Egypt, the Russian Federation, Yugoslavia and Australia)
19.30 Meeting with the business community

Thursday, 11 October 2001

08.30 Meeting with diplomats from the ASEAN countries (representatives of Brunei Darussalam, Cambodia, Indonesia, the Lao People's Democratic Republic, Malaysia, the Philippines, Singapore, Thailand and Viet Nam)
10.00 Meeting with members of subcommittees of the Human Rights Committee (chaired by H.E. U Khin Maung Win, Deputy Minister for Foreign Affairs)
11.30 Meeting with the Myanmar National Committee for Women's Affairs (Dr. Daw Khin Win Shwe, Dr. Daw May May Yi and members)
12.45 Briefing with the United Nations Country Team (UNICEF, WHO, UNDCP, FAO, UNHCR, UNDP)

14.00 Meeting with representatives of international NGOs
15.00 Meeting with the Ambassador of the United Kingdom
16.00 Courtesy call on H.E. Lieutenant General Khin Nyunt, Secretary-1 of the State Peace and Development Council
20.00 Meeting with diplomats from the OECD countries (representatives of France, Germany, Italy, Japan, Republic of Korea and United States)

Friday, 12 October 2001

09.00 Meeting/seminar with Daw Ni Ni Myint, Director-General of the Department of Historical Research, U Thaw Kaung and Dr. Tun Aung Chain at Yangon University, followed by a meeting with teachers and students
10.30 Meeting with U Myo Myint, Director-General, Department of Religious Affairs, Ministry of Religious Affairs
11.30 Meeting with Dr. Hla Pe, Rector of the International Theravada Buddhist Missionary University, Prof. U Sat Tun Hmat Win and Bamaw Sayadaw of the same university
13.00 Meeting with Ambassador U Win Mra
16.00 Meeting at the Union Solidarity and Development Association (H.E. U Than Aung, Minister for Education)
17.00 Meeting with representatives of a number of groups participating in the ceasefire
18.00 Meeting with representatives of ethnic nationalities' parties of the Committee Representing the People's Parliament

Saturday, 13 October 2001

06.00 Arrival in Lashio
10.10 Meeting with the Commander of North East Command, Thiha Thur Tin Aung Myint Oo
12.00 Visit to Lashio prison

15.30 Proceed to Wa regions by helicopter to meet with Wa leaders and visit Namtit (U Airon Ike, U Li Si U, Plein Ka, Chao Ni Zi Yao, Hu Bao U Chan)

Evening Return to Lashio

Sunday, 14 October 2001

08.00 Leave Lashio for visit to the border town of Muse by helicopter (Colonel Myint Thein)

13.00 Return to Lashio by helicopter Afternoon Visit to the Hton Bo labour camp

Monday, 15 October 2001

08.00 Arrival in Mandalay

10.00 Meeting with the Commander of the Central Command, Major General Ye Myint

12.00 Meeting at the National League for Democracy (NLD) branch office in Mandalay

Tuesday, 16 October 2001

Morning Arrival in Sagaing; visit to the University for Development of National Races

Afternoon Visit to the Mandalay central prison

Wednesday, 17 October 2001

08.00 Return to Yangon

13.00 Meeting with the United Nations Resident Coordinator

16.00 Meeting with H.E. U Win Aung, Minister for Foreign Affairs

17.00 Meeting with Daw Aung San Suu Kyi, General Secretary of the NLD, and senior NLD members

19.00 Meeting with H.E. U Khin Maung Win, Deputy Minister for Foreign Affairs

19.50 Departure of the Special Rapporteur

Thursday, 18 October 2001

Work of the team at the UNDP office

Friday, 19 October 2001

11.00 Meeting of mission team with the NLD Executive Committee at its headquarters

15.00 Meeting of mission team with international NGOs and ICRC Head of delegation

Saturday, 20 October 2001

17.00 Meeting of mission team with the United Nations Resident Coordinator

19.50 Departure of team

Annex II

Humanitarian cases

1. Myint Maung Maung, male, aged about 30; reportedly detained in Mandalay central prison; reportedly transferred to a hospital near the prison in June 2001 after he become paralysed in both legs.

2. U Tun Aung Kyaw, teacher aged about 50; arrested and sentenced in 1990 to five years at hard labour; contracted tuberculosis in prison; released in 1994 but rearrested while receiving antituberculosis

treatment in hospital and sentenced to seven years at hard labour for possessing a book written by a foreign author about transitions from authoritarian to democratic political systems; visited by the Special Rapporteur on 15 October 2001; continues to suffer from chronic lung ailments and frequent attacks of fever.

3. U Aye Tha Aung - Secretary of the CRPP representing four ethnic nationality parties; arrested and reportedly given three sentences of seven years on three separate charges (21 years in prison) and detained in Insein prison; reportedly seriously ill and held in the section of the Yangon General Hospital reserved for prisoners.

4. U Win Tin, male, aged 71, well-known journalist and writer, member of the Central Executive

Committee (CEC) of the NLD, of which he is the only remaining senior figure detained; held since 1989 in Insein prison where he is serving a total of 20 years' imprisonment; health reportedly very poor due to his age, treatment, and his conditions of imprisonment.

5. Paw U Tun, Chairman of ABSFU; arrested on 24 March 1989 in connection with the activities of the student union; detained in Sittwe, Rakhine State, sentenced to 20 years' imprisonment, commuted to 10 years in 1993; his prison term expired in March 1999; his health, both physical and mental, is a matter of serious concern.

6. Khin Maung Yi (alias Tin Aye) , ABSFU CEC member; reportedly arrested on 13 July 1989, for alleged connections with the defunct Communist Party of Burma; sentenced to 20 years in prison in Mandalay, commuted to 10 years in 1993; his term expired in July 1999.

7. Htwe Myint, aged about 72 years, reportedly a member of the Democracy Party detained in Insein since June 1995 for allegedly distributing political pamphlets critical of the Government; health is reportedly poor.

8. Khin Ma Than (Nge Ma Ma Than) , female, aged about 64; arrested in June 1997 and sentenced to 10 years in prison for alleged high treason and violating the unlawful association act; detained in Insein prison; her age and prison conditions are matters of concern.

9. Nai Ngwe Thein, male, aged about 76; arrested for the third time in September 1998 (previous arrests 1991 and 1994) in connection with his alleged support for the CRPP and sentenced to 14 years in prison, which he is serving in Insein prison; his age and poor detention conditions are matters of concern.

10. Than Chaung, male, aged about 72; coffee shop owner arrested in December 1999 for playing a foreign Voice of America radio broadcast loudly in his shop, and sentenced to two years in prison, which he serves in Thayet.

11. Thein Dan (or Tan) , male, aged about 70, publisher and NLD executive committee member; arrested in September 1990 for peaceful expression of his political views and sentenced to 17 years in prison, commuted to 10 years in 1993; detained in Thayet prison.

12. Dr. Zaw Min, male, aged 42; medical doctor arrested in 1989 for alleged contacts with illegal political organizations and sentenced to 20 years in prison, commuted to 10 in 1993, which he is serving in Mandalay central prison; visited and interviewed by the Special Rapporteur on 15 October 2001; appeared to be psychologically disturbed as a result of his arrest and detention.

Annex III

Persons who reportedly received prison terms for communicating, trying or intending to communicate, or being suspected of communicating human rights information to the United Nations

A. Persons allegedly detained in connection with the visit to Myanmar of the former Special Rapporteur, Mr. Y. Yokota

These persons were arrested in August 1994; they reportedly continue to be detained in Myitkyina prison, Kachin State. Charges against them reportedly include communicating, or attempting to communicate information to the Special Rapporteur, Mr. Y. Yokota in connection with his visit (Ms. San San Nweh, arrested with them, was reportedly released on 18 July 2001):

1. Khin Zaw Win (alias Kelvin)
2. Sein Hla Oo
3. Khin Maung Shwe

B. Other persons who reportedly received additional sentences for having communicated, or attempting or intending to communicate information on human rights to the United Nations:

1. Ba Myo Thein, born 1954, agricultural technician, arrested in 1990 and sentenced to seven years in prison on charges of contact with exiled opposition; given an additional seven years for allegedly signing a letter on prison conditions that was to be sent to United Nations; detained in Patheingyi prison.

2. Dr. Zaw Myint Maung, alias Dr. Myint Aung, born 1951, medical doctor, MP-elect for the NLD; arrested in November 1990; sentenced to 10 years in prison for allegedly participating in discussions about the formation of a parallel government in Mandalay; was among a group of prisoners in Insein who were given further prison terms (seven years) for allegedly writing to the Special Rapporteur about prison conditions; detained in Myitkyinia prison.
3. Kyaw Min Yu (alias Jimmy), student of physics, reportedly arrested in 1988/89 for peaceful political activities and sentenced to 20 years in prison (commuted to 10 years in 1993); was given seven additional years in 1996 for alleged involvement in plans to distribute news from foreign broadcasts in Insein prison and to contact the United Nations Commission on Human Rights about prison conditions; detained in Tharawaddy prison.
4. Hla Tun Aung, arrested in 1996 and sentenced to seven years in prison for allegedly "spreading false information to destabilize peace and tranquillity". Charges reportedly included making a videotape illustrating problems relating to rice production, which was intended to be sent to the United Nations Commission on Human Rights through the NLD; very poor health reported; detained in Myitkyina prison.
5. Kan Shein, rice farmer, arrested in 1996 and reportedly detained for seven years in connection with the same case as 4. above; detained in Thayet prison.
6. Po Aye, arrested in 1996 and reportedly detained for seven years in connection with the same case as in 4. above; detained in Mandalay prison.
7. Maung (Ko Thein Lin) , student arrested in 1996 and sentenced to seven years in prison, in connection with the same case as in 4. above; detained in Myitkyina prison.
8. Kyi Pe Kyaw, arrested in 1995 and sentenced to seven years in prison for allegedly illustrating with symbols deemed critical of the Government a magazine produced in Insein prison and for allegedly participating in a discussion to organize the sending of information on prison conditions to the United Nations; detained in Myitkyina.
9. Phyo Min Thein, arrested in 1991 for political activities and sentenced to 14 years; reportedly given an additional sentence in connection with same case as in 8. above; detained in Toungoo.
10. Myo Myint Myein, born 1960, editor of satirical magazine What is happening, deemed as "aiming at making people misunderstand the government and defence forces"; arrested on 12 September 1990 and given seven years in prison, with U Sein Hlaing, for alleged political activities. Was reportedly given another seven years in 1996 for allegedly preparing a magazine in Insein prison and discussing sending information to the Special Rapporteur; detained in Tharawaddy prison.

In 2001 the newly-appointed Special Rapporteur did not submit a written report to the Commission.

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Report to the Commission on Human Rights, March 2000

UNITED NATIONS

Economic and Social Council

Distr. GENERAL

E/CN.4/2000/38

24 January 2000

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Fifty-sixth session

Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS
IN ANY PART OF THE WORLD

Situation of human rights in Myanmar

Report of the Special Rapporteur, Mr. Rajsoomer Lallah, submitted in accordance with Commission on Human Rights resolution 1999/17

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Executive summary

Political repression and the lack of real engagement in a political dialogue with opposition groups continue to be the main sources of measures adversely affecting democratic governance in Myanmar. The policy of large-scale displacement of certain ethnic groups, the continued practice of forced labour for military camp work and portering, and related human rights violations remain the main cause of refugee movements.

The Permanent Representative of Myanmar to the United Nations indicated at the General Assembly last November that the authorities in Myanmar were giving serious consideration to a visit by the Special Rapporteur. To date no concrete steps have materialized.

Myanmar's ethnic and religious minorities, such as the Karen, Karenni, Shan and Rohingyas, continue to suffer severe abuses, including arbitrary arrest, killings, forced labour in the army and trafficking of women.

The administration of justice continues to operate under the effective control of a military regime where the exercise of the basic freedoms of expression, association, assembly and movement are criminalized under the law itself. Vaguely worded laws, such as the 1950 Emergency Provisions Act and the 1975 State Protection Law, continue to be used to arrest and sentence persons for their peaceful political activities. It is estimated that in 1998 there were approximately 800 political prisoners in Myanmar.

According to reliable studies of the economic and social situation in Myanmar, the country is riddled with abject poverty. Child mortality rates are relatively high for a country with Myanmar's level of gross domestic product per capita. Poverty rates are approximately the same in urban and rural areas, but most of the poor (71 per cent) live in rural areas. Flawed policies and inefficient mechanisms for rice procurement are largely responsible for the high level of malnutrition and infant and maternal mortality. Government budgetary priorities that in effect limit expenditure on social services have exacerbated the current situation.

The adoption by the Government of Myanmar of military solutions to political problems, while seeking military and financial inputs from outside the country to impose its order on the people, continues to generate a pattern of gross and systematic human rights violations.

Unless the regime moves away from military solutions and engages instead in an all-inclusive political dialogue with the political opposition, including representatives of the ethnic groups, and addresses the concerns of the international community, the pattern of human rights violations which has characterized the last decade in Myanmar will continue and no significant progress can be expected towards realizing the country's economic potential and achieving the levels of human welfare and prosperity enjoyed by the rest of South-East Asia.

Introduction

1. The mandate of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar has been described in each of the Special Rapporteur's previous reports to the General Assembly (annexes to documents A/47/651, A/48/578, A/49/594 and Add.1, A/50/568, A/51/466, A/52/484, A/53/364 and A/54/440) and to the Commission on Human Rights (E/CN.4/1993/37, E/CN.4/1994/57, E/CN.4/1995/65 and Corr.1, E/CN.4/1996/65, E/CN.4/1997/64, E/CN.4/1998 and E/CN.4/1999/35). The mandate was extended for a further year by resolution 1999/17 of the Commission on Human Rights, which requested the Special Rapporteur to submit an

interim report to the General Assembly at its fifty-fourth session and to report to the Commission at its fifty-sixth session, keeping a gender perspective in mind when seeking and analysing information (para. 8).

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

2. On 4 October 1999, the Special Rapporteur presented his interim report on the situation of human rights in Myanmar to the fifty-fourth session of the General Assembly (A/54/440) and made an introductory statement. While in New York, he had discussions with representatives of various Governments and non-governmental organizations as well as individuals who provided him with information on the situation of human rights in Myanmar.

3. It should be recalled that, since his appointment in June 1996, the Special Rapporteur has yet to be allowed by the Government of Myanmar to examine the situation in situ and to meet with government officials and other persons relevant to the effective exercise of his mandate.

4. It should be noted that, in response to the submission of his last interim report to the General Assembly, the Permanent Representative of the Union of Myanmar to the United Nations reiterated his Government's rejection of the appointment of the Special Rapporteur, on the ground that it constituted an interference in the internal affairs of Myanmar. He expressed, as on previous occasions, his disagreement with the contents of the Special Rapporteur's report. He stated however, that his Government did not rule out a visit by the Special Rapporteur. Similar indications had, year after year, been given in the General Assembly and the Commission by the Permanent Representative of Myanmar. To date no positive steps have been taken to allow such a visit. The Special Rapporteur reiterates his regret that in the nearly four years since his appointment, the Government of Myanmar has not responded to the repeated calls of the General Assembly and the Commission on Human Rights for cooperation with the Special Rapporteur and to authorize his visit. In spite of the lack of cooperation from the authorities in Myanmar, and as in previous years, the Special Rapporteur has received considerable assistance and information from governmental,

intergovernmental and non-governmental sources. He has also received relevant information from individuals about the human rights situation in Myanmar.

5. The Special Rapporteur has proposed to visit two neighbouring countries in order to conduct interviews of refugees and other displaced persons from Myanmar in those countries. The Special Rapporteur expects that the mission could take place in the course of this year.

6. The present report is based upon information received by the Special Rapporteur up to 15 December 1999 and is to be read in conjunction with his interim report to the General Assembly.

II. THE EXERCISE OF CIVIL AND POLITICAL RIGHTS

A. Measures adversely affecting democratic governance

7. In his report to the fifty-fourth session of the General Assembly (A/54/440), the Special Rapporteur indicated that opposition political parties continued to be subject to intense and constant monitoring by the regime and to severe restrictions on their activities; their members have been prohibited from leaving their localities and subjected to intimidation, personal harassment and harassment of their families, and arrest and imprisonment, particularly in the case of members of the National League for Democracy (NLD), the object being to procure the resignation of those members.

8. The Special Rapporteur continues to receive reports indicating that the campaign of harassment and intimidation continues to be conducted against high-ranking members of NLD in

general and the rank and file membership in particular for the purpose of procuring their resignations. It would appear that Aung San Suu Kyi and other NLD leaders are able to meet but always subject to restrictions and close monitoring. Public meetings are not allowed. As a result of forced resignations, particularly among members of executive committees, a number of NLD branch offices have closed down or were forced to close. By March 1999 there had been over 50 branch closures. Moreover, a number of sources reported in September 1999 that many members of the NLD, including MPs-elect, and other activists (in the hundreds) were still in prison or were under arrest or some form of detention while others were subject to restrictions on their freedom of assembly and movement and to systematic monitoring.

9. Restrictions imposed by the regime on ethnic opposition parties are reported to continue unabated. For instance, two senior members, Naing Tun Thein (82) of the Mon National Democratic Front and Kyin Shin Htan of the Zomi National Congress, two of the ethnic opposition parties in Myanmar, were arrested shortly after they met with the Special Envoy of the United Nations Secretary-General, Mr. Alvaro de Soto, during his visit to Myanmar from 14 to 18 October 1999. No official reason has been given for their detention. Another ethnic leader, Doo-wah U Zaw Aung, of Myanmar's Kachin nationality and the MP-elect for the township of Waingmaw, disappeared at the beginning of August. It is reported that his fate or whereabouts remain undetermined.

10. Reports indicate that three ethnic leaders were arrested in September 1998 for supporting the Committee Representing the People's Parliament formed by NLD to speak on behalf of Myanmar's elected parliamentarians. Two of them were subsequently released in order to receive medical treatment, but the third, Saw Mra Aung (82) from the Arakan League for Democracy, has remained under arrest for more than a year.

11. According to news bulletins received by the Special Rapporteur, the authorities in Kachin State ordered the branch of the Shan National League for Democracy (SNLD) in Waingmaw township to close down in November. No official reasons were given. It is further reported that in August two MPs-elect from Labutta township, U Kyi Win, a Supreme Court lawyer, and Aye Kyu, along with two other township officers of the NLD, were sentenced to two years in prison in Myaung Mya for their efforts to secure the release of four other township branch members. The four were sentenced to five years' imprisonment.

12. Regular "resignations" of NLD members continue to be announced in The New Light of Myanmar, Myanmar TV and other media channels, all controlled by the regime, in furtherance of its systematic policy of intimidation and repression directed against NLD and its supporters. According to sources inside Myanmar, about 48,000 NLD members have been reported as resigning since the campaign began a year ago. A large majority of these resignations are reported to have been registered in Irrawaddy, Mandalay and Pegu Divisions.

13. The Special Rapporteur has also been apprised of daily features published in the Government-controlled press belittling and vilifying the leadership of NLD, in particular Aung San Suu Kyi, inciting the public to treat them as enemies and to destroy them, presenting them as stooges of foreign Powers, jeopardizing stability and progress, and as being destructive agents.

14. The Special Rapporteur wishes to recall the pledge made by the authorities of Myanmar since 1990 after the general elections, in particular in Declaration No. 1/90 (see A/51/466, chap. III.C), and similar subsequent assurances often repeated in international forums. With a view to redeeming that pledge, to achieving national reconciliation and to enabling Myanmar to fulfil its obligations under the Charter of the United Nations and the Universal Declaration of Human Rights, the authorities should respond to the calls of the General Assembly and the Commission, put an end to the hostile policy they have carried on against their own people and engage in a substantive dialogue with the political leaders in the opposition, including Aung San Suu Kyi, and representatives of the ethnic groups.

B. Extrajudicial, summary or arbitrary executions

15. The Special Rapporteur on extrajudicial, summary or arbitrary executions has, during the last reporting period (November 1998-October 1999), transmitted three communications to the Government of Myanmar regarding 11 allegations of violations of the right to life of individuals, most of whom were reportedly porters killed by troops of the State Peace and Development Council (SPDC).

16. More specifically, one of the communications concerned a group of women who were allegedly raped and shot by an SPDC commander near the villages of Wan Wawn and Wan Ek, Nawng Kaw Tract, Nam-Zarng Township, in January 1999. Further, it is also reported that when a civilian porter who witnessed the scene tried to intervene, the commander shot him as well. Another communication concerned a number of porters who were allegedly executed by SPDC troops on 4 December 1998 in Kae-See Township. In the third communication, information was transmitted to the Government regarding allegations of two executions on 5 December 1998 of porters who were kicked and beaten, and finally shot, by SPDC troops because they became too weak from exhaustion and lack of food over a period of days to carry equipment.

C. Freedom of association

17. On 15 November 1999, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent a communication to the Government of Myanmar on behalf of nine persons, two of whom are NLD MPs-elect, namely, Saung Win Latt, U Hla Pe, U Zeya, U Moe Thu, U Win Tin, U Myo Mynt Nyen, U Sein Hlaing and U Aung Tin and U Boe Thin, requesting information about the legal basis of the charges and offences of which they were convicted.

D. The administration of justice

18. According to a recent study conducted by the Centre for the Independence of Judges and Lawyers (CIJL) of the International Commission of Jurists (ICJ) and published in its annual report, *Attacks on Justice*, the rule of law in Myanmar has malfunctioned since the military Government began its rule in 1988, as the Special Rapporteur and his predecessor have found in their reports over the past several years.

19. The study recalls that in September 1988, Law No. 2/88, the Judiciary Law, was enacted by the regime. Under that law, a Supreme Court was established, composed of a Chief Justice and "not more than five Judges". Lower courts, the state or division and township courts, are established by the Supreme Court. Military tribunals, established in 1989 for the purpose of trying martial-law offenders under special summary procedures, were abolished in September 1992.

20. The military regime appoints the Judges of the Supreme Court. The Supreme Court selects judges for the lower courts, but requires the approval of the regime. The Supreme Court is further in charge of supervising the lower courts. The Judiciary Law does not contain any provisions on the security of tenure of judges and their protection from arbitrary removal, thus leaving such issues entirely in the hands of the military regime and, what is worse, without any guarantees provided by law by which the military regime is bound.

21. In this regard, according to the CIJL study, five Judges of the Supreme Court, namely U Kyaw Win, U Aung Myin, U Than Pe, U Tin Ohn and U Tin Htut Naing, were "permitted" by the regime to retire by Order No. 5/98. No reasons were given. It is widely believed that, because cases submitted by NLD were pending and the regime was uncertain as to how those Judges would decide the outcome, they were forced to retire.

22. The administration of justice is greatly marked by constraints which are inconsistent with judicial independence and characteristic of a military dictatorship. According to section 2 (a) of Law No. 2/88, justice is required to be administered "independently, according to law". In reality,

however, the judiciary is far from independent. This situation results from the suspension of the Constitution and the numerous decrees made by the regime the object of which is to arrogate to itself complete control over the whole political life of the nation and to restrict all civil freedoms that are likely to interfere with that objective.

23. In addition to the military Government's unrestricted powers in the appointment of judges, the courts are powerless to protect the rights of victims of oppression. This is so because a great number of decrees have been promulgated by the regime for the purpose of repressing political activity and freedom of thought, expression, association and movement, among others. Moreover, emergency laws are still resorted to. These, in Myanmar, are similar to those devised in colonial times, long before the adoption of the Universal Declaration and the human rights treaties which have since followed. The courts have no jurisdiction to challenge or to discard this repressive legal arsenal. For this reason, the courts have become a mere instrument to provide formal and apparent, but clearly not substantive, legitimacy to the regime's systematic repression of the civil and political rights which constitute the very basis of the rule of law, democracy and democratic governance.

24. Basic guarantees of due process and judicial control over detention do not in practice exist, even in cases involving violations of the provisions of the law that criminalize political activity and the exercise of civil rights for that purpose. For example, without the permission of the intelligence organs, judges cannot even let the family and counsel of the accused know what sentence has been passed. In many cases, the accused is kept in ignorance of the section of law under which he is charged. There have been reported instances where Military Intelligence has passed sentences orally at the time of arrest, before any trial had taken place. More often than not trials are held in camera.

25. According to the CIJL study referred to above, since the assumption of power by the regime in 1988, the freedom of individual lawyers to exercise their profession and defend political opponents of the regime has in practice been severely suppressed. The Lawyers' Associations, the voice of the profession, have been silenced. The Bar Council has not been independent since 1989, and is instead supervised by the Attorney-General and is staffed by government officials.

26. Many of the decrees promulgated by the State Law and Order Council (SLORC), as it then was, remain in force today, including Order No. 2/88 which prohibits public gatherings of more than five people and No. 8/88 which, in its effects, prohibits debate and criticism.

27. In cases other than those involving political activity, some basic due process rights, including the right to a public trial and to be represented by a defence attorney, are generally respected. Defence attorneys are permitted to call and cross-examine witnesses, but their primary role would, in practice, be to bargain with the judge to obtain the least severe sentence possible for their clients.

28. During the past few years many lawyers have had their licences withdrawn for involvement, alleged or real, in politics. Lawyers who may have been arrested, imprisoned or released prior to 1997 reportedly remain unable to practise their profession. For example, according to CIJL, Myint Aung (lawyer, licence No. 3277) was arrested and charged under section 2 (1) (a) of the Arms Act. His trial was heard on 16 and 17 May 1990 at Yangon Division Joint Magistrates Court No. 12 and he was sentenced to two years' imprisonment with hard labour. He was prevented from practising law as of 4 November 1993, and his licence to practise was withdrawn. A similar fate befell U Toe Aung (lawyer, licence No. 1049). He was charged under the notorious article 5 (j) of the Emergency Act 1950 and sentenced to five years' imprisonment on 7 February 1991. His licence too was withdrawn.

29. CIJL reports that some 50 lawyers are unable to practise their profession owing to similar treatment by the regime. It also reported that lawyers are often reluctant to take on cases involving human rights abuses by Military Intelligence (MI) Officers or soldiers for fear of arrest, retaliation or harassment by the authorities and the removal of their right to practise.

III. THE EXERCISE OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. Background

30. The exercise of economic, social and cultural rights has been greatly marked by the ethos of militarism inherent in the very nature of a military regime. The regime has constituted for itself a highly centralized system of decision-making and enforced execution with no representative or public participation in the decision making process, whether with regard to policy or implementation. The only organization which participates in implementation is the Union Solidarity and Development Association (USDA) which is, however, under the complete direction and control of the military and for the purposes for which the military alone decides to use it.

31. In particular, and above all else, budgetary allocations are largely determined by military considerations and objectives. Thus, high and growing military spending contrasts with diminishing allocations to basic social services such as health, education and essential services, all necessary not only to translate growth, however modest, into human development and welfare but also to sustain growth.

B. Poverty

32. According to a recent economic and social assessment of Myanmar by the World Bank which is soon to be published, the country is "trapped in abject poverty despite its rich resources base. Although there has been notable moderate growth in the economy, the trickle-down effect of this growth did not reach the poor. The country's poverty and development indicators have lagged behind those of its neighbours". Flawed government policies are considered to be responsible for these outcomes.

33. The study adds, with regard to prospects for the future:

"The recent slowdown in economic activity, the sharp worsening of foreign reserves and severe contraction of public expenditure on basic services, are inflicting further hardship on the poor. If the present policies are maintained, the people of Myanmar are unlikely to benefit substantially from a resumption of growth in the region ... Continuing lackluster economic performance that fails to improve living standards for the majority of the population could have devastating consequences for poverty, human development and social cohesion in Myanmar."

34. The World Bank study concludes that if Myanmar is to enjoy broad-based economic growth and create significant gains in human welfare on a par with those enjoyed in other countries in South-East Asia, it must consider a comprehensive review of the Government's role in the economy with a view to abandoning inefficient policies and reforming budgetary priorities that squeeze expenditure on social services and infrastructure. If the country is to meet its full economic potential, it will be necessary both to establish domestic incentives and capable institutions, and to attract high-quality foreign investment. However, in order to receive the support of the international community, Myanmar must demonstrate a commitment to a broad-based policy that would not only address the economic and social issues elaborated in the Bank's report, but also the other concerns of the international community, in particular United Nations resolutions concerning political and civil rights.

35. Yet a different study of July 1998, provided to the Special Rapporteur, has concluded that data concerning the ability to lead a long healthy life, to be educated, and to have command over resources needed for a decent living indicate that Myanmar's 46 million people are generally poor. Further, the same study points to the low levels of achievement and slow progress in several critical areas of human development in Myanmar.

C. Food security

36. According to the World Bank study, "the level and depth of hardship among families in Myanmar is vividly reflected in high rates of malnutrition among pre-school-aged children. Even based on official statistics, far too many of Myanmar's children suffer from wasting and stunting. Moderate wasting affects almost 3 out of 10 children under 3 years of age, and 1 in 10 is severely malnourished. This has been described elsewhere as a 'silent emergency' in Myanmar. It has also been noted that deprivation on this scale indicates not only immediate need, but also adverse longterm repercussions for the health and intellectual development of the affected children".

37. In a recent report submitted to the Special Rapporteur, entitled "The People's Tribunal on Food Scarcity and Militarisation in Burma, October 1999"¹, the authors received testimonies from a large number of witnesses upon which the following conclusions were reached:

"1. There exists hunger and food scarcity in both the civil war and non-civil war areas of Myanmar, in particular the Karen, Karenni and Shan states, and the Delta region;

"2. The situation of hunger is spreading both geographically (to more regions of Myanmar) and demographically (affecting people from more varied walks of life);

"3. The causes of this situation are as follows:

"3.1 the destruction of staple crops which provide the local food supply.

"3.2 uncompensated conscription of people to work on State projects which do not leave enough time for them to work their fields.

"3.3. uncompensated conscription of people to do portering to areas far from their home villages, resulting in not being able to have time to grow food.

"3.4. forced relocation of people to areas where rice is difficult to grow, or to unfamiliar terrain making it difficult to find enough food.

"3.5 a quota system of the amount of rice to be supplied to the government substantially below market price, which must be supplied whether or not the harvest was adequate. This often leaves the people in debt and without any rice of their own to eat."

D. AIDS/HIV epidemic

38. The economic deterioration and the widespread human rights abuses that accompanied the rule of SLORC since 1988 and later, in 1997, SPDC, has had a dramatic effect on the health status of the people of Myanmar, a situation that is compounded by limited access to health care, particularly in the ethnic-minority regions. According to the World Bank study mentioned above, the last 10 years have been characterized by a sharp decline (80 per cent) in the usage of public hospitals and dispensaries. This is mainly due in principal to the low level of public spending on health (about 0.2 per cent). The widespread campaigns of forced relocation and wholesale transfers of communities such as the Karen and other minority groups, arbitrary arrests, slave labour coupled with the use of civilians as human minesweepers have further deteriorated the health situation in the country. Furthermore, about 1 million children are malnourished. The health of the people of Myanmar is further jeopardized by another threat: the increasing use of heroin and the alarming spread of HIV/AIDS. According to the World Bank report on Myanmar, "there are over 1 million HIV/AIDS cases".

39. It is further reported that the availability of heroin in Myanmar has encouraged its local cultivation, especially for the consumption of intravenous drug users. This is considered to have contributed to a marked increase in HIV infection throughout the region. While government statistical estimates are conservative, the United Nations Drug Control Programme and non-governmental organizations that work in the health sector estimate the number of addicts to be between 400,000 and 500,000. The Joint United Nations Programme on HIV/AIDS (UNAIDS) published estimates for the end of 1997 indicating the number of adults and children living with the HIV/AIDS virus to be around 440,000.

40. UNAIDS reports that the Government of Myanmar began HIV screening in 1985 of high-risk populations and blood donors and in 1989, the National AIDS Technical Committee was formed and later restructured, within the National Health Committee, to the multisectoral National AIDS Committee, with a vertical structure of divisional, district and township AIDS committees. Further, the National Health Committee has established guidelines for the Government's AIDS policy since then. Although the Government was reluctant to acknowledge the existence of an HIV/AIDS problem when it was first discovered in 1985, recent efforts show a change in attitude. However, resources made available to combat HIV/AIDS would appear to have been limited. The impact of these resources, meagre in comparison with the magnitude of the problem, is judged to have been limited by the Government's reluctance to permit international non-governmental organizations to work in collaboration with community-based organizations. Permits to visit patients are difficult to obtain and access to high-risk groups and vulnerable groups is restricted.

41. Other significant factors impeding the measures taken to date to address the situation are said to be the lack of "social marketing" crucial in prevention efforts and the lack of behavioural research and assessment of prevention interventions. Equally important, little intervention has targeted women. There would also appear to be a lack of political will to tackle the HIV/AIDS problem as well as of resources at a level required for a successful HIV/AIDS care and prevention programme. Indeed, earlier this year UNAIDS warned of a growing epidemic in Myanmar and indicated that the regime was largely ignoring it. The Special Rapporteur shares this concern and urges the Government to recognize the problem and allocate sufficient resources to address the epidemic, which might quite easily affect neighbouring countries as well.

E. State of education

42. Universities are still closed. The authorities still fear that the demand of the students to have a say in structuring their own education might lead, as in 1988, to demands for the restoration of democracy. A whole generation, and the country itself, is being deprived of the knowledge, intellectual development and expertise which a country badly requires for its own development and human welfare.

43. Available data indicate a trend of declining expenditure on education by the Government, accounting for 1.1 per cent of GDP in 1995-1996, from 2.6 per cent in 1991-1992. The World Bank study referred to above corroborates these estimates, adding that it is impossible to provide good quality education services with the substantial erosion in education spending that has occurred over the past decade, and that "current Government spending in education as a share of national income is among the lowest in the world".

F. Forced Labour

44. In his report to the General Assembly (A/53/364), the Special Rapporteur provided details on the work of the Commission of Inquiry established by ILO to examine complaints lodged by the international Confederation of Free Trade Unions concerning the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), as well as the observations made in the Director-General's report (see A/54/440, paras. 21-30).

45. The Commission of Inquiry submitted its report in July 1998. Its findings were updated in subsequent reports of which the most recent was published in November 1999 for the 276th session of the ILO Governing Body. This report (document GB.276/6) presented comprehensive information on such measures as had been taken by the Government of Myanmar following the recommendations of the Commission of Inquiry and action taken in that regard by ILO. The report, inter alia, notes that in spite of the Commission's recommendations, the exaction of forced or compulsory labour by the authorities continued and the attention of the Government was drawn to the "relevant and consistent evidence of the persistence of forced labour" in Myanmar.

46. The evidence presented to the ILO Governing Body also shows that a considerable number of orders addressed to village heads were issued by military officers demanding the supply, without fail, of a number of "servants", "rotation servants" or "volunteer workers". Further, the report indicates that it is often specified that if the village head fails to comply, it would be entirely his or her responsibility and would be severely punished. While the focus of the report of the Commission of Inquiry was on forced labour, it highlighted the human rights violations suffered by the various ethnic groups in Myanmar in general. The human rights violations recorded include extrajudicial killings, rape, torture, ill-treatment and forced relocation.

47. With respect to the right to form and join trade unions, although Myanmar ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) in 1955, the competent organ of ILO reports that workers and employers in Myanmar do not enjoy the right to join organizations of their own choosing. Furthermore, such organizations do not have the right to join federations and confederations or to affiliate with international organizations without impediments.

48. The issue of freedom of association and protection of the right to organize has again been discussed before the ILO Committee on the Application of Standards and the Committee of Experts. Both committees have deplored the absence of any progress towards the application of this fundamental Convention despite their repeated calls upon the Government for over a decade.

49. In the absence of genuine cooperation on the part of the Government and the total absence of progress in the application of this convention, the Committee on the Application of Standards has noted in a special paragraph of its report the continued failure of the Government of Myanmar to implement the Convention. Both the Committee on the Application of Standards and the Committee of Experts have strongly urged the Government of Myanmar to adopt, as a matter of urgency, the measures and mechanisms necessary to ensure, both in legislation and actual practice, the right of workers to establish, without previous authorization, and to join, subject only to the rules of the organizations concerned, first-level unions, federations and confederations of their own choosing for the furtherance and defence of their interests and to ensure the right of such organizations to affiliate with international organizations. The Government of Myanmar was invited by the Committee on the Applications of Standards to consider appropriate forms of ILO assistance to ensure that real progress was achieved by 2000 in the observance of its obligations under this fundamental convention.

V. THE GENDER PERSPECTIVE

A. Violence against women

50. In a previous report (E/CN.4/1999/35) the Special Rapporteur identified some of the problems that affect especially women and children in Myanmar and expressed his concern over the situation. Because rape and abuses are a regular feature in the mode of operation of the army in its campaign of incursions into the insurgency zones or else in the relocation sites, women and children continue to seek refuge within and outside the country. As those abuses continue to devastate the lives of many, they migrate. Many women are reported to fall through the safety net of refugee camps along the borders and into the hands of traffickers or become victims of other forms of exploitation. Recent reports received by the Special Rapporteur indicate that such abuses and their consequences afflict women from several ethnic groups in general and the Rohingyas in particular.

51. As an ethnic group, it is said that the Rohingyas continue to suffer from the consequences of discrimination and gross abuses. They practice Islam. Many generations ago they migrated from East Bengal. They are denied citizenship, as explained in the Special Rapporteur's previous reports. While Rohingya women, men and children are all affected, the women are at particular risk of exploitation

by traffickers luring them into becoming sex workers or to "sweatshops" working as underpaid labour .

52. The Special Rapporteur's attention has been drawn to the interview of a 19-year-old educated Rohingya woman who complained that "the major problem is rape. Rape is very common. We are not respected. That is why women are too afraid to leave their homes and even work outside. Often the military kidnap girls and take them to their camps. They are only released after being gang raped ... and assaulted."

53. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), six major circumstances constituted the "push factor" for the outflow some years ago of the Rohingyas from Myanmar: (1) the lack of citizenship and, by extension, nationality rights; (2) imposed restrictions on movement by the Myanmar authorities; (3) forced labour and portering for the army; (4) compulsory food donations, extortion and arbitrary taxation; (5) land confiscation or relocation; and (6) deliberate food (rice) shortages in combination with high prices. These factors, coupled with systematic human rights violations and imposed underdevelopment, led to the mass exodus of Rohingyas.

54. The General Assembly, in resolution 49/166, defined the practice of trafficking as the "illicit and clandestine movement of persons across national and international borders, largely from developing countries and some countries with economies in transition, with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations from the profit of recruiters, traffickers and crime syndicates, as well as other illegal activities related to trafficking, such as forced domestic labour, false marriages, clandestine employment and false adoption".

55. The Special Rapporteur on violence against women, its causes and consequences, transmitted to the Government of Myanmar last June information on alleged instances of violence against women and, in particular, alleged violations of the Convention on the Elimination of All Forms of Discrimination against Women, the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, and Protocol II Additional to the Geneva Convention.

56. Examples of the cases that have been brought to the attention of the Government of Myanmar by the Special Rapporteur on violence against women, include the following: Naw May Oo Paw, who was forced to pay soldiers with rice and other food to avoid working as a porter; the wives of Bo Pha Palaw Pho and Bo Kyaw Hair, two Karen National Union leaders, forced to carry extraheavy loads for the army to the point of becoming unconscious; Nam Nu, who was allegedly kidnapped by MI officers and later beaten during interrogation; and Mugha Lwee Paw, who was allegedly arrested twice by soldiers and tortured.

B. Forced labour

57. There are many reports of forced labour of women. Women are said to be regularly taken from their homes and forced to undertake manual labour for the army. This labour involves cooking, cleaning, digging ditches, building bridges and roads, and carrying heavy loads. Moreover, they are allegedly beaten if they are unable to work or become tired; they are left behind in the jungle if they become unconscious from beatings or fatigue and are malnourished.

C. Arbitrary detention

58. Many reports indicate that police and intelligence officers use rape and sexual harassment in order to extract information from women in detention. Women are allegedly beaten, starved, and kept in solitary confinement while in detention.

A. Conclusions

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Report to the Commission on Human Rights, March 1999

UNITED NATIONS

Economic and Social Council

Distr. GENERAL

E/CN.4/1999/35

22 January 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Fifty fifth session

Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS
IN ANY PART OF THE WORLD

Situation of human rights in Myanmar

Report of the Special Rapporteur, Mr. Rajsoomer Lallah, submitted in accordance with Commission on Human Rights resolution 1998/63

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Introduction

1. The present report is submitted pursuant to paragraph 5 of Commission on Human Rights resolution 1998/63, adopted without vote on 21 April 1998, in which the Commission on Human Rights requested the Special Rapporteur to submit a report at its fifty fifth session.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

2. The Special Rapporteur wishes to recall that, since his appointment in June 1996, he has yet to be allowed by the Government of Myanmar to see the situation on the ground, despite the repeated requests of the General Assembly and the Commission on Human Rights that he have direct access

to the Government and people of Myanmar.

3. In the meantime, the Special Rapporteur, through his missions and consultations, has received much assistance and information from governmental, intergovernmental and non-governmental sources. He has further received information from individuals who have personal knowledge of the situation in Myanmar. He has also received several well-documented reports describing the situation in Myanmar, particularly in relation to the matters over which the General Assembly and the Commission on Human Rights have expressed concern.

4. The Special Rapporteur submitted an interim report (A/53/364, annex) to the General Assembly at its fifty-third session.

5. While at Headquarters to present his report, the Special Rapporteur met with several representatives of Governments and non-governmental organizations and also private individuals who imparted their views and information on the situation of human rights in Myanmar.

6. In his continuing effort to obtain the most accurate and up-to-date information on the situation of human rights in Myanmar, the Special Rapporteur visited Thailand in December 1996 to assess that situation in the light of information gathered from newly displaced persons from Myanmar living in refugee camps along the Thai-Myanmar border. The findings of the mission are reflected in section III of this report.

7. The present report is based upon information received by the Special Rapporteur through 31 December 1998. The report is to be read in conjunction with the Special Rapporteur's report to the General Assembly; it updates certain matters discussed before the General Assembly while treating some issues not addressed there.

II. THE EXERCISE OF CIVIL AND POLITICAL RIGHTS

A. Measures adversely affecting democratic governance

8. In his report to the fifty-first session of the General Assembly (A/51/466), the Special Rapporteur stated that the repressive political climate in Myanmar since 1990 had made it virtually impossible for opposition parties to function and they had been severely hampered through constant repression and arrests, with a number of members of Parliament in prison and others in exile. Two years later, the Special Rapporteur continues to receive reports indicating that in Myanmar political parties in opposition continue to be subjected to intense and constant harassment by the regime with a view to restricting their activities.

9. This harassment and the arrests increased during September 1998 when 200 representatives of the National League for Democracy (NLD) and elected representatives from various constituencies and more than 650 party members were arrested by the authorities following NLD's attempts to convene a parliament comprising representatives of the country's various ethnic groups in accordance with the results of 1990 general election.

10. On 6 October 1998, the United Nations High Commissioner for Human Rights issued a press release in which she stated the following: "I have been following with increasing concern the intensification of repression against Myanmar's political opposition over the last few weeks.

Recently, over 200 members of the National League for Democracy (NLD) have been arrested or detained, while NLD leader Aung San Suu Kyi has been subjected to repeated harassment. Further, conditions of detention in the country fall far short of international standards, and a number of prisoners are reported to have died while in custody. "It is clear from the Commission of Inquiry established by the International Labour Organization that forced labour continues in Myanmar.

Meanwhile, there also appears to be an official policy of forced displacement of ethnic minorities, which has resulted in large numbers of internally displaced and refugees in neighbouring countries.

"I raised these issues with the Foreign Minister of Myanmar, U Ohn Gyaw, during a meeting in New York on 23 September but received no satisfactory response. I take this opportunity to call on the

Government of Myanmar to guarantee the rights of freedom of movement and association of all citizens and to accelerate the process of national reconciliation leading to the enjoyment of all human rights. I hope the people arrested or detained for political reasons will be released and allowed to express freely their views and opinion and demonstrate peacefully. "I urge the Government to establish a constructive dialogue with the United Nations system, including the human rights mechanisms, in the effective promotion and protection of human rights in the country. Regrettably, the authorities have failed to respond to consistent requests to allow the Special Rapporteur on the situation in Myanmar, Rajsoomer Lallah, to conduct a field mission. I reiterate my support for Mr. Lallah's efforts to fulfil his mandate and again request the Government to cooperate with him and allow him to have direct contacts with the people of Myanmar."

11. On 7 October 1998, one day following the High Commissioner's statement, the State Peace and Development Council (SPDC) continued its policy of restricting the legitimate activities of members of political parties by arresting 54 NLD members. According to a statement made the same day by Myanmar authorities, the 54 persons were distributing leaflets calling for the convening of the parliament and support for the NLD. According to the authorities, these groups were also in collusion with illegal organizations within the country and abroad.

12. On the same day, the High Commissioner for Human Rights issued a second statement stating the following: "The latest detentions of opposition activists in Myanmar are very worrying, indicating that the Government continues to ignore basic human rights standards and the concern of the international community. "Yesterday I deplored the intensifying wave of repression against Myanmar's political opposition. I reiterate in the strongest possible terms my call to the Government of Myanmar to release all political prisoners and to guarantee its citizens all fundamental human rights. I also urge the Government to undertake a process of reconciliation with the opposition and to cooperate fully with the human rights mechanisms of the United Nations."

13. On 23 October 1998, the Chairman-Rapporteur of the Working Group on Arbitrary Detention together with the Special Rapporteur on torture of the Commission on Human Rights addressed a letter to the Minister for Foreign Affairs of Myanmar in which they referred to the specific case of Dr. U Saw Mra Aung. The letter states the following: "We wish to draw Your Excellency's attention to information we have received concerning the situation of Dr. U Saw Mra Aung, an 80-year old medical doctor and an elected member of Parliament, who was allegedly arrested on 6 September 1998. In view of his old age, the source is particularly concerned about his health while in detention. It is also reported that on 7 October 1998, the State Peace and Development Council announced that 54 people had been arrested in connection with a conspiracy to 'incite unrest' by members of the National League for Democracy and students said to be allied with foreign organizations. It is alleged that some of those detained before the 7 October press conference were severely beaten during interrogation, and that they may not be receiving such medical assistance as they might require as a result."

14. On 3 December 1998, the Permanent Representative of Myanmar to the United Nations Office at Geneva responded to the letter by stating the following:

"I have since been informed by the authorities concerned in Myanmar that the person under reference in your communication, Dr. Saw Mra Aung, was not arrested as alleged. He is comfortably accommodated at the government guest house where he is accorded due courtesy and respect. Dr. Saw Mra Aung has unlimited access to his family. On 26 October 1998 and again on 10 November 1998 he was chauffeured to his residence for overnight reunions with his family."

15. Myanmar officials claimed in numerous interviews and press statements that the elected members of Parliament and other NLD members were not arrested but were instead called for questioning and were treated as guests in government guest houses. In a news briefing held in Yangon on 22 November 1998, Lieutenant Colonel Hla Min stated that "arrangements were made for NLD party members and elected representatives from various constituencies to take up temporary

residence at State guest houses in their respective areas from 6 September onwards. A total of 200 NLD representatives and 651 party members were included in these arrangements."

16. According to the same article, 63 NLD representatives and 321 party members who undertook not to participate in such "illegal activities" were returned to their homes. However, the Special Rapporteur has no information on the fate of the remaining over 400 NLD representatives and party members, their place of custody and health situation.

17. Since November 1995, when the NLD leaders withdrew from the National Convention, there has been increasing harassment of the party by the military regime, including arrests of hundreds of party members over the last six months. In December 1998, almost all of the members of the organizing committees in the states, divisions, townships, wards and villages have been taken into custody illegally for no apparent reason and they are unable to fulfil their obligations and duties. Most of these elected parliamentarians have added responsibilities as either chairman or secretary of the organizing committees in the townships. The Special Rapporteur observes that the SPDC is illegally arresting and detaining numerous members of the NLD, including elected representatives who have in no way violated any law. The Special Rapporteur further wishes to note that keeping people in so-called "guest houses" against their will or under the threat that their detention will continue unless they desist from political activities or abandon membership of the party or of their seat in Parliament is no more than a euphemism for arbitrary imprisonment in violation of article 9 of the Universal Declaration of Human Rights, as more fully elaborated in article 9 of the International Covenant on Civil and Political Rights.

18. Aside from the arbitrary arrests, NLD members have been subjected to intense and systematic harassment. It is reported that over the last six months, members of the party have been constantly intimidated by local authorities as well as by armed forces personnel. Their houses are under constant surveillance. Many members of political parties have reportedly been evicted from State owned apartments where they had lived for many years. The harassment of the NLD and the pressure under which its members are living have led some of them to resign. Such resignations are publicized in the Government-controlled newspaper, New Light on Myanmar. As a further form of harassment, a concerted effort was made by local authorities to remove all signs of an NLD presence on main roads or at any place where they might be exposed widely to the public. As a result of all these repressive measures, virtually all the branch offices are closed.

19. The resignations of NLD members and closures of NLD offices are widely disseminated in the media, in terms that are almost identical in nature and matter except for the particulars regarding the address, department, and number of people. The following are some examples: "It has been learned that the entire township Executive Committee [EC] and members of the National League for Democracy [NLD] party of Ponnagyun Township [in Arakan State] have resigned and the township branch of the NLD was dissolved at their own request on 16 October 1998." Source: Rangoon TV Myanmar Network in Burmese, 1330 GMT, 11 November 1998. "It has been learned that the Executive Committee [EC] members and all members of Minbya Township National League for Democracy [NLD] in Arakan State have tendered their resignations and dissolved the township NLD out of their own volition on 11 November 1998." Source: Rangoon TV Myanmar Network in Burmese, 1330 GMT, 25 November 1998. "All members of the Executive Committee [EC] of the National League for Democracy [NLD] in Kyunhla Township, Sagaing Division, have resigned of their own volition and disbanded the NLD office in Kyunhla on 27 November [1998]." Source: Rangoon TV Myanmar Network in Burmese, 1330 GMT, 3 December 1998. "All Executive Committee [EC] members of Mong Yawng Township National League for Democracy [NLD] in Eastern Shan State resigned from the party and the township office of the NLD was dissolved on 30 November." Source: Rangoon Radio Myanmar in Burmese, 1330 GMT, 9 December 1998.

B. Prison conditions

20. The current Special Rapporteur has not been able to visit Myanmar. Given the fact that the former Special Rapporteur was denied access to prison cells and could not meet with any detainee while visiting Myanmar, and given the fact that the Government of Myanmar rejected the International Committee of the Red Cross (ICRC) standard requirements for visits to places of detention (i.e. that it meet prisoners in private, have access to all prisons and be assured of repeat visits), the Special Rapporteur can only rely on the complaints of former detainees such as those with whom he met while in Thailand in the course of his recent visit. The testimonies gathered from three former detainees strongly indicate that Myanmar authorities are unwilling to open their jails to public scrutiny and that prison conditions fall far below minimum international standards established by the United Nations.

21. Prisoners are said to be denied adequate food (in amount and quality) and health care, to be housed in unsanitary and degrading conditions and subjected to cruel disciplinary practices or torture.

22. Numerous allegations, often in considerable detail, have been received alleging that members of the Myanmar military, intelligence and security services and police continue to torture persons in detention or otherwise subject them to cruel, inhuman or degrading treatment and punishment. Such treatment seems to be routinely employed during the interrogation of persons who have been arbitrarily arrested. Many former political detainees testified to having been put into leg irons and beaten with canes, sometimes to the point of unconsciousness. Testimonies from reliable sources indicate that detainees are very often forced to sleep on cold cement, and that many of them suffer from sickness and serious diseases. Cells are often overcrowded and prisoners are provided with inadequate hygiene or medical care.

23. Bribery and corruption are said to be a major problem in Myanmar prisons. Although families can bring food and medicines to their relatives, such supplies are reportedly often confiscated by the prison authorities.

24. The Special Rapporteur was told that hundreds of prisoners have been forced to work under extremely harsh conditions on infrastructure projects without being released at the completion of their duties. It has also been alleged that convicts are taken from prison to serve as porters, often shortly before their sentences are to expire, and then forced to work under very poor conditions long after they should have been released from prison. Apparently, prisoners can avoid going to such camps if they pay large bribes to the prison authorities. Persons released from prison stated that during their detention they were not allowed to have any reading material, including the State-run newspaper, or material with which to write, or non-political literature; they were reportedly also denied access to radios.

III. MISSION TO THAILAND

25. The Special Rapporteur has previously addressed the situation in the ethnic minority States, especially those along the Myanmar/Thai border, in his reports to the General Assembly (A/51/466, annex, paras. 37-51 and A/52/484, annex, paras. 69-142) and to the Commission on Human Rights (E/CN.4/1997/64, paras. 65-100). His initial concern related to reports of military attacks and looting on civilian settlements, forced relocation of the ethnic groups, forced labour for development and industrial projects and portering for military operations. In his last report to the Commission on Human Rights, the Special Rapporteur called upon the Government of Myanmar to take immediate steps in order to put an end to the forced displacement of persons, to prohibit the practice of forced labour and forced portering and to prevent arbitrary killings, and confiscation of property in the ethnic minority areas.

26. The Special Rapporteur visited Thailand in order to inquire into the current situation of the displaced persons on the border of Myanmar with Thailand, and on the human rights violations committed against ethnic minorities and others who had been subjected to various forms of repression by the Government. The itinerary of the Special Rapporteur included Bangkok, Kanchanaburi, Mae Sot, Chiang Mai, Mae Hong Son and camps in the Tak province with large populations of displaced persons. During these visits he was received by representatives of the Thai authorities and met with representatives of international non governmental organizations and representatives of several ethnic groups. During his visit, the Special Rapporteur received the testimonies of a total of 50 persons selected from among newly arrived persons from Myanmar, mostly Karen, Shan and Karenni. The information and views obtained in the course of his visits are reflected below under the relevant subject headings.

A. The problem of displacement

27. Internal displacement in Myanmar represents a particular case of human tragedy resulting from conflict between the Government and different ethnic groups. It is estimated that over half a million displaced persons, living in Mon, Karen, Shan and Karenni States, are in need of humanitarian assistance. Since the independence of Myanmar in 1948, the country has suffered from unresolved conflicts between most of the ethnic minorities and the central authorities in spite of a number of ceasefire agreements. These conflicts precipitated insurgencies in several parts of the country which have resulted in large numbers of internally displaced persons and a considerable number who have sought refuge in neighbouring countries, particularly Thailand, Bangladesh and India.

28. The Special Rapporteur is not in possession of independently verified statistics on the number of displaced persons in Myanmar, but local and international NGOs estimate the number in Karen State to be between 100,000 and 200,000. Unofficial estimates place the current number in Shan State to be over 300,000 and in Karenni State, 70,000. Finally, there are reportedly about 40,000 persons displaced in Mon State.

29. By the end of June 1998, the refugee camp caseload of displaced persons from Myanmar living in Thailand was 112,841. The breakdown by ethnic group was as follows: 86,823 Karen, 12,665 Mon, 13,353 Karenni. In addition, there were a number of Shan displaced persons who were not living in refugee camps but were scattered mainly throughout the north of Thailand. It is generally believed that tens of thousands of people from Myanmar have entered Thailand during the last three years.

B. The main causes of displacement

30. The problem of displacement in Myanmar is complex and open to so many different interpretations that a comprehensive assessment is difficult. The causes of displacement are numerous and differ from one region to another, although certain common features and trends can be discerned.

31. The role of the army, in this context, is paramount. Since independence, it has exercised a strong influence over the governing of the ethnic states. Many Karen, Karenni and Shan do not perceive the army as a national army, and soldiers, particularly ethnic Burmese, generally behave towards the local population as if they were enemies.

32. Violence against civilians would appear to have been a fundamental component of the overall military strategy of the Myanmar army. That strategy is designed first to secure resources from the local population, in particular food, combatants and workers, and second to weaken the resource base of insurgent groups and their capacity to govern. To this latter end, the army not only has undertaken systematically to destroy most of the villages but also, as the local economy is largely based on agriculture, forcibly to displace the rural population so as to disrupt agricultural production.

33. In flagrant violation of the basic rules of humanitarian law, civilians living in rural settlements have been attacked. In some cases, this has resulted in massacres, in others in disorderly flight to safety, often separating families. Those who are captured are often subjected to rape and arbitrary killing, or are held captive to grow food for the army, or made to provide forced labour or portering for the army.

34. After these general observations, it is appropriate to specify the main causes of displacement. These are counter insurgency operations, forced labour and portering restrictions on farmers and land confiscation. Each is discussed separately below. Displacement is also attributed to major development projects undertaken by the Government in the process of which large numbers of persons are removed from the lands designated for the projects without being assisted in relocation or being appropriately compensated.

1. Counter insurgency operations

35. Counter insurgency operations by the army have had an important impact on the displacement of the population, both with regard to the number of persons displaced and the methods employed.

These operations have also contributed to the massive uprooting of the rural population by deliberately relocating large numbers of civilians from numerous villages as part of the military strategy against the insurgents. Despite a number of ceasefire agreements signed by the Government and representatives of ethnic groups, the army is still engaged in counter-insurgency operations in Karen, Shan and Karenni States.

36. Although the practice of forced relocations by the military as a means of controlling the population in the ethnic regions is not new, the scale of the relocations increased significantly after 1996. The victims of displacement are mostly peasants, including members of ethnic groups such as the Karen, Karenni, Shan and Mon, who live in areas of insurgency and are victimized by counterinsurgency activities or are caught in the crossfire between the army and the insurgents.

37. Numerous testimonies received by the Special Rapporteur indicate that the civilian population living in or near the combat zone is generally forced to move: in these "grey zones" (zones controlled or influenced by the insurgents) the armed forces often resort to searches, destruction and burning of houses, and confiscation of property and food to force the people to move, temporarily or permanently. Testimonies indicate that no distinction between insurgents and non-combatants is generally made and that the inhabitants of these zones are subjected to indiscriminate torture, beatings and arbitrary arrests by the army.

38. In order to cut the main links between the insurgent groups and the civilian population, entire communities living in the border area between Myanmar and Thailand are moved to relocation sites which are subject to strict military control. Expulsion orders are issued by the army coupled with the warning that anyone trying to remain in their homes will be shot on sight.

39. The following information provided to the Special Rapporteur is illustrative of the widespread recourse to forced relocation and the consequent violation of most basic rights. Central Shan State has witnessed one of the largest forced relocation programmes, which still continues. From March 1996 the army has ordered village after village in eight townships (Larng Kher, Murng Nai, Nam Zarng, Lai Kha, Murng Kerng, Kun Hing, Ke See and Murng Su) to move to a total of 45 relocation sites. The estimated number of people relocated is over 100,000 from over 600 villages. When relocated, the population is left to fend for itself to find work, food and sanitary and education facilities. In Karenni State, throughout June and July 1996, orders were given to more than 100 villages located between the Pon and Salween Rivers instructing villagers to move to relocation sites near army camps in Sha Daw and Ywa Thit townships. The estimated number of people affected was 20,000-30,000, most of them ethnic Karenni. The army's purpose is apparently to isolate the population in that area from Karenni insurgents of the Kayinni National Progressive Party (KNPP).

Army officers are reported to have warned that those who remained in the deserted villages would be considered insurgents or "enemies".

40. In addition to displacement caused by deliberate action, many persons are said to have left for fear of being attacked when the military fronts move close to their places of residence. To avoid losing their homes and sources of livelihood, many communities have resisted displacement as long as possible and have developed different strategies for survival. Several displaced persons living in camps in Thailand described to the Special Rapporteur how people in their village would hide in the forest and return when it was safe to tend to their farms. As the situation worsened, many families fled the village. Since fighting was spreading to different parts of the district, they did not know where to go to find shelter and after one week they returned. The village was finally attacked and the houses destroyed.

2. Forced labour and portering

41. The second reason has to do with the particular phenomenon of forced conscription of civilians into compulsory labour duties for the military authorities. No pay is given for such labour and the period of service can last for months. This practice disrupts family life and prevents people from carrying on their daily work in order to earn a living.

42. The Special Rapporteur received reports that villagers throughout Shan State are being forced by the SPDC to work without payment. The people most seriously affected are those who have been forcibly relocated, as they have been forced to leave their land and become wage labourers and thus cannot afford to work without pay for the military.

43. It is common practice for the military to force villagers to go and work on military bases, either for constructing or maintaining barracks, bunkers or fences, or performing menial tasks like cleaning, weeding, and fetching firewood or water. Even children are forced to do this kind of work: on 29 May 1998, SPDC troops are reported to have forced 10-15 boys between the ages of 14 and 16 to work at the military bases of LIB 524 and IB 246. They were not fed, and were even beaten up by the soldiers.

44. The Special Rapporteur has received reports that villagers are being forced to grow food for the army. In June 1998, villagers in Kengtung are reported to have been forced by the SPDC to grow chili peppers, beans and garlic on land that was confiscated from them. And on 11 July, SPDC base LIB 102 apparently ordered the civilian population to provide labourers for weeding soya bean and corn farms owned by the military in Murng Pan. Ten persons from each village, from some 15 villages each day, had to bring their own food and tools. Villagers of Kengtong, Murng Nai, said they had been forced in September 1998 to plant yellow beans for the army, then tend the plots and do weeding and fencing for troops at local bases.

45. Throughout 1998, The Special Rapporteur received reports of villagers from Murng Pan, Larng Khur, Murng Nai, Murng Ton and Nam Zarng being forced to work for the army for periods of up to two weeks splitting rocks near the Salween River crossing of Ta Sarng in Shan State. The battalions concerned were IB 225, IB 64, IB 65 and LIB 333. The rocks were conveyed by the army to big cities like Yangon where they were sold for 12,000-15,000 kyats per truckload.

46. Since 4 July 1998, villagers from the Kengtong area are reported to have been forced to drive their oxcarts to carry teak lumber from Kengtong to the SPDC military base of IB 43 at Kunhing. During July and August 427 oxcarts were used.

47. Since April 1998, villagers in 21 villages in the Nam Kham area of Northern Shan State, bordering on China, are reported to have been forced to work on a dam over the Nam Mao River.

48. Throughout 1998, the SPDC military are reported to have been taking porters from the main towns throughout central and southern Shan, where the Shan resistance is operating. The SPDC had been sending out regular military patrols from its bases around the area, each time demanding groups

of porters from the civilian population. The households provided porters on a rotation basis, and if someone could not go, they were made to pay 8,000-10,000 kyats to hire a replacement.

3. Restrictions on farmers

49. Because of the massive displacement of the population, farming has apparently been drastically reduced. This has led to food shortages among the rural population generally and has provoked voluntary displacement to other areas in search of assistance and security.

50. The army is reported to be increasingly placing restrictions on the kinds of crops grown by the local farmers, forcing them to grow crops for the troops which they will either consume themselves or sell. On 4 May 1998, in Murng Pan, IB 66 is reported to have ordered farmers to grow no more than a small amount of garlic, whereas farmers had traditionally grown this crop for export to Thailand. They were told they had to grow soya beans for the army instead. On 23 June, IB 286 in Kaesee told villagers from Murng Nawng and Murng Nang (who had been forcibly relocated) that they needed licences to grow rice and if licenced, they had to give half their rice crop to the army. If they had no licence, their rice fields would be confiscated. On 2 July, SPDC IB 99 in Larng Khur is reported to have ordered all sugarcane farmers to clear two thirds of their sugarcane farms and grow soya beans and yellow beans for the army instead. One farmer who had apparently been granted permission to continue farming as usual was reported to have been beaten, kicked, tortured and then shot to death on 3 August 1998. In September, the villagers of Kengtong, Murng Nai, were said to have been forced to cultivate yellow beans for the SPDC troops at local bases.

4. Land confiscation

51. Another important cause of displacement relates to land confiscation. The majority of the population lives by agriculture. Farms tend to be small and constitute the only income for families. Moreover, land is culturally part of a person's identity. The Special Rapporteur was told that very few legal titles to land exist. This permits the military to confiscate the land that had traditionally belonged to peasants and farmers living in Karenni, Karen and Shan States and to redistribute it to military officials and soldiers.

52. Since June 1998, the authorities are reported to have issued orders for the confiscation from the people in Tachilek of 1,000 acres of land stretching along the Tachilek-Kengtung main road. The confiscated land has been bulldozed, divided into small patches and sold to those who can afford it. People from nine villages have been affected. On 4 June 1998, the Golden Triangle Military Command Commander ordered LIB 422 to confiscate 13 plots of land and rice fields owned by villagers of King-Ka in Zone 2 in Kengtung to expand the military base. The villagers were given a small plot of land each to build a house on, but they had to buy it. They were still forced to pay their rice quota to the SPDC even though their land had been taken from them.

53. While development and industrial projects such as railway construction, and the creation of tourist attractions are being carried out in areas inhabited by minorities, many people are having their lands confiscated without any compensation and are forced to move to designated sites.

C. Patterns and consequences of displacement

54. The Special Rapporteur has ascertained from his contacts with those who have sought refuge in the camps on the Thai side of the Thai Myanmar frontier that since 1996, there are two distinct categories of internally displaced persons in the ethnic States: the "displaced" and "dispersed". The first category consists mostly of families who were forced to go to relocation sites or army camps, while the second category includes persons who instead fled to the mountains or the jungle, trying to avoid the main roads and to hide from the military. It is much more difficult to identify the dispersed, since they are not concentrated in a group but are literally dispersed throughout the country. While visiting the camps, the Special Rapporteur spoke with both categories of displaced persons who

subsequently fled to Thailand, and in the context of the present report the term "internally displaced" implies both categories.

55. Testimonies received by the Special Rapporteur, as well as observations made by representatives of non-governmental organizations, indicate that the victims of displacement are mostly villagers and farmers who were living in remote areas of Karen, Shan and Karenni States. Most of them have not been officially registered and do not possess any identification cards or other documents.

56. Cases of forced evictions seem to occur with great frequency and as a matter of policy. All the people interviewed by the Special Rapporteur stated that they were given at most one week's notice to move and were told that they would be shot if they did not comply. They were forced to leave their land, their crops and most of their animals. Much of the property was reportedly immediately stolen or confiscated by the army. In some cases, there was adequate time to prepare for departure, so that families or even entire communities could leave together. If not, or if attacked, they had to flee in a disorderly manner, sometimes with the husband, wife and children going in different directions.

57. The internally displaced persons in Myanmar rarely flee in large numbers. They usually move in small groups of a few families or individuals. The areas of expulsion are numerous and spread throughout the country, including in the border areas with Thailand. The displaced's own perceptions of where food and security might be found are determining factors in deciding upon the destination of their flight. The displaced usually move to neighbouring rural areas or to the jungle; others go directly to relocation sites and from there to camps located in Thailand, or directly to Thailand where they often join relatives or friends from the same area. In this regard, the Special Rapporteur was often told during the mission that the army is planting landmines in order to prevent the population from using the routes which take them to their paddy fields or to the Thai border. According to information received, each battalion in the front line area (along the Myanmar Thai border) was issued with about 200 landmines and ordered to plant them.

58. The two main considerations which led people to flee were security concerns and the need to have a source of livelihood. These could at times be contradictory concerns. On the one hand, fear of losing one's land constituted a motive for staying if the harvests were sufficient, while on the other hand, fear of attacks was a motive for departing. Conversely, the need to find a source of subsistence had to be weighed against the fear of being caught by the army after having been ordered to move to a relocation site.

59. Another problem affecting the displaced is the disintegration of families and communities. The Special Rapporteur noticed a large number of widows and orphans among the displaced in camps in Thailand. However, numerous communities have remained more or less together in spite of displacement and have maintained many of their cultural traditions. This helps to alleviate to some extent the acute problems of displacement and would no doubt facilitate the process of return to the areas of origin. However, very few returns to areas of origin seem to be taking place. Continued insecurity coupled with destroyed infrastructure suggest that displaced persons had compelling reasons for wanting to remain in the camps in Thailand.

60. As far as the security situation in the areas of return are concerned, reports continuously reaching the camps speak of, for example, forced labour and portering, arbitrary arrests, detentions and executions by the Myanmar military of persons suspected of sympathizing with insurgents, with no recourse to formal judicial proceedings. In addition, returnees were finding their homes destroyed and their land either burnt or occupied by the army. In such cases, the returnees had no recourse to justice, either because the judicial system did not exist or because it was not functioning independently. The displaced, moreover, had very few resources and means by which to return home. The infrastructure of entire villages had been destroyed and many homes levelled by warfare and looting. Finally, it would seem that the local authorities had no intention of dealing with the assistance and protection problems of the returnees.

61. The Special Rapporteur was told that, for the peasants who had lost their land, either because they had to sell it very cheaply before they fled or because it was destroyed or taken by the army, return is not possible. Where the armed conflict is continuing, return is also not an option.

1. The situation of the dispersed in the jungle

62. Following orders to leave their homes, many villagers avoid moving to relocation sites and usually move first to a nearby rural area or go to the jungle, trying to work in their fields during the day and returning for safety at night. They can remain in hiding for several months as long as they are able to find sufficient food to survive. These villagers live in fear that the soldiers will find them, especially in the dry season. It was reported, for example, that at the start of the dry season in 1998, local army troops shot on site at villagers hiding in the Mi Chaung Theit area.

63. Apart from the lack of security, the lack of food is clearly the main problem facing families living in the jungle. Families supplement their rice porridge by eating wild roots, leaves and fruit. Many families interviewed said that they could not cultivate their crop safely and that when they were discovered their fields and paddies were burned. As a result, without any source of income and without enough food to survive, they try to find their way to Thailand. In addition, people living in the jungle have limited access to health care. They have to rely on an insufficient and informal health-care network in the form of "mobile health teams", which provide medicines and vaccinations. However, it was reported that these mobile teams could not cover all the areas where the displaced hide and live.

2. The situation of the displaced in relocation sites

64. According to testimonies received, relocation sites, as well as the living conditions in the sites, may vary from one place to another. Displaced persons in refugee camps in Thailand describe the sites as either a large, empty stretch of land surrounded by fences or barbed wire and near a military camp or as the centre of a large village where the army has forced villagers to congregate. The military outpost is normally in the centre of the village.

65. No particular arrangements are made by the authorities to receive the new forced arrivals. There seems to be a food and a health crisis and a general lack of adequate housing and basic services. Villagers have to build their own makeshift huts and provide their own food. Family members living in the relocation sites are often requested to do various tasks for the army. Each family also has to provide one person to work for the army. They perform various duties such as building the fences, cleaning the compound or guarding the site. The interviews did not make clear to what extent facilities for education and access to health care, especially for children, are available.

Unemployment is a major problem in the relocation sites. The displaced are used to working their own land and it is difficult to start any sort of work to generate income. When they are able to find work, they are easily exploited. According to testimonies received, many displaced persons, including children, work as daily workers (porters), whose salaries are around US\$ 2 per week, for 12-hour working days. Others work in construction. Those who find such jobs are considered to be fortunate, since they have an income.

66. The villagers are not entitled to leave the compound without a pass, for which they have to pay. Their freedom of movement is extremely limited and, in all cases, subject to authorization from the local military battalion. Attempting to flee is said to be interpreted by the authorities as proof of participation in or sympathy with the insurgency and of an intention to report on the abuses committed by the army. Some are required to obtain safe conduct passes or pay high fees at checkpoints for a "permission" to leave. Other sources have reported incidents of women and children being shot at while fleeing in areas near the border with Thailand.

3. Special problems affecting women and children

67. Many of the displaced, in particular women and children, reported that they had been terrorized and subjected to inhuman treatment before taking refuge in Thailand. It was reported that Myanmar soldiers raped and abused women during incursions into the emergency zones or in the relocation sites. In some areas, women who work in the fields still face significant risks of being targeted and victimized.

68. The Special Rapporteur has noted the serious psychological problems facing women and children affected by the crisis. Abuses against women, especially in the course of violent events, reportedly ranged from having seen their children or husband killed to being raped and losing their home and means of subsistence. Interviews held in the course of a short visit to a village revealed that many had suffered from such abuses. It should be mentioned that cultural inhibitions linked to subjects such as sex and the serious social implications of rape and assaults on women compound the problem of lack of outlets for expression and foment deep hatreds.

69. Female-headed households were less able to become self-reliant and were therefore more in need of assistance. In some cases, they were assisted by other families, for example, in setting up shelters. The numerous children who had been orphaned or separated from their families constituted a particularly vulnerable group. In general, there was a willingness on the part of local families or other displaced persons to adopt the children, at least until their parents could be traced if they were still alive.

70. Some of the most serious problems the displaced and dispersed populations face are in the health domain, largely because of the lack of health services. Children are particularly affected by chronic malnutrition, malaria, diarrhoea and dysentery. The right to health is seriously jeopardized in those circumstances.

71. Displaced children living in the jungle suffer high mortality and malnutrition rates and their flight from their homes often puts them beyond the reach of any assistance or protection. Frequently, displaced children have witnessed the murder of their parents or the destruction of their homes. As a consequence, many children suffer from fear and parents, caught in the day-to-day struggle for survival, often have little energy to devote to caring for them.

72. Rather than attending school, many displaced children have had to help support their families. In any event, many schools are reported to have been destroyed or closed. Public education is officially free; however, many schools are under funded and parents have to pay tuition so that the school can operate. Many displaced children do not speak Burmese and have difficulties in communicating with their teachers. Many children who used to go to school in their native village and learned their native language have to restart their schooling upon arrival in the relocation sites because they are prevented from learning in their own language. This is not only a negation of sound pedagogical principles but a violation of the right to freedom of expression which includes the right to receive and impart information so necessary in the educational field.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

73. The Special Rapporteur has previously reported that Myanmar law and orders of the State Law and Order Restoration Council (SLORC) themselves violate basic freedoms, including the freedoms of expression and association. The Government of Myanmar continues to intimidate its citizens and prevents them from exercising their fundamental rights to freedom of association and expression by prosecuting persons for criminal and treason-related offences. The Special Rapporteur notes that many citizens are still being arrested for peaceful expression of their ideas. As mentioned above, political party leaders and their members are being held, for an undetermined period, against their will and without any charges being brought against them. Moreover, it is evident that the total State

domination of the media, together with the existence of a wide range of SLORC orders criminalizing freedom of expression, seriously undermines the exercise of this right as well as the right to freedom of association.

74. Conditions in Myanmar prisons fall short of international standards, i.e. the Standard Minimum Rules for the Treatment of prisoners, the Basic Principles for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

75. The non-acceptance by Myanmar of the customary ICRC procedures for visits to places of detention is highly prejudicial to the amelioration of conditions of detention in Myanmar.

76. The phenomenon of displacement would appear to be limited largely, if not exclusively, to ethnic minorities. The problem is not new and originates mainly from the absence of a political solution dating back to colonial times and before. The ceasefire agreements concluded in recent years are a beginning to a solution but are likely to be fruitless until serious and meaningful measures are taken to engage in a political dialogue which includes the ethnic minorities.

77. The army has been implicated in human rights abuses resulting in displacement. This is partly attributable to the fact that the armed forces constitute the only institution vested with law enforcement. The armed forces are occasionally involved in restoring public order, although no specific training is given for this task and those involved in such operations merely resort to the use of military equipment and military tactics. In such cases a number of provisions of international humanitarian law, such as article 17 of Protocol II Additional to the Geneva Conventions, which prohibits the displacement of civilian populations for reasons related to the conflict, are relevant and must be observed.

78. Impunity remains a very serious problem. Retaliatory massacres of villagers and massive human rights violations of civilians have occurred. In all these instances the right to life and security of the person, in particular of women and children, are violated. In addition, corruption, which is on the rise, is a serious problem particularly as law enforcement and the administration of justice are casualties of military rule.

79. As observed earlier, none of the displaced persons living in Myanmar itself or in Thailand will be able to return home immediately, as their houses and land have been destroyed or others have moved onto their land. Deeply embedded insecurity and fear also prevent return. Where return to the home areas becomes impossible, alternative solutions are required to ensure the basic rights to life, protection of personal security and from cruel, inhuman or degrading treatment, health, education and family unity, among others.

B. Recommendations

80. Since the situation of human rights in Myanmar is worsening and the repression of civil and political rights continues unabated, the Special Rapporteur feels bound to renew the detailed recommendations he made in paragraphs 7 to 97 of his last report to the Commission on Human Rights (E/CN.4/1998/70) and in paragraphs 61 to 63 of his interim report to the General Assembly (A/53/364).

81. In addition, in view of the ever growing humanitarian crisis in Shan, Karen and Karenni States, in particular, assistance to the displaced and other conflict-affected persons should become a priority for the Government.

82. Because the displaced and other conflict-affected persons have a wide variety of urgent needs, the Government should seek the assistance of the international community, through the United Nations system and its specialized agencies, governmental and intergovernmental organizations, as well as non governmental organizations, in assessing the nature and extent of the assistance needs and in responding to those needs in a rapid and flexible manner.

83. Clearly, the military solution that has been adopted by the Government in the ethnic areas has become a serious problem rather than a solution. A political solution in the ethnic areas in the

B. Myanmar women in public life

- C. The situation of refugee women
- D. Women and forced labour

IV. CONCLUSIONS AND RECOMMENDATIONS

- A. Conclusions
- B. Recommendations

Introduction

1. The mandate of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar has been described in each of the Special Rapporteur's previous reports to the General Assembly (annexes to documents A/47/651, A/48/578, A/49/594 and Add.1, A/50/568, A/51/466 and A/52/484) and to the Commission on Human Rights (E/CN.4/1993/37, E/CN.4/1994/57, E/CN.4/1995/65 and Corr.1, E/CN.4/1996/65 and E/CN.4/1997/64). The mandate, initially articulated by the Commission in its resolution 1992/58 of 3 March 1992 and extended most recently in resolution 1997/64 of 16 April 1997 (approved by the Economic and Social Council in its decision 1997/272 of 22 July 1997), required the Special Rapporteur to establish or to continue direct contact with the Government and people of Myanmar, including political leaders deprived of their liberty, their families and their lawyers, with a view to examining the situation of human rights in Myanmar and following any progress made towards the establishment of a constitution of democratic governance, the lifting of restrictions on personal freedoms and the restoration of human rights in Myanmar.

2. In its resolution 1997/64, the Commission called upon the Government of Myanmar to cooperate fully with the relevant mechanisms of the Commission, in particular the Special Rapporteur, and to ensure his access to Myanmar, without preconditions, in order to allow him to discharge his mandate fully, including through access to any person whom he might deem it appropriate to meet in the performance of his mandate; requested the Secretary-General to give all necessary assistance to the Special Rapporteur; and requested the Special Rapporteur to report to the General Assembly at its fifty-second session and to the Commission at its fifty-fourth session.

3. The priority concerns of the international community with regard to the situation of human rights in Myanmar are referred to in the resolutions adopted by the various competent organs of the United Nations over the past six years, in particular General Assembly resolution 52/137 and Commission resolution 1997/64, which are the most recent. These concerns may be summarized, in substance, as follows:

(a) The continuing violations of human rights in Myanmar, including extrajudicial, summary or arbitrary executions; killings of civilians; torture; arbitrary arrest and detention; deaths in custody; absence of due process of law, including trial of detainees in secrecy without proper legal representation; severe restrictions on freedom of opinion, expression, assembly and association; violations of freedom of movement; forced relocation; forced labour by children as well as adults, including portering for the military; abuse of women and children by government agents; and the imposition of oppressive measures directed in particular at ethnic and religious minorities;

(b) The absence of significant steps towards the establishment of democratic governance as expressed by the will of the people at the elections of 1990;

(c) The exclusion of the representatives democratically elected in 1990 from participation in the proceedings of the National Convention, the severe restrictions on delegates, including members of the National League for Democracy (NLD), who have withdrawn and subsequently were formally excluded from the sessions of the Convention and who were unable to meet or distribute their literature, the adoption by the Convention of a basic principle conferring on the armed forces (Tatmadaw) a leading role in the future political life of the State and the conclusion that the National Convention does not appear to constitute the necessary steps towards the restoration of democracy;

- (d) The restrictions on the freedom of expression, association, assembly and movement placed upon Daw Aung San Suu Kyi and other political leaders and the continued arrests and harassment of members and supporters of the National League for Democracy, trade unionists and students for peacefully exercising their right to freedom of expression, assembly and association, forced resignations of elected representatives, the continued attacks against Daw Aung San Suu Kyi and the closure of all universities and colleges following the student demonstrations in December 1996;
- (e) The forced relocation and other violations of the rights of persons belonging to minorities, resulting in a flow of refugees to neighbouring countries, and the continuing attacks on groups, resulting in death, destruction and displacement;
- (f) The violation of children's rights in contravention of the Convention on the Rights of the Child, in particular through the lack of conformity of the existing legal framework with the Convention, by the systematic recruitment of children into forced labour and by discrimination against children belonging to ethnic and religious minority groups.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

4. On 12 November 1997, the Special Rapporteur presented his interim report on the situation of human rights in Myanmar to the fifty-second session of the General Assembly (A/52/484, annex). While in New York, he met with several representatives of Governments and non-governmental organizations as well as individuals who imparted their views and information on the situation of human rights in Myanmar.

5. It will be recalled that since his appointment, the Special Rapporteur has sought the cooperation of the Government of Myanmar and has requested their authorization to travel to Myanmar in order, *inter alia*, to examine the situation *in situ* and to meet with appropriate government representatives as well as other persons relevant to the fulfilment of his mandate so as to ensure that the General Assembly and the Commission on Human Rights are presented with a comprehensive assessment of the situation of human rights in Myanmar.

6. It will also be recalled that, following the submission of the first report of the Special Rapporteur to the General Assembly in November 1996, the Permanent Representative of the Union of Myanmar expressed his disagreement with the assessment made by the Special Rapporteur. He indicated, however, that the Special Rapporteur would be authorized at an appropriate time to visit Myanmar. In April 1997, at the fifty-third session of the Commission, the Permanent Representative of Myanmar gave similar indications. Despite these statements, no steps have so far been taken by the Myanmar authorities to authorize such a visit. More recently, in November 1997, during the debate on the human rights situation in Myanmar at the General Assembly, Ambassador U Pe Thein Tin, Permanent Representative of Myanmar, while again challenging the assessment made by the Special Rapporteur, nevertheless reiterated in his intervention that the Special Rapporteur would have the opportunity to visit Myanmar at a time deemed appropriate. The Special Rapporteur regrets that there have been no developments on this issue and that, in the more than two years since his appointment, he has not been given the opportunity to visit the country as requested by the General Assembly and the Commission on Human Rights.

7. The Special Rapporteur understands that the criticism levelled by the authorities of Myanmar against the reports of the Special Rapporteur are based, in large part, on the ground that his reports "reflect mainly the views of those who are opposing the Government for reasons totally unconnected with the issue on human rights". It stands to reason that if the General Assembly and the Commission are to benefit in a meaningful way from a serious assessment of that criticism, it is essential that the Myanmar authorities agree to a visit by the Special Rapporteur to the country.

8. It must be noted that it is not the Special Rapporteur who is avoiding discussion of human rights complaints with representatives of the Government of Myanmar. On the contrary, it is precisely the

Government of Myanmar which refrains from doing so while continuing to refuse him direct access to the country and the people of Myanmar. The Special Rapporteur is only able to meet with people outside Myanmar, in particular the great number of displaced persons on the Thai side of the Thailand-Myanmar border areas and whose complaints the Special Rapporteur feels bound to reflect in his reports to the Commission and the General Assembly. The Special Rapporteur is firmly convinced that it is in the interest of the authorities themselves, in addition to that of the international community as represented in the United Nations, that such a visit should take place. This would also clearly demonstrate the commitment of the Government of Myanmar to cooperate with the United Nations in accordance with its obligations under the Charter.

9. Notwithstanding the absence of cooperation on the part of the Government of Myanmar, the Special Rapporteur has received much assistance and information from governmental, intergovernmental and non-governmental sources. He has also received information from individuals connected in one way or another with the situation in Myanmar. He has also received several well-documented

reports describing the situation in Myanmar, particularly in relation to the matters over which the General Assembly and the Commission on Human Rights have expressed concern. No less importantly, he has had direct contact with displaced persons along the Thailand-Myanmar border who have fled Myanmar and from whom he continues to receive information.

10. The present report is based upon information received by the Special Rapporteur up to 19 December 1997 and is to be read in conjunction with the Special Rapporteur's report to the General Assembly. The present report updates certain matters discussed before the General Assembly while treating some issues not addressed there. In response to operative paragraph 4 (a) of Commission resolution 1997/64, the Special Rapporteur has included a chapter on women based on such information as was available to him.

II. THE EXERCISE OF CIVIL AND POLITICAL RIGHTS

A. The reconstitution of SLORC

11. On 15 November 1997, the State Law and Order Restoration Council (SLORC) was dissolved and reconstituted as the State Peace and Development Council (SPDC), consisting of 19 members (SLORC Notification No. 1/97 dated 15 November 1997). The expressed purpose was to "ensure the emergence of an orderly or disciplined democracy" and to establish a "peaceful and modern State ... in the interest of all the national peoples". The former top four SLORC leaders, Senior General Than Shwe, General Maung Aye, Lieutenant-General Khin Nyunt and Lieutenant-General Tin Oo, retained their positions within the SPDC. In addition, Lieutenant-General Win Myint was appointed SPDC's Secretary Three. Other members include the Commanders-in-Chief of the Navy and the Air Force, and the 12 Army Regional Commanders. SPDC Notification No. 2/97, also dated 15 November 1997, established a 40-member Cabinet. Two new ministries, the Ministry of Military Affairs and the Ministry of Electric Power, were created. SPDC Notification No. 3/97, of the same date, announced the formation of a 14-member Advisory Group. Its members consist of the 13 former SLORC members who had lost their positions both within the regime and the Cabinet. The fourteenth member is Major-General Soe Myint.

B. Rights pertaining to democratic governance

12. In introducing his report to the General Assembly, the Special Rapporteur indicated that he had observed the beginnings of a positive attitude with respect to restrictions on political parties, especially in relation to the activities of the National League for Democracy (NLD) and its right to hold meetings. He welcomed the change on the part of the authorities. However, it would appear that this change is of a purely formal and limited nature given the virtually complete control which the

authorities seem to exercise over the venue of meetings, the measure of control over the agenda of the meetings, the strict limitations on the number of people allowed to attend, and the monitoring of the meetings, as the following paragraphs indicate.

13. On 27-28 September 1997, unlike previous years, the NLD was allowed by the authorities to hold a national convention, commemorating its ninth anniversary, at the residence of its General Secretary Daw Aung San Suu Kyi. About 600 delegates attended the two-day meeting and no arrests were known to have taken place. However, the Special Rapporteur received reports of a great number of NLD members who were denied access, by military intelligence personnel and riot police, to Daw Aung San Suu Kyi's compound. On 28 September 1997, some 30 NLD members were forced into trucks by the security forces, driven for an hour outside the capital and dropped off at the roadside in groups of two or three to make their way back.

14. It would appear that when the NLD requests permission to hold a meeting, authorization is granted only for the specific purpose for which the meeting is taking place; no other subject of discussion would appear to be allowed. On 10 October 1997, the authorities permitted the NLD to hold a religious ceremony and about 200 dignitaries attended the function at the General Secretary's home. Official Information Sheet No. A-0171, dated 16 October 1997, stated that "the relevant authorities have granted permission to the party to perform the traditional religious ceremony with the expectation that the ceremony will be a purely religious activity and totally none other".

15. On 28 October 1997, an NLD delegation consisting of Chairman U Aung Shwe, Co-Chairmen U Kyi Maung and U Tin Oo, and General Secretary Daw Aung San Suu Kyi planned to meet with local members of the NLD at their office in Mayangone township, north of Yangon. It was reported that the authorities took measures to prevent the meeting from taking place and, upon arrival, the NLD delegation found the office empty and returned home. According to SLORC Information Sheet Nos. A-0186 and A-0187, dated 28 October 1997, "the NLD representatives have also been advised (by the authorities) on grounds of security and stability reasons that such activities (rallies) should be held at Daw Aung San Suu Kyi's university compound".

16. Every time the authorities allow a meeting to take place, they also always specify the number of people allowed to attend. For the ceremony celebrating the ninth anniversary of the NLD, the authorization granted by the authorities dated 26 September 1997 limited the attendance to 300 participants. For the meeting celebrating the religious ceremony held on 10 October 1997, the authorities imposed a condition that the "number of invitees be kept at (100) persons" (see Official Information Sheet No. A-0171).

17. Finally, the meetings are closely monitored by the authorities and the people attending the meetings are systematically registered. On 24 November 1997, a ceremony to celebrate the seventy-seventh anniversary of the National Day was held at the residence of Daw Aung San Suu Kyi. On that occasion, it was reported to the Special Rapporteur that persons attending the ceremony had to wait for half an hour at the entrance to University Avenue, where the authorities checked their invitations, registered their names and took their photographs. It is understandable that there is a need for the authorities to facilitate the smooth flow of road traffic in that neighbourhood and to take appropriate measures to ensure that the persons attending the meeting conduct themselves in a manner which does not disturb public order. Nevertheless, the registration of persons attending and the taking of photos are entirely unnecessary. On the contrary, such actions are of a dissuasive nature and a clear restriction on the normal exercise of the basic freedom of assembly and personal freedoms.

18. Almost two years after her release from house arrest, the General Secretary of the NLD is reported to continue to face serious restrictions on her freedom of movement and her social and political activities, including constant harassment and vilification. The weekend addresses from her home were stopped, barricades have been erected in the street giving access to her home, and both she and the people who visit her are kept under constant police or military surveillance. According to

a statement released by SLORC on 24 October 1997, Daw Aung San Suu Kyi's movements will not be restricted provided she conducts her political activities "within the framework of the law. ... There is no government restriction on her movements. In fact, the authorities concerned have only requested her to be careful in her activities outside her compound for her own security, and conduct political activities within the framework of the law and within the established regulations governing such activities so that peace, tranquillity and stability will not be disturbed". This statement brings into sharp focus the question whether the relevant laws and regulations themselves violate the exercise of public freedom which a political figure should normally be able to exercise, with the protection, if necessary, of the State.

19. On 19 December 1997, the Permanent Mission of Myanmar to the United Nations Office at Geneva addressed, by name, to the officer assigned by the Office of the High Commissioner for Human Rights to assist the Special Rapporteur a note entitled "Daw Suu Kyi freely fulfils appointment schedule". The note gave a day-by-day account, from 11 to 17 December 1997, of the party members who either visited her or whom she visited, including two foreign diplomats. It is hoped that all restrictions on Daw Aung San Suu Kyi's public and other political activities, meetings and addresses will soon be lifted in order that she may exercise her civil and political rights freely and completely.

20. The initiation of a dialogue between the authorities and the NLD would appear to be having a difficult and uneasy beginning. On 18 December 1997, the SPDC, led by the Minister for Home Affairs, held a meeting with five Central Executive Committee (CEC) members of the NLD. The communication of 19 December 1997 referred to above included a note regarding the purpose of that meeting. According to the note, "the meeting was initiated by the Minister for Home Affairs with the aim of creating better understanding and cooperation between the NLD and the State Peace and Development Council". At the meeting, the SPDC "cordially advised the NLD CEC members to refrain from creating conditions in which the authorities concerned [would be] inevitably forced to take necessary actions against the NLD party". The Special Rapporteur has no information regarding the views of the representatives of the NLD with regard to the meeting.

21. From such information as is available to the Special Rapporteur to date, this was the first meeting between governmental representatives and the NLD since the Government was reconstituted on 15 November 1997. The last time NLD officials met government leaders was in July 1997, when NLD Chairman U Aung Shwe and two Central Executive Committee members met SLORC Secretary One Lieutenant-General Khin Nyunt to discuss political issues. In mid-September 1997, high officials of SLORC invited representatives of the NLD for discussions. The meeting did not take place, apparently owing to a difficulty which arose concerning the acceptance by the authorities of the General Secretary of the NLD as part of the delegation, which the NLD had decided should be the case. It is to be hoped that, in future, the NLD will be free to decide how its own delegations should be constituted.

22. The Special Rapporteur hopes that serious discussions will continue and will take place in accordance with the basic recommendations made both by the General Assembly and the Commission on Human Rights with regard to the initiation of a political dialogue with all political parties returned in the elections of 1990, including representatives of ethnic minorities.

23. It is perhaps too early to gauge the nature and extent of the change in the repressive policy vis-à-vis civil and political rights which has been pursued by the regime since the people made their choice in the 1990 elections. However, it is hoped that this most welcome change in attitude on the part of the authorities, however limited it appears to be at present, will continue and broaden the democratic space, permitting the will of the people to be realized. As the Special Rapporteur had occasion to observe in previous reports, the violation of the exercise of political rights is at the root of the violation of most human rights in Myanmar.

C. Extrajudicial, summary or arbitrary executions

24. In his last report to the Commission, the Special Rapporteur addressed the Government's decision to commute death sentences passed between 18 September 1988 and 31 December 1992 to life imprisonment. This year, the officer assigned by the Office of the High Commissioner for Human Rights to assist the Special Rapporteur received a communication from the Permanent Mission of Myanmar about an order issued by the SPDC on 1 December 1997 (Order No. 1/97), entitled "Commutation and remission of sentences". It states, inter alia:

"2. In respect of citizen prisoners undergoing death sentence, imprisonment for a term of an unlimited period, transportation for life or imprisonment for a term exceeding 10 years under orders passed by a civil court, military court or military tribunal, the respective sentences which they are undergoing shall be commuted and remitted as follows:

"(a) to commute death sentence to transportation for life (imprisonment for a term of 20 years) for those prisoners undergoing the said sentence;

"(b) to remit the imprisonment ranging from a term exceeding 20 years to imprisonment for a term of an unlimited period to imprisonment for a term of 15 years for those prisoners undergoing the said sentence;

"(c) to commute the sentence of transportation for life to a term of 10 years for those prisoners undergoing the said sentence;

"(d) to remit the imprisonment ranging from a term exceeding 10 years to a term of 20 years according to each offence to imprisonment for a term of 10 years according to each offence for those prisoners undergoing the said sentence.

"3. The Order, which has the force of law, applies to sentences passed before 15 November 1997.

"4. The commutation and remission of sentences under this Order shall not effect the period to which the prisoner concerned is ordinarily entitled."The Special Rapporteur notes with satisfaction that one of the early acts of the SPDC has been to commute death sentences, a sign of progress in the protection of the right to life.

25. The Special Rapporteur has had no indication that there exists an explicit or systematic government policy of encouraging summary executions. However, he is greatly concerned by the frequent allegations of arbitrary killings of civilians and insurgents by members of the Tatmadaw under a variety of circumstances, in violation of the right to life contained in article 3 of the Universal Declaration of Human Rights. The right to life has the character of *jus cogens* binding on all States under all circumstances, without any exception. The following allegations, among many others, exemplify the reports received by the Special Rapporteur:

(a) On 7 June 1997, three villagers from Wan Kyawng, Murngpan township, Shan state, were allegedly beaten to death by troops of Light Infantry battalion (LIB) No. 332 from Murngpan. The three reported victims were Loong Za Li, Loong Nan Ta, and Sai Ta;

(b) On 13 June 1997, five villagers from different villages in Murngpan township were reportedly beaten to death by LIB No. 332 troops from Murngpan. The five reported victims were Pannya from Nam Maw Mon village, Loong Pae from Nawng Harn village, Pa Kao from Wan Kung village, Su Nan Ta from Loi Noi village, and Su Na Ta from Long Kaeng village.

26. The Special Rapporteur on extrajudicial, summary or arbitrary executions has, during the last year, transmitted three communications to the Government of Myanmar regarding allegations of violations of the right to life. One communication concerned three Karenni living in a refugee camp in Thailand who were allegedly killed on 3 January 1997 by members of the armed forces. Another communication concerned three other refugees reportedly executed, on 28 and 29 January 1997, in refugee camps in Thailand by members of the Democratic Karen Buddhist Army (DKBA), a Karen militia group alleged to be backed by SLORC. The third communication concerned the arbitrary executions of two Shan farmers committed on 30 October and 13 November 1996 by the Tatmadaw. The replies of the Government and the observations of the Special Rapporteur on extrajudicial,

summary or arbitrary executions are contained in document A/CN.4/1998/68/Add.1, paragraphs 285-288.

27. Given the great number of allegations of summary or arbitrary executions, in addition to violations of other basic rights, as reported in previous reports of the Special Rapporteur, and given the continuing flow of similar allegations, particularly in areas where ethnic minorities live, it is of the utmost importance that the authorities conduct a high-level inquiry with broad terms of reference. It is true that most of the acts are alleged to have been perpetrated by the rank and file. Nevertheless, if the allegations are well-founded, the acts could not have been committed without the orders of field superiors.

D. Arbitrary detention

28. During 1997, reports indicated that NLD members and sympathizers, as well as other persons involved in political activities, continued to be constantly harassed and some of them arbitrarily arrested and detained when exercising their rights to freely express their views, to assemble or to hold rallies.

29. On 27 June 1997, the Special Rapporteur, together with the Special Rapporteur on the question of torture, transmitted an urgent appeal to the Government of Myanmar seeking clarification with regard to allegations of arbitrary arrest and torture (see E/CN.4/1998/38/Add.1, para. 255). The Special Rapporteur notes that the International Committee of the Red Cross (ICRC) is still not allowed uninhibited access to prisons and places of detention.

30. The urgent appeal referred to the arrest, on 13 June 1997, of two Executive Committee members of the Federation of Trade Unions-Burma and their families by the National Intelligence Bureau. U Myo Aung Thant, who is also a member of the All Burma Petro-Chemical Union, is said to have been detained along with his wife and children at Mingaladon international airport in Yangon. U Khin Kyaw, who is also an official of the Seamen's Union of Burma and an affiliate of the International Transport Workers' Federation (ITF), was reportedly detained along with his wife at his home. He had allegedly been tortured and his wife had allegedly been sexually abused during a previous detention in 1993. Fears had been expressed that U Myo Aung Thant and U Khin Kyaw and their detained family members might be subjected to torture or other ill-treatment during their present detention.

31. The urgent appeal also referred to reports received by both Special Rapporteurs according to which the following members of NLD have been detained since 13 June 1997: Khin Maung Win (also known as Ko Sunny, the official video-photographer for the NLD), Cho Aung Than (a relative of and former assistant to NLD General Secretary Daw Aung San Suu Kyi); Daw Khin Ma Than (the sister of Cho Aung Than); U Shwe Myint Aung (the husband of Cho Aung Than) and U Ohn Myint (an NLD adviser who is over 80 years of age).

32. On 24 July 1997, the Government of Myanmar responded that the seven above-named persons (correcting the names of Daw Khin Ma Than and U Shwe Myint Aung to Nge Ma Ma Than and U Swe Myint Aung, respectively) were said to have been found to be involved in terrorist activities. They had been planning bomb attacks on foreign embassies and residences of State leaders, the blowing up of transformers and the cutting of telephone lines, as well as the incitement of workers. Cho Aung Than was said to have been involved in making appointments for foreigners to meet Daw Aung San Suu Kyi. Myo Aung Thant, Nge Ma Ma Than and Cho Aung Than were said to have secret contacts with foreigners to send financial aid to Daw Aung San Suu Kyi. Myo Aung Thant, Nge Ma Ma Than, Cho Aung Than, Khin Maung Win and U Ohn Myint were said to have participated in producing and smuggling a film of Daw Aung San Suu Kyi in Kayin national dress for a charity show for refugees in Bangkok. The Government of Myanmar added that there was no ground for concern that the persons detained would face ill-treatment while in detention since torture

and other cruel, inhuman or degrading treatment were prohibited by relevant laws and regulations in Myanmar which were scrupulously followed by the authorities concerned.

33. On 4 November 1997, the two Special Rapporteurs transmitted another urgent appeal to the Government of Myanmar seeking clarification concerning eight persons, seven of whom are said to be leading members of the NLD, who were reportedly arrested by security forces in the night of 28/29 October 1997 (see E/CN.4/1998/38/Add.1, para. 256).

34. The arrests allegedly occurred following attempts to hold a meeting with Daw Aung San Suu Kyi at the NLD Mayangone township office on the outskirts of Yangon. The meeting was reportedly planned for the morning of 28 October, but security forces are said to have set up barricades, preventing it from taking place. A number of NLD supporters were reportedly arrested but subsequently released. The following eight persons are still believed to be detained: Daw May Win Myint (NLD Divisional Organizer and MP-elect from Mayagone), Khin Maung Myint (NLD Central Youth member and Secretary of Latha township), Daw San San (NLD Seikkan Divisional Vice-Chairman and NLD women's leader), Win Win Htay (member of the Yangon NLD Youth Division), U Soe Myint (Chairman of the Thaketa NLD), Dr Than Nyein (MP-elect from Kyauktan township), U Win Thaung (Chairman of the Mayangone NLD office), U Mya Thaung (landlord of the Mayangone NLD office). Some are also said to have had documents taken from them. They were reportedly arrested by security forces, including military intelligence forces, and taken to an unknown place. Fears had been expressed that they might be subjected to torture or other illtreatment while in detention.

35. Although the Government of Myanmar did not respond specifically to the letter sent by the Special Rapporteurs, the officer assigned by the Office of the High Commissioner for Human Rights to assist the Special Rapporteur received from the Permanent Mission of Myanmar Official Information Sheet No. A-0241 dated 10 December 1997, which provided information about these cases. It states as follow: "On 9 December 1997, the Special Court of Insein Rehabilitation Centre passed sentences on the following (7) persons from NLD who have been charged with section 5 (j) of the Emergency [Provisions] Act of 1950. [international harm to the morals or conduct of the public or a section of the public in a manner likely to impair the security or restoration of law and order of the Union]:

- (a) Dr. Than Neyin
- (b) U Soe Myint
- (c) U Win Thaung
- (d) U Nyan Thaung
- (e) Daw May Win Myint
- (f) Ma Win Win Htay
- (g) U Khin Maung Myint

"The court found the accused (6) persons guilty of section 5 (j) of the Emergency [Provisions] Act of 1950 and U Khin Maung Myint was found guilty of both section 5 (j) of the Emergency [Provisions] Act of 1950 and section 16 (a) of 1986 Gambling Law. The court has sentenced Dr. Than Neyin, U Soe Myint, U Win Thaung, U Nyan Thaung, Daw May Win Myint, Ma Win Win Htay to (6) years' imprisonment and U Khin Maung Myint (8) years' imprisonment, it is learnt."

36. According to information received by the Special Rapporteur, the accused have been denied their right to retain lawyers for their defence and were not allowed to defend themselves in hearings held on 2 December 1997.

37. On 6 November 1997, Dr. Min Soe Lin, an elected member of parliament and Secretary-General of the banned Mon National League for Democracy (MNLD), was reportedly arrested under section 5 (j) of the Emergency Provisions Act for his role in organizing celebrations for the fiftieth Mon National Day on 23 February 1997. Dr. Min Soe Lin was arrested in Mudon, Mon state, but it is not known where he has been taken for detention or under what conditions he is being held.

38. On 19 November 1997, the Myanmar authorities reportedly arrested Thaung Aye and Chit Khin. Thaung Aye, an owner of a building in the South Okkalapa township of Yangon, had reportedly been arrested because he agreed to rent an office to the NLD. Chit Khin is the Chairman of the Okkalapa branch of the NLD.

39. The Working Group on Arbitrary Detention on 11 July 1997 transmitted a communication to the Government of Myanmar concerning a case of detention which was reported to have occurred in Myanmar. In accordance with its methods of work, the Working Group has adopted, on 2 December 1997, Opinion No. 20/1997, the text of which is contained in document E/CN.4/1998/44, annex II. A summary of the case appears below.

40. After having been released from detention through an amnesty on 4 February 1995, Khin Sint Aung, aged 61, medical doctor and member of the NLD, was rearrested on 23 July 1996 for recent activities in support of the opposition. He had previously been arrested on 3 August 1993 and sentenced on 15 October 1993 to 20 years in prison for destabilizing national unity, printing and publishing material without official registration and improper use of official secret documents. Dr. Khin Sint Aung's case had already been transmitted by the Working Group to the Government in April 1994. The Working Group, by its Decision No. 13/1994, declared his detention to be arbitrary. His rearrest was believed to be related to his membership of the NLD.

41. The Government informed the Working Group and the Special Rapporteur that Dr. Khin Sint Aung had been convicted in 1993 under section 5 (j) of the Emergency Provisions Act, section 17/20 of the Printers and Publishers Registration Law, and section 5 (1) (4) of the Burma Official Secrets Act. The Government added that Dr. Khin Sint Aung had been granted amnesty under section 401 (1) of the Criminal Procedure Code, after he had been given a solemn pledge to the authorities that he would henceforth abide by the law. But, the Government added, Dr. Khin Sint Aung did not abide by his pledge and, as a consequence, the amnesty extended to him was revoked and he resumed serving the remainder of his original sentence.

42. The source of the information, in its observations on the Government's reply, reiterated its view that Dr. Khin Sint Aung's detention was based solely on the exercise of his right to free expression. The charges against him were believed to be specifically related to letters he sent to NLD members during the January 1993 NLD National Convention.

43. The Working Group, in its Decision No. 13/1994 declaring Dr. Khin Sint Aung's detention to be arbitrary, noted that the Government had failed to specify in what way he failed to abide by his pledge, what the activities were that led to the revocation of the amnesty extended to him, and in what way they constituted a violation of the pledge.

44. The Working Group held that the renewed detention of Dr. Khin Sint Aung, like the first one, was linked to the fact that he peacefully exercised his right to freedom of opinion and expression. Accordingly, the Working Group concluded as follows: "The deprivation of liberty of Khin Sint Aung is arbitrary, as being in contravention of articles 9 and 19 of the Universal Declaration of Human Rights, and falls within category II of the categories applicable to the consideration of the cases submitted to the Working Group." The Working Group consequently requested the Government to take the necessary steps to remedy the situation, and bring it in conformity with the standards and principles set forth in the Universal Declaration of Human Rights. The Working Group further recommended that the Government take steps to become a party to the International Covenant on Civil and Political Rights.

45. With regard to the particular case of Dr. Khin Sint Aung, the Special Rapporteur wishes to recall the previous reports of his predecessor, Professor Yozo Yokota, to the Commission on Human Rights (E/CN.4/1994/57) and (E/CN.4/1995/65) in which the case was mentioned. When Professor Yokota visited Myanmar in 1993 and 1994, he personally met Dr. Khin Sint Aung in Insein prison.

46. In 1993, when Professor Yokota met Dr. Khin Sint Aung, he was accompanied by the prison warden and his staff and by photographers. Dr. Khin Sint Aung addressed the Special Rapporteur in

the Burmese language, as he clearly indicated he had been advised to do, although he had done his medical training in England and spoke English well. Dr. Khin Sint Aung told the Special Rapporteur that those who met the Special Rapporteur would have problems and would be likely to be sentenced to 10 years' imprisonment. He therefore must be careful how he answered the Special Rapporteur's questions: if he answered "wrong", his 20-year prison sentence would become 40 years. He also said that the grounds for his imprisonment were prescribed by existing laws; information in that regard could be obtained from the Government. He said he had been tried in a special court, i.e. not an ordinary court. It was by his own choice that he did not hire a lawyer because he wanted to defend himself. He had received his sentence recently and was intending to appeal through the proper channels. Dr. Khin Sint Aung indicated that he was treated well in the prison and had even received a new tooth in his first week there. In concluding, he repeated that he did not want to be in prison for 40 years, and so he preferred to say no more.

47. In 1994, Professor Yokota again met Dr. Khin Sint Aung in Insein prison. He was not allowed to enter the cell where the prisoner was kept but he was able to speak to him through the locked grill of the cell door. The prison warden and several guards recording the interview were also present, as well as photographers. The interview was very short and the prisoner seemed nervous but in good health. Unlike their meeting in 1993, Dr. Khin Sint Aung addressed the Special Rapporteur in Burmese and English. In 1993, he had indicated that he intended to appeal through the proper channels. He now informed Professor Yokota that he had not appealed but did not give any specific reason why he had changed his mind. In concluding, he repeated that he would like from the bottom of his heart to serve a democratic Government.

48. As the Special Rapporteur has had occasion to observe, there are laws in Myanmar that criminalize the normal exercise of basic civil and political rights (see A/51/466, annex, chaps. III and IV). All the persons convicted or detained under these laws are, in a true sense, political prisoners. The SPDC should take urgent steps to have those persons released by proclaiming a general amnesty.

E. Torture and cruel, inhuman or degrading treatment or punishment

49. The Special Rapporteur continues to receive numerous allegations of acts of torture committed by soldiers of the Tatmadaw. The Special Rapporteur has already reported on some of these cases in his previous reports to the General Assembly and the Commission on Human Rights.

50. The Special Rapporteur on the question of torture has also raised with the Government of Myanmar several cases of alleged torture. By letter dated 21 February 1997, he informed the Government of Myanmar about reports indicating that the Myanmar army still uses torture and ill-treatment against members of ethnic minorities in Shan and Mon states and in Tanintharyi division. According to these reports, members of ethnic minorities are forced to serve as porters for the army. Any person who cannot carry the required load is allegedly beaten with bamboo sticks or rifle butts. Deprivation of food, water, rest and medical care is also reportedly a common method of punishment.

51. In the same letter, the Special Rapporteur also asked the Government of Myanmar to reply to allegations that a number of persons had been beaten by the police during student demonstrations in Yangon in December 1996.

52. On 25 April 1997, the Government of Myanmar replied to the Special Rapporteur stating that nobody had been subjected to violence during the December 1996 student demonstrations. Concerning the allegations of ill-treatment of porters, the Government of Myanmar stated that the recruitment of civilian labour to assist the armed forces is regulated by law and based on three criteria: the person has to be unemployed; physically fit to work as a porter; and a reasonable wage has to be agreed upon before recruitment. Furthermore, according to the Government, porters were

never required to accompany the troops to the battle scene. They were thus not exposed to danger (see E/CN.4/1998/38/Add.1, paras. 258-267).

III. THE GENDER PERSPECTIVE

53. In its resolution 1997/64, the Commission on Human Rights extended the mandate of the Special Rapporteur, as contained in Commission resolution 1992/58, and requested the Special Rapporteur to keep a gender perspective in mind when seeking and analysing information.

54. Gender-specific reporting and analysis entail an examination of gender as a determining factor in respect of: (a) the form which a human rights violation takes; (b) the circumstances in which the violation occurs; (c) the consequences of the violation for the victim; and (d) the availability and accessibility of remedies.

55. The term "gender" is used as referring to the socially constructed roles of women and men in public and private life. It denotes the significance attached within societies and communities to sex identity. Historically, different cultures construct gender in different ways so that women's roles, the value that their particular society places on those roles, and the relationship with men's roles may vary considerably over time and from one setting to another. To varying degrees in all societies, discrimination against women and their unequal treatment are systematic and reflected in the structure and functioning of public institutions, de jure and de facto family relations, access to economic resources, and legal systems. It is mainly for this reason that the mere enactment of appropriate laws is not sufficient to eradicate discrimination or inequality on grounds of sex. Other measures, educational, social and administrative, among others, are particularly necessary to change societal attitudes and acceptance of traditional values.

A. International norms

56. The Government of Myanmar is bound by a number of international conventions and declarations to which it is party to prohibit discrimination against women and to ensure the effective enjoyment of their human rights. A general prohibition against discrimination and unequal treatment is found in article 2 and 7 of the Universal Declaration of Human Rights, according to which "everyone is entitled to all the rights and freedoms ... without any distinction of any kind, such as race, colour, sex" and "all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination." Articles 2 (1), 3 and 26 of the International Covenant on Civil and Political Rights contain a similar prohibition. A more elaborate and explicit prohibition of discrimination against women in all its forms is found in the Convention on the Elimination of All Forms of Discrimination against Women.

57. The traffic of women and suppression of prostitution is regulated in the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, signed by Myanmar on 14 March 1956 but not yet ratified.

58. The Special Rapporteur also recalls the Declaration on the Elimination of Violence against Women (General Assembly resolution 48/104). Article 2 prohibits violence against women (a) in the family, (b) within the general community, and (c) by the State. Article 1 of the Declaration defines "violence against women" as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life".

59. The Special Rapporteur welcomes the ratification by Myanmar of the Convention on the Elimination of All Forms of Discrimination against Women. Article 1 of the Convention, which came into force for Myanmar on 21 August 1997, defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of

impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field". The Union of Myanmar is required under article 18 of the Convention to submit, within one year, a report to the Committee on the Elimination of Discrimination against Women on the legislative, judicial, administrative and other measures it has adopted to give effect to the Convention and on the progress made in its implementation.

60. In the absence of a visit to Myanmar, the Special Rapporteur is unable to report comprehensively on the situation of women in situ. The following paragraphs highlight some legal provisions and other material which the Special Rapporteur has come across in his work.

61. According to article 22 of the Myanmar Constitution of 1974, which was repudiated by the SLORC in 1988, "all citizens shall be equal before the law, regardless of race, religion, status or sex." In addition, in article 154 the following rights of women are explicitly defined: (a) women shall enjoy equal political, economic, social and cultural rights; (b) mothers, children and expectant mothers shall enjoy those rights as prescribed by law; (c) children born of citizens shall enjoy equal rights; and (d) women shall enjoy the freedoms and rights guaranteed by laws as regards marriage, divorce, division of property, succession and custody of children. It does not appear that, after the repudiation of the Constitution, any law, decree, or order of a basic character has been enacted to guarantee the rights of women provided in the defunct Constitution.

B. Myanmar women in public life

62. As is the case for men, Myanmar women who become politically active are harassed and arbitrarily arrested, especially those who belong to parties or movements in opposition to the regime. There would not appear to be any women in the SPDC, in the Cabinet, or in the 14-member Advisory Group referred to in SPDC Notification No. 3/97 of 15 November 1997.

63. In the note sent by the Permanent Mission of Myanmar referred to in paragraph 19 of this report, a number of meetings of the Central Women's Work Committee are reported to have taken place in the compound of Daw Aung San Suu Kyi between 11 and 17 December 1997. This is an indication that women are active in the political field, at least in opposition.

C. The situation of refugee women

64. The Special Rapporteur has reported on the situation of Myanmar refugees and internally displaced persons in his previous reports. According to testimony received by the Special Rapporteur, many of the refugees reported about in his report to the General Assembly (A/52/484) fled in order to escape forced labour, portering and starvation. The situation of nursing mothers or women with young children is particularly harsh. There is no doubt that refugee women, particularly those on their own, are more vulnerable than men to exploitation and deprivation of rights at every stage of their flight. The Special Rapporteur expresses his concern that, according to information received, the flow of refugees continues. In late October and early November 1997 Karen refugees in groups of 50-100 people, mostly women, children and old people, reportedly entered Ban Letongkhu, Ban Thijochi and Ban Kuileter in Umphang, about two kilometres from the border with Thailand. Myanmar troops had started to round up and send Karen civilians to a controlled area away from the border.

D. Women and forced labour

65. In recent years, increasing numbers of women, including young girls and the elderly, have been forced to work on infrastructure projects and to act as porters in war zones. Such uncompensated forced labour continues despite Myanmar's ratification of ILO Convention No. 29 Concerning Forced or Compulsory Labour. The Special Rapporteur has on several occasions reported on the use

of forced labour for various development and infrastructure projects. In these projects women are not spared forced recruitment, even when they are pregnant or nursing their infants. Those who are too weak for the strenuous work have to hire another person or face a fine. On the work site, the forced labourers do not receive appropriate medical treatment. Further, they are reported to receive no remuneration and have to provide their own food. While away the women cannot work on their farms, which results in food shortages for the family. On the work site women, like men, risk exhaustion, accidents and lack of medical treatment. They are also victims of many other serious human rights violations, such as beatings, rape and murder.

66. The Special Rapporteur has on more than one occasion reported on forced portering. As porters women are more vulnerable than men, since they have been reported to have been used as (a) forced labour to work as porters; (b) human shields; and (c) entertainment for soldiers, which often ends in rape. For instance, on 8 June 1997, SLORC troops from Murngpan allegedly arrested 17 villagers (10 men and 7 women) at Ter Hung village and forced them to carry military supplies from Kaeng Twang area to Murngpan. When they reached Murngpan, the men were released while the women were detained. During the night all the women were reportedly gang-raped before being released the next morning.

67. The Special Rapporteur is concerned that real access to the justice system by the victims is virtually non-existent.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

68. The Special Rapporteur regrets that, in spite of his continuing efforts to obtain the authorization of the Government of Myanmar to visit the country and in spite of the encouraging statements made by the Permanent Representative of Myanmar, both in the Commission on Human Rights and the General Assembly, he has not so far obtained any response. In this regard, the criticism levelled by the authorities against the reports of the Special Rapporteur is, in large part, based on the ground that the reports rely on information received from outside the country and do not reflect the actual situation in Myanmar. It stands to reason that, if the General Assembly and the Commission are to benefit from an assessment of that criticism, the agreement of the Myanmar authorities to a visit by the Special Rapporteur is essential.

69. The Special Rapporteur has observed the beginnings of a positive attitude with respect to the easing of restrictions on political parties, especially in relation to the activities of the NLD and its right to hold meetings. This change on the part of the authorities is welcome. However, it would appear that this change is of a purely formal and limited nature given the virtually complete control which the authorities seem to exercise on the freedoms of association, assembly and expression. The Special Rapporteur notes that the absence of respect for the rights pertaining to democratic governance continues to be at the root of all the major violations of human rights in Myanmar insofar as this absence is inherent in a power structure which is autocratic and accountable only to itself, thus resting on the denial and repression of fundamental rights. The Special Rapporteur concludes that genuine and enduring improvements in the situation of human rights in Myanmar cannot be attained without respect for the rights pertaining to democratic governance. In this regard, he notes with particular concern that the electoral process initiated in Myanmar by the general elections of 27 May 1990 has still, after seven years, to reach its conclusion and that the Government still has not implemented its commitment to take all necessary steps towards the establishment of democracy in the light of those elections.

70. On the basis of his examination of the situation of human rights in Myanmar over the past year, the Special Rapporteur has unfortunately come to the general conclusion that, except for the apparent easing of restrictions on political activities as referred to in paragraph 69, there has been no change

in that situation since his last report to the General Assembly and to the Commission on Human Rights. The resolutions of the General Assembly and of the Commission have gone largely unheeded by the Government of Myanmar. The result is that the conclusions of the Special Rapporteur as contained in his reports to the General Assembly at its fifty-second session (A/52/484, annex, paras. 143-151) and the Commission on Human Rights at its fifty-third session (E/CN.4/1997/64, paras. 101-107) remain substantially the same, except for the fact that, according to certain reports, a meeting took place in mid-July 1997 between a representative of SLORC and an official of the NLD. There have been suggestions that the substance of those discussions was political in character but the Special Rapporteur has no concrete information in this regard.

71. The well-documented reports, photographs and testimonies received by the Special Rapporteur lead him to conclude that extrajudicial, summary or arbitrary executions, the practice of torture, portering and forced labour continue to occur in Myanmar, particularly in the context of development programmes and of counter-insurgency operations in minority-dominated regions.

72. With regard to arbitrary arrest and detention, the Special Rapporteur does not doubt that such violations take place on a wide scale if for no other reason than that an examination of the laws in place show that such violations are legal and may easily occur. At the same time, the absence of an independent judiciary, coupled with a host of executive orders criminalizing far too many aspects of normal civilian conduct, prescribing enormously disproportionate penalties and authorizing arrest and detention without judicial review or any other form of judicial authorization, leads the Special Rapporteur to conclude that a significant percentage of all arrests and detentions in Myanmar are arbitrary when measured by generally accepted international standards. In this regard, the Special Rapporteur expresses his deep concern at the continued detention of many political prisoners, in particular elected representatives, and the continuing arrests and harassment of supporters of democratic groups in Myanmar.

73. Because of both visible and invisible pressures, the people of Myanmar live in a climate of fear in which whatever they or their family members may say or do, particularly in the exercise of their political rights, involves the risk of arrest and interrogation by the police or military intelligence. The Special Rapporteur notes that NLD leaders cannot assemble in a group, cannot freely discuss, and cannot publish or distribute printed or video material. In this situation it is difficult to assume that open discussion and free exchanges of views and opinions can possibly take place in Myanmar, unless they are in support of the military regime.

74. Turning to freedom of movement and residence in Myanmar, including the right to leave and reenter one's own country, the Special Rapporteur concludes that there are clear violations of those freedoms in both law and practice. Specifically, severe, unreasonable and, in the case of the Muslim Rakhine population, racially based restrictions are placed on travel inside the country and abroad. On the matter of internal deportations and forced relocations, the Special Rapporteur concludes that the Government's policy violates freedom of movement and residence and, in some cases, constitutes discrimination based on ethnic considerations.

75. In his report to the General Assembly, the Special Rapporteur analysed the laws relating to citizenship and their effect on the exercise of civil and political rights. He raised serious questions of the consistency of those laws with generally accepted international norms, since those laws appear to be discriminatory on the basis of ethnicity, fail to ensure equality before the law, and do not provide special measures of protection to which children are entitled. In the short term, this situation produces serious violations of the rights of both minorities and other persons living in the country as well as a sense of not belonging to Myanmar. In the long term, the situation is likely to discourage a sense of national unity and to encourage and exacerbate secessionist movements likely to be destructive of a multi-ethnic and multi-religious nation. Sheer repression following efforts at ceasefire agreements would not appear to be the answer.

76. The Special Rapporteur welcomes the ratification by Myanmar of the Convention on the Elimination of All Forms of Discrimination against Women in 1997. In this regard, he hopes that the Government of Myanmar will also ratify the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, signed by Myanmar on 14 March 1956.

B. Recommendations

77. In the light of the foregoing conclusions, the Special Rapporteur submits the following recommendations.

78. To ensure that the institutions of government genuinely reflect the will of the people, in conformity with article 21 of the Universal Declaration of Human Rights, steps should be taken to allow all citizens to participate freely in the political process, in accordance with the principles of the Universal Declaration of Human Rights, and to accelerate the process of transition to democracy, in particular through the transfer of power to the democratically elected representatives. The institutions of the Union of Myanmar should be such as to ensure that the executive authorities are accountable to the citizenry in a clear and meaningful way. Furthermore, steps should also be taken to restore the independence of the judiciary and to subject the executive to the rule of law and render unjust and unjustifiable actions justiciable.

79. All necessary measures should be taken to accelerate the process of transition to a democratic order and to involve in a meaningful way in that process the representatives duly elected in 1990. In this regard, genuine and substantive discussions should take place without further delay between the present military regime and the leaders of the National League for Democracy and with other political leaders who were duly elected in the democratic elections of 1990, including representatives of the ethnic minorities. Certain steps taken in July 1997 by the SLORC, and in December 1997 by the SPDC, to initiate such discussions are a welcome and positive development, but one which requires to be intensified. The SPDC should do all it can to ensure that the character and substance of the discussions are genuine and are perceived to be so by all the participants and the people generally. In addition, political parties should be free to decide the composition of their own delegations for the purposes of the dialogue.

80. Immediate measures should be taken to put an end to the harassment of the leaders and the members of the National League for Democracy, to ensure that the General Secretary of the National League for Democracy is genuinely free and able to exercise her functions without fear of attack, and to ensure that all political parties are able freely to carry out their activities. In other words, the present embargo or recess on the exercise of political rights, which is rigidly enforced by exceptional legal and administrative machinery, should be ended. Political "détente" should replace the political embargo by way of a general amnesty or otherwise.

81. All political detainees, including elected political representatives, students, workers, peasants and others arrested or detained under martial law for the exercise of their normal civil and political rights after the 1988 and 1990 demonstrations or as a result of the National Convention should be immediately released. The Government should also ensure that there are no acts of intimidation, threats or reprisal against them or their families and should take appropriate measures to compensate all those who have suffered arbitrary arrest or detention.

82. Constitutionality and the rule of law should be re-established and orders and decrees should no longer be the basis of law. All laws rendering violations of human rights legitimate should be repealed urgently and all laws should be given due publicity. The laws in Myanmar should be brought into conformity with international standards regarding the rights relating to protection of physical integrity, including the right to life, protection against disappearance, prohibition of torture and cruel, inhuman or degrading treatment, providing humane conditions for all persons under detention and ensuring the minimum standards of judicial guarantees.

83. Particular attention should be given to conditions in the country's prisons and all the necessary steps taken to allow international humanitarian organizations to have access thereto and to communicate freely and confidentially with prisoners.

84. Urgent steps should be taken to facilitate and guarantee the enjoyment of the freedoms of opinion, expression and association, in particular by decriminalizing the expression of opposition views and by relinquishing government controls over the media and literary and artistic works.

85. Restrictions relating to the entry and exit of citizens into and out of the country, as well as their movement within the country, should be abolished.

86. All discriminatory policies which interfere with the free and equal enjoyment of property should cease and adequate compensation should be paid to those who have been arbitrarily or unjustly deprived of their property.

87. The Government of Myanmar should fulfil its obligations under ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize of 1948. In compliance with this Convention, it should guarantee by law the right of trade unions to exist and operate freely. In that respect, the Government of Myanmar is encouraged to cooperate more closely with the ILO through a technical cooperation programme so that the very serious discrepancies between the law and the practice on the one hand, and the Convention on the other hand, are eliminated urgently.

88. The Government of Myanmar is urged to comply with its obligations under ILO Convention No. 29, prohibiting the practice of forced labour. In this connection, the Government of Myanmar should urgently take the appropriate measures to repeal the offending legal provisions under the Village Act and the Towns Act to halt the practice of forced labour. The Government of Myanmar is encouraged to cooperate with the Commission of Inquiry established by the ILO.

89. Urgent steps should be taken to put an end to the enforced displacement of persons and to create appropriate conditions to prevent the flow of refugees to neighbouring States. In the event that the relocation of villagers becomes necessary in circumstances which are in conformity with international norms, proper consultations should take place with the villagers, including the payment of appropriate compensation, reviewable by independent courts, and the taking of measures to ensure that food, housing facilities, proper medical care and social amenities, including appropriate arrangements for the education of children, are provided in adequate measure in the interest of the displaced persons.

90. The Government of Myanmar should refrain from actions which contribute to insecurity affecting the population, such as the use of military force and bombardments against civilian targets along the border with Thailand. In this regard, given the great number of allegations of summary or arbitrary executions and other grave human rights violations, particularly in areas where ethnic minorities live or to which they are being forcibly displaced, it is of the utmost importance that the new government conduct a high-level inquiry with broad terms of reference, specifically to gauge the extent of the violations and to propose remedial measures.

91. In order to promote repatriation of the Myanmar Muslims and other minorities, the Government should create the necessary conditions of respect for their human rights. The Government should ensure, in law and in practice, their safe return and resettlement in their villages of origin. To this end, it should also promote their complete civil, political, social, economic and cultural participation in Myanmar without restriction or discrimination.

92. The laws relating to citizenship should be revised in order to ensure that they have no unfavourable incidence on the exercise of civil and political rights and to be consistent with generally accepted norms. In particular these laws should be substantially revised so as to remove all discriminatory features based on ethnicity, legal status and adverse impact on the right of children to have a nationality. Further, necessary measures should be adopted by the administration to ensure that citizenship can be obtained without burdensome and unrealistic administrative procedures and requirements. These laws should also be brought into conformity with the principles embodied in the

97. The Government of Myanmar should take early steps to amend all existing laws, orders or decrees in order to ensure that its international obligations with regard to the rights of women are effectively implemented, including by the adoption of administrative and other measures as well as the allocation of sufficient funds. In addition, in the drafting of a new constitution, steps should be taken to ensure that the rights of women with regard to equality and non-discrimination are guaranteed by the enactment of basic provisions.

UNITED NATIONS
Economic and Social Council
Distr. GENERAL
E/CN.4/1997/64
6 February 1997
Original: ENGLISH
COMMISSION ON HUMAN RIGHTS
Fifty-third session
Item 10 of the provisional agenda
QUESTION OF THE VIOLATION OF
IN ANY PART OF THE WORLD, WITH
OTHER DEPENDENT COUNTRIES AND
Situation of human rights in Myanmar

Report of the Special Rapporteur, Mr. Rajsmoor Lallah, submitted in accordance with Commission on Human Rights resolution 1996/80

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Introduction

1. The mandate of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar has been described in each of the Special Rapporteur's previous reports to the General Assembly (A/47/651, A/48/578, A/49/594, A/50/568 and A/51/466) and to the Commission on Human Rights (E/CN.4/1993/37, E/CN.4/1994/57, E/CN.4/1995/65 and E/CN.4/1996/65). The mandate, initially articulated in Commission resolution 1992/58 and extended most recently by the Commission in resolution 1996/80 of 23 April 1996 (approved by the Economic and Social Council in its decision 1996/285 of 24 July 1996), required the Special Rapporteur to establish or to continue direct contacts with the Government and people of Myanmar, including political leaders deprived of their liberty, their families and their lawyers with a view to examining the situation of human rights in Myanmar and following any progress made towards the transfer of power to a civilian government and the drafting of a new constitution, the lifting of restrictions on personal freedoms and the restoration of human rights in Myanmar. In resolution 1996/80, the Commission urged the Government of Myanmar to cooperate fully and unreservedly with the Commission and the Special Rapporteur and, to that end, to ensure that the Special Rapporteur effectively had free access to any person in Myanmar whom he might deem it appropriate to meet in the performance of his mandate, including Daw Aung San Suu Kyi; requested the Secretary-General to give All necessary assistance to the Special Rapporteur; and requested the Special Rapporteur to

report to the General Assembly at its fifty-first session and to the Commission at its fifty-third session.

2. On assuming his mandate, the present Special Rapporteur has tried to identify the priority concerns of the international community with regard to the situation of human rights in Myanmar. Such concerns are referred to in the resolutions which the various competent organs of the United Nations have adopted over the past five years, in particular General Assembly resolution 51/117 and Commission resolution 1996/80, which are the most recent. These concerns constitute the substantive content of the Special Rapporteur's mandate. They may be summarized as follows:

- (a) The electoral process initiated in Myanmar by the general elections of 27 May 1990 has yet to reach its conclusion and the Government still has not implemented its commitments to take All necessary steps towards the establishment of democracy in the light of those elections;
- (b) Many political leaders, in particular elected representatives, remain deprived of their liberty;
- (c) Violations of human rights remain extremely serious, including, in particular, the practice of torture, summary and arbitrary executions, forced labour, including forced portering for the military, abuse of women, politically motivated arrests and detention, forced displacement, serious restrictions on the freedoms of expression and association, and the imposition of oppressive measures directed, in particular, at ethnic and religious minority groups;
- (d) The continuing fighting with ethnic and other political groups, despite the conclusion of ceasefire agreements, which, together with the continuing violations of human rights, has resulted in flows of refugees to neighbouring countries.

1. ACTIVITIES OF THE SPECIAL RAPPORTEUR

3. With a view to discharging his mandate in the most impartial and effective manner, the Special Rapporteur immediately after his nomination sought the cooperation of the Government of Myanmar by sending on two occasions letters informing them of his recent nomination and asking them for authorization to travel to Myanmar in order, inter alia, to examine the situation in situ and to meet with appropriate government representatives as well as other persons relevant to the fulfilment of his mandate and to allow him to discharge his mandate fully and reliably in reporting to the States Members of the United Nations and to ensure that the General Assembly and the Commission on Human Rights are presented with an accurate and comprehensive assessment of the situation of human rights in Myanmar.

4. In the meantime, and in order to become familiar with the different issues pertaining to his mandate, the Special Rapporteur visited in July 1996 Switzerland and the United Kingdom and met with several individuals and organizations, both intergovernmental and non-governmental, based in Geneva and London who possess recent and useful information on alleged human rights violations in Myanmar.

5. On 8 October 1996, the Special Rapporteur submitted a preliminary report (A/51/466) to the General Assembly at its fifty-first session.

6. On 15 November 1996, the Special Rapporteur presented his interim report on the situation of human rights in Myanmar to the fifty-first session of the General Assembly at United Nations Headquarters. While in New York, the Special Rapporteur met with several representatives of governments and non-governmental organizations and also private individuals who imparted their views and information on the situation of human rights in Myanmar.

7. In his continuing effort to obtain the most accurate and up-to-date information on the situation of human rights in Myanmar, the Special Rapporteur visited Thailand in December 1996 to assess the situation of the displaced persons from Myanmar living in refugee camps along the Thai-Myanmar border. The findings of the mission are reflected in section IV of this report.

8. On 9 January 1997, the Special Rapporteur addressed a third letter to the Minister for Foreign Affairs of Myanmar in which he reiterated his request for cooperation and to visit Myanmar. Unfortunately, to date, his requests have met with no response. In this regard, the Special Rapporteur wishes to highlight, and to express his regret about the fact that since his appointment in June 1996, he has yet to be allowed by the Government of Myanmar to see the situation on the ground despite the requests expressed in the resolutions of the General Assembly and the Commission on Human Rights that he have direct access to the Government and people of Myanmar.
9. Notwithstanding the lack of cooperation on the part of the Government of Myanmar, the Special Rapporteur through his missions and consultations has received much assistance and information from governmental, intergovernmental and non-governmental sources. He has also received information from individuals connected in one way or another with the situation in Myanmar. He has also received several well-documented reports describing the situation in Myanmar, particularly in relation to the matters over which the General Assembly and the Commission on Human Rights have expressed concern. These have proved very helpful.
10. The present report is based upon information received by the Special Rapporteur through 31 December 1996. The report is to be read in conjunction with the Special Rapporteur's report to the General Assembly; the present report updates certain matters discussed before the General Assembly while treating some issues not addressed there.

II. THE EXERCISE OF CIVIL AND POLITICAL RIGHTS

A. The impact of Myanmar law on human rights

11. In his last report to the General Assembly (A/51/466, sects. III and IV), the Special Rapporteur analysed the question of the legitimacy of the assumption and continued retention of martial law powers after the elections of 1990, its break with constitutionality and legal continuity, its nonconformity with international norms and the adverse impact of Myanmar law on the respect and protection of human rights. In this regard, the Special Rapporteur mentioned the most commonly employed laws banning the enjoyment of civil and political rights and suppressing dissent against the State Law and Order Restoration Council (SLORC). He came to the conclusion that various laws, by themselves, criminalize or adversely affect freedom of thought, information, expression, association and assembly through fear of arrest, imprisonment and other sanctions. In addition, where they do not criminalize them, executive acts or orders greatly restrict those rights.
12. The Special Rapporteur notes that these laws and orders aimed at the restriction of civil and political rights continue to be invoked to arrest Myanmar citizens. Moreover, new laws have been enacted in order to provide the authorities other legal bases to suppress the rights of freedom of expression. Therefore, the Special Rapporteur was not surprised to receive information that people continued to be arrested and detained for the peaceful exercise of fundamental human rights.
13. For example, on 15 August 1996 National League for Democracy (NLD) member Dr. Hlaing Myint, together with NLD member Kyaw Khin and student Maung Maung Wan, were sentenced to a total of 10 years' imprisonment (7 years under section 5(j) of the Emergency Provisions Act and 3 additional years under the 1985 TV and Video Act).
14. Order 2/88, which prohibits public gatherings of more than five persons, has also been invoked in several arrests lately, including the arrest of people attending Daw Aung San Suu Kyi's weekend speeches delivered at the gate to her home.
15. Law No. 5/96 of 7 June 1996, entitled "Protecting the Stable, Peaceful and Systematic Transfer of State Responsibility and the Successful Implementation of National Convention Free from Disruption and Opposition", prohibits, inter alia, the preparation or dissemination of speeches or statements that undermine the stability of the State or are critical of the SLORC, and prescribes up to

20 years' imprisonment for persons violating the law, while organizations taking part in such activities can be banned and have their funds and property confiscated.

16. According to a statement by Lt.Gen. Khin Nyunt at a press conference on 31 December 1996, Nyein Si (also called Nyein Myint) was arrested on 7 December 1996 in a tea shop on 24th Street in Yangon. He had in his possession pamphlets and documents allegedly proving his and other youths' involvement with the banned Burma Communist Party. They were also said to have conspired in the student demonstrations. The statement referred to a total of 34 youths, among them Toe Toe Htun, who had allegedly been involved in underground activities, who were apprehended in December following student demonstrations. Law No. 5/96 was invoked in these cases.

17. The Television and Video Act of 31 July 1996 requires that:

(a) Foreign diplomatic missions and United Nations agencies obtain permits to show imported videos at "public exhibitions". Government video censorship boards will have the right to ban, censor or restrict the audience for such showings;

(b) Private video operators obtain licences from "video business supervisory committees" which will be formed in All States and Divisions composing the Union of Myanmar;

(c) All videos, both imported and locally produced, be approved by the video censorship board.

Violations of these provisions are liable to punishments of up to three years' imprisonment and/or fines of up to 100,000 kyats. The law also forbids private TV transmitters that are not authorized by the Government, with five-year prison terms for any offenders.

18. The Computer Science Development Law of 27 September 1996 makes the unauthorized import, possession and use of certain types of computer equipment, for example computers with networking capability, punishable with sentences of 7 to 15 years in prison and/or a fine. A "Myanmar Computer Science Council" will be established to approve the type of equipment to be restricted. According to the Government-controlled newspaper "New Light of Myanmar" (NLM), the punishment is prescribed for anyone setting up links with a computer network without prior permission or who uses computer networks or information technology for undermining State security, law and order, national unity, the national economy or national culture or who obtains or transmits State secrets. Members of unauthorized computer clubs may, according to reports, be sentenced to prison terms of a minimum of three years. A punishment of 5 to 10 years' imprisonment is prescribed for anyone who imports or exports computer software or information banned by the Myanmar Computer Science Council.

19. The Special Rapporteur regards these laws as continuing attempts to restrict freedom of opinion and expression in Myanmar, already seriously hampered by a number of other laws in force which the authorities have used to arbitrarily suppress the expression of any opposition opinion or any undesired discussion of certain issues.

B. Extrajudicial, summary or arbitrary executions

20. The Special Rapporteur welcomed the Government's decision to commute death sentences passed between 18 September 1988 and 31 December 1992 to life sentences. Although the Special Rapporteur notes that there presently does not appear to exist an explicit or systematic government policy of encouraging summary executions, he is greatly concerned by the frequent allegations of arbitrary killings of civilians and insurgents by members of the Tatmadaw under a variety of circumstances, in violation of the right to life contained in article 3 of the Universal Declaration of Human Rights. The right to life is considered to have the character of *jus cogens*, that is binding on All States under All circumstances without any exception. The following allegations exemplify the reports received by the Special Rapporteur:

(a) On 7 December 1996, the owner of the Sein Ba Bu laundry in Railway Station street in Yangon was reportedly arrested and beaten to death by riot police in connection with the breaking up of student demonstrations;

- (b) According to reports, Bawi Kung was killed by Light Infantry Battalion (LIB) No. 266 on 9 October 1996 when entering Ngalang village in Than Tlang township to stay the night. The two friends accompanying him attempted to flee, but one of them, Pa Lian, was arrested. After the killing, the army imposed a curfew until the next afternoon, and tortured village elders who could not provide them with the names of Chin National Front leaders;
- (c) In January 1996 two men in Kong Kauk village in Shan State were allegedly arrested for suspicion of possession of firearms. They were reportedly taken to an army camp where they were beaten and the eye of one of them was gouged out. Both men were then allegedly killed;
- (d) On 26 September 1996, the commander of column 2 of LIB 540, Soe Myint, reportedly shot and killed two villagers who were panning gold at Htee Nga Peh Loh. The soldiers are said to have wanted the gold for themselves.

C. Torture and cruel, inhuman or degrading treatment or punishment

21. Article 5 of the Universal Declaration of Human Rights as well as the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stipulate a complete prohibition of torture, a prohibition which is, in addition, considered to constitute international customary law of a *jus cogens* character, binding on All States under All circumstances. Torture is defined in the latter Declaration as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons".

22. Among the reports received by the Special Rapporteur alleging torture by agents of the Government of Myanmar are the following:

- (a) On 12 December 1995, Capt. Kyaw Myint of Infantry Battalion (IB) No.104 from Kyaukadin, Tenasserim Division, reportedly brought about 20 villagers, including some women, to Kyaukadin where they were allegedly detained and tortured for 15 days. The torture included standing in hot sunshine at mid-day, beating and having water poured over their heads. The villagers were reportedly accused only of being relatives of Karen guerillas;
- (b) On 8 October 1996, members of Army Battalion 256 reportedly entered Ban Ai Long village, near the Thai border, and detained male villagers apparently in order to interrogate them about the presence of Shan insurgents in the village. The following day the troops reportedly beat 10 of the men with their fists, as a result of which one young villager fell unconscious;
- (c) Two Akha girls (aged 15 and 16 years) were reportedly taken away by army troops and continuously raped for six days. According to the reports, both were severely traumatized and eventually died;
- (d) A 25-year-old Akha man was reportedly kicked to death by SLORC soldiers since he was unable to carry his load of mortars because he was suffering from malaria.

Prison conditions

23. SLORC continues to refuse to change its stance on allowing the International Committee of the Red Cross (ICRC) to visit prisoners despite the fact that such visits are based on international humanitarian law and the 1949 Geneva Conventions to which Myanmar became a party in 1992.

24. The Special Rapporteur continues to receive reports of deplorable sanitary conditions in Myanmar prisons, where ill-treatment is allegedly common:

- (a) From mid-November 1995 to early January 1996 U Win Tin, 66, who has suffered from poor health for several years and is dependent on his family for medicine and meat, was, together with a group of other prisoners, placed in military dog cells, made to sleep on concrete floors and not allowed visits from his family. In March 1996, at least five years were reportedly again added to his

sentence for his part in trying to inform the Special Rapporteur of the harsh prison conditions;
(b) In June 1996 a Muslim student detained in Thayet jail, Magway Division, was allegedly beaten to death by military intelligence agents. When his body was given to the Muslims from Thayet town it reportedly was bruised all over and had a crushed skull.

25. Prisoners are reportedly not given sufficient food and health care, unless they can pay bribes to prison authorities. U Myo Aung, a Muslim activist serving a 10-year sentence in Thayawaddy jail in Pegu Division, who is reportedly constantly ill-treated and is suffering from dysentery, malaria, gastritis, malnutrition and other complications, was allegedly denied treatment in a proper hospital unless he could pay bribes to the jail doctor.

26. Other prisoners with poor health serving long sentences include MaThida, 29-year-old writer and surgeon who had been serving a 20-year prison sentence under various censorship laws since October 1993; Dr. Khin Zaw Win, serving a 15-year sentence on similar charges; and U Nay Min, a 47-year-old lawyer serving a 14-year sentence with hard labour for allegedly sending "false news" in interviews with the BBC.

27. It was learned that NLD MP Hla Than died in prison on 2 August 1996. According to reports he had asked to be allowed to die at home, but the military authorities had denied the request unless he resigned from the NLD, which he refused to do.

D. Due process of law

28. U Pa Pa Lay and U Lu Zaw, both comedians, and U Aung Soe and U Htwe were reportedly sentenced to seven years' imprisonment on 18 March 1996. U Pa Pa Lay and U Lu Zaw were charged under section 5(c) of the 1950 Emergency Provisions Act with spreading false news, since they had allegedly made jokes about the military Government in a performance on independence day. It is not known what U Aung Soe and U Htwe were charged with. None of these persons was reportedly allowed legal representation at the trial.

29. On 28 March 1996, U Win Tin (66 years of age) and 20 others were sentenced under section 5(e) of the Emergency Provisions Act and under the Penal Code for misappropriation of State property without being allowed any legal representation at the trial, which was held in prison.

30. On 15 August 1996, U Win Tin, U Po Aye, Maung Thein Lin, U Kan Shein and U Hla Tun Aung were reportedly sentenced to seven years' imprisonment at Insein Township Court under section 5(j) of the Emergency Provisions Act. U Win Tin was charged with sending out some present and former NLD members to collect information on agricultural development in various parts of the country; the others were charged for their parts in collecting this information and for sending "false data". The NLD lawyer defending the five men was not allowed to cross-examine all witnesses during the trial, and he was not allowed to meet with U Win Tin privately. U Win Tin was reportedly sentenced to an additional seven years' imprisonment on 26 August under section 5(e) of the Emergency Provisions Act for having served as a translator for Tin Hlaing at an interview with a foreign journalist.

E. Rights pertaining to democratic governance

31. The freedoms of thought, expression, association and assembly are guaranteed, respectively, by articles 18, 19 and 20 of the Universal Declaration of Human Rights. These freedoms are so closely related that restrictions on one of these freedoms almost always has an impact on the others. This is especially so in relation to democratic governance as the will of the people is to be the basis of authority of government according to article 21 of the Universal Declaration of Human Rights. In Myanmar, the relationship is clear in so far as it would appear that the Government will not permit any thought, expression, association or assembly that conflicts with the policy of the SLORC.

32. The clearest evidence of violation of the freedom of expression continues to be found in Myanmar laws, such as Law No. 5/96 of 7 June 1996 referred to above. In application of this law, the following examples have been reported to the Special Rapporteur:

(a) The January 1996 issue of the magazine "Thint Bawa" reportedly had 50 pages torn out by censors since they celebrated the 75th jubilee of the founding of Yangon University. The March issue of the same magazine, intended to celebrate the 160th anniversary of the establishment of the first newspaper in Myanmar, was also severely censored;

(b) On 30 June 1996 Daw Aye Aye Win was reportedly arrested at her home in Tharketa after police officers had searched her house and confiscated 40 cassette recordings of speeches given by Daw Aung San Suu Kyi together with some NLD papers;

(c) On 28 September small groups of students and others, shouting "Long live Daw Aung San Suu Kyi", marched towards a meeting point at Shwedagon Pagoda, the roads leading to which were blocked by security forces, soldiers and police. One of the groups was reportedly arrested by security forces on Shwedagon Pagoda Road, and another group marching from the Shwedagon side was allegedly beaten, arrested and taken to Insein jail by army and security forces.

33. Another law which has perhaps been most frequently invoked to suppress freedom of expression and opinion is the 1950 Emergency Provisions Act which allows the imprisonment for up to seven years of any person who either "infringes upon the integrity, health, conduct and respect of State military organizations and government employees", spreads false news about the government or "disrupts the morality and behaviour of a group of people".

(a) On 26 August 1996 Tin Hlaing was reportedly sentenced to seven years' imprisonment under section 5(e) of the Emergency Provisions Act for spreading false news. According to the 27 August issue of NLM he had been instructed by U Win Tin to meet foreign journalists on 9 April 1996, to whom he had allegedly given information about torture of political prisoners, which the NLM characterized as "concocted news".

(b) On 23 September Yangon radio announced the arrest of nine youths charged with "inciting the people and spreading false news and fabricated leaflets with the intention to upset the stability of the State and community peace and tranquillity". The youths are Kyin Thein, Thant Zin and Ngwe Soe from Sangyuang township, and Nyan Win, Hla Hla Win, Kyaw Aye, Tun Aye, MyoHtut Aung and Tun Naing. They were sentenced to 13 years' imprisonment on 21 October. Further details on the trials are not known.

34. In his previous report to the General Assembly, the Special Rapporteur noted that in Myanmar violations of the freedom of association take two principal forms: restrictions on associations of a political nature, and the right to form and join independent trade unions.

35. As far as associations of a political nature are concerned, a number of the political parties that won seats in the 1990 elections have been banned, and the functioning of the few that remain has become increasingly difficult. The repressive climate in Myanmar since 1990 has made it virtually impossible for opposition parties to function and they have been severely hampered through constant harassment and arrests.

36. Since November 1995, when the NLD leaders withdrew from the National Convention, there has been an increasing number of arrests of the party members by the SLORC:

(a) Between 7 and 13 December, 28 NLD members were reportedly arrested, among them 13 NLD youths and one NLD politician. A total of more than 60 NLD members were arrested during the month of December;

(b) On 23 October 1996 the Deputy Chairman of NLD, U Kyi Maung, 75 years old, was arrested in Yangon accused of helping to organize a protest by some 500 students against police brutality which began on 21 and 22 October. According to a senior SLORC officer he was detained for questioning for having met with two students from Yangon Institute of Technology, Ye Thiha Thwin and Nyi Nyi Myo, at Daw Aung San Suu Kyi's house. U Kyi Maung was released only on 28 October;

(c) On 29 September six students taking part in the preparations for the 7th Students' Sports Festival in Tavoy were reportedly arrested by soldiers from LIB 19 after having taken a picture of a damaged Union Solidarity and Development Association (USDA) signboard in front of the local SLORC

office, charged with illegal possession of a camera, suspicion of stealing firearms and attempted agitation for unrest;

(d) On 14 September 1996 NLD members Aung Myint Oo and Khin Aung were reportedly arrested, for an unknown reason, in Yangon by military intelligence officers;

(e) In September 1996 the wife and son of NLD MP Hla Than, who died in prison on 2 August 1996, were reportedly arrested without any reason being given;

(f) On 8 August 1996 Ye Htum and four other students were arrested after visiting Daw Aung San Suu Kyi's house.

37. If not arrested, NLD leaders and members are subjected to intense and systematic harassment. Several reports received by the Special Rapporteur continue to indicate that they are constantly intimidated and their freedom of movement and expression are repeatedly restricted.

38. The Special Rapporteur notes that since her release from house arrest, Daw Aung San Suu Kyi and her colleagues were allowed to make regular weekly appearances at her home in Yangon and to speak to Myanmar citizens who gather there every weekend. However, since the end of September 1996, barricades and police and security forces have been introduced to prevent people from gathering outside her compound to attend weekend speeches or any possible NLD congress. Recently, it has been reported that the military intelligence has started to arrest people attending Daw Aung San Suu Kyi's weekend speeches delivered at her gate, charging the NLD with violations of Order 2/88 which prohibits public gatherings of more than five persons. This Order has not been consistently applied, and the SLORC has now extended the number of persons allowed to gather on Daw Aung San Suu Kyi's compound to 10 persons.

39. The Government stated on 28 September that it was compelled to prevent the congress from being held in order to preserve stability and because the necessary legal permission had not been obtained by the NLD:

"The State Law and Order Restoration Council banned the 'All Burma Congress' which was to have been held by the National League for Democracy from 27 to 29 September 1996. To hold such a ceremony with a gathering of people or to use a public address system in the township, permission has to be sought from the respective Township Administrative Authorities and Police Force in accordance with procedures. Respective Township Administrative Authorities have issued since August 1989 directives, including procedures to be followed by the political parties when they hold meetings and ceremonies. Legal action can be taken against those who undertake such procedures if they do not adhere to the directives."

40. According to a SLORC statement on 28 September, the Ministry of Home Affairs and security officials "intimated [to] persons involved with the NLD on 2 and 4 June 1996 that roadside talks of Daw Suu Kyi, U Tin Oo and U Kyi Maung on University Avenue on weekends must no longer continue". The roadside talks and news circulated among representatives of foreign media and external organizations were, according to SLORC, "meant to cause disruption of stability and peace and rule of law and collapse of economic order". The NLD congress was thus a "political movement intended to incite riots and upheaval in the entire country".

41. On the night between 11 and 12 October, University Avenue, the street where Daw Aung San Suu Kyi resides, was again closed to traffic and pedestrians by traffic police and Lon Htein (riot police) troops. On 16 October the barricades were removed but the street remained forbidden for everyone. The registration plates of cars allowed to enter neighbouring streets were reportedly recorded by the police and a nearby gas station and a grocery shop were shut down by the police. On 12 October the Public Relations and Information Division of the Ministry for Foreign Affairs issued a statement explaining the measures undertaken by saying that Daw Aung San Suu Kyi had said on 8 October that the NLD congress and roadside talks would be held and NLD members had been asked to gather at Daw Aung San Suu Kyi's residence at 8.30a.m. on 12 October:

"In order to avoid the undesirable consequences arising out of such a gathering including outbreak of confrontation and riots, disturbance of existing peace and stability in the nation, unruly actions and incitement in the street affecting the daily life of the ordinary people, the authorities have decided as a preventive measure the temporary closure to both traffic and pedestrians of the University Avenue from Kokang Road junction to the Inya Myaing Road starting from the morning of 12 October."

42. Also in October some gatherings of people were broken up by the police. On 12 October there were reportedly four clashes between security forces and people approaching Daw Aung San Suu Kyi's house. In the first incident security forces allegedly chased and attacked a crowd at Kokkine intersection, whereafter the crowd dispersed. Later people assembled again, and the security forces lifted the barricades to let people pass, and then reinstated the barricades, trapping people inside and attacking them. On the same day there were clashes between crowds and security forces also in the Campbell and Hamidtit areas. SLORC reported 25 arrests, but all persons arrested were said to have been released later. After the clashes there was a heavy security presence in the areas.

43. On 1 November 1996 the authorities suggested that larger public meetings may be held within Daw Aung San Suu Kyi's compound, but that not more than 10 persons may gather outside her gate. Daw Aung San Suu Kyi reportedly did not accept these limitations. On 3 November 1996 several processions of NLD supporters were dispersed by riot police on roads leading to Daw Aung San Suu Kyi's house, and at least four persons who tried to gather near Daw Aung San Suu Kyi's house were reportedly briefly detained. Some monks were reportedly injured as a result of the use of batons. SLORC Lt.Col. Hla Min stated on 5 November that the 12 persons detained on the evening of 3 November in connection with a demonstration had been released the following day.

44. The Special Rapporteur was very disturbed to learn of the attacks on Daw Aung San Suu Kyi on 9 November by a stone-throwing mob of about 200 persons. Allegations of government involvement in the event circulated, as the two attacks on the cars Daw Aung San Suu Kyi and her aides were travelling in took place at locations where there was a heavy security presence. Government officials denied their responsibility in the attack and said that they were investigating this incident. The result of such investigations are not yet known.

45. Some NLD members of Parliament, democratically elected in 1991, continue to submit their resignation as a result, it is widely believed, of the continual harassment and the pressure they are facing from the authorities:

(a) At the end of September Yangon Radio announced the resignation of two NLD MPs. U Ngint Tang from Tiddim township, Chin State, was said to have resigned for health reasons and U Zaw Win was said to have resigned because of his family's health problems, and their resignation was accepted by the Multiparty Democratic Election Commission in accordance with section 11, subsection E of the People's Assembly Election Law;

(b) On 28 November Yangon Radio announced the resignation of U Saw Oo Reh, Hpru-so township, Kayah State, citing poor health and old age.

46. Since the September arrests, guards posted at Daw Aung San Suu Kyi's house have reportedly been discouraging and sometimes even preventing her from leaving the compound. According to a statement made on 31 December 1996 by Lt.Gen.Khin Nyunt at a press conference and published in the "New Light of Myanmar", "The main reason why a request had been made to Daw Aung San Suu Kyi not to leave her residence was a precautionary measure to prevent untoward incidents because of the current situation. It had been discovered that anti-Government underground elements were actively trying to stir up and foment trouble in Yangon. So to prevent further disorder the Government had simply requested Daw Aung San Suu Kyi not to leave her compound for the time being."

47. Daw Aung San Suu Kyi's correspondence is said to be studied, her phone reportedly tapped, and her meetings with foreigners closely monitored.

48. On 27 September the NLD office on Shwegondine Road was closed and the NLD signboard was taken down. According to SLORC the office was closed since the contract had expired and the landlord was disturbed by the 300 persons that gathered on his property on 27 September to prepare the congress and therefore took the building back. According to the NLD, the landlord was illegally forced to annul the lease and to remove the signboard from the building. He was threatened that the NLD would be declared illegal and that the building would thereafter be confiscated.

49. The Special Rapporteur was told that in Mayangone (Yangon Division), the authorities demanded that the NLD signboard be reduced in size. It was further reported that in Sagaing Division, the Township Law and Order Restoration Council offices sent a letter to NLD offices instructing them to take down their signboards. Also in Yangon NLD offices were reportedly ordered to take down their signboards, and authorities told building owners that the NLD will be declared illegal and that the buildings thus risked being confiscated.

50. The Special Rapporteur notes that freedom of association also implies a right to refrain from joining associations. In 1995 SLORC, apparently in preparation for the Visit Myanmar Year, reportedly issued a directive requiring all hotels in Myanmar to join the recently created Hotel and Tourism Committee. In addition to an obligatory membership fee, members reportedly have to contribute funds for "community projects".

51. In addition the Special Rapporteur has received reports that most members of the USDA have joined the organization against their will. Civil servants are said to have their names automatically registered on USDA rosters, and village- and township-level authorities are reportedly expected to register at least one USDA member per household. According to reports students in some areas must join the USDA if they want to pass their matriculation exams.

52. With respect to the right to form and join an association, the Special Rapporteur deeply regrets the fact that this right is denied to Myanmar citizens and the events of early December 1996 have demonstrated that the absolute power of the SLORC is also exercised to penalize those wishing to form an independent association.

53. During the first week of December 1996, between 1,000 and 2,000 university students from Yangon's Institute of Technology (YIT) started a series of protest demonstrations in central Yangon demanding, inter alia, the formation of a fully independent students' union. The protests, which appear to be a general expression of frustration and disappointment at the lack of freedom of association and expression and rule of law, spread to Mandalay (Myanmar's second largest city), where students from the Institute of Technology and the Institute of Medicine have also been demonstrating, and to other cities of the country.

54. The security police and army arrived with fire trucks and police vehicles. Several army trucks, three fire engines and two prison buses were seen during the demonstrations. The road leading to the YIT and the surrounding area were blockaded by security personnel. The demonstrations were broken up by security forces. The demonstrators were hosed with water cannons and security forces were reported to have beaten students taking part in the demonstration. The students did not resist. During the demonstrations, police stoned bystanders on the streets as well as onlookers in nearby houses to discourage eyewitnesses. It was reported that about 400 students were arrested for brief questioning and control of identity. Most of the students detained were reportedly released, but some allegedly remained in detention. In an article published on 2 January 1997 in NLM, a SLORC official, Col. Thein Swe, said that the authorities took in 424 students and 172 other persons, all of whom were later transferred to the care of faculty members and the local SLORC respectively, to be subsequently returned home. No one was detained, according to the authorities.

55. Subsequent to these events, universities and most high schools for boys have been closed to classes. Yangon University announced on 8 December 1996 that the 88th Convocation of Yangon University, scheduled to be held on 13 and 14 December, was postponed and that the new schedule would be announced later. The entrance examination for an evening computer course of the Ministry

for Education scheduled for 15 December was reported to have also been postponed, the date of the exam to be announced later. On Friday, 13 December, it was announced that the 30th Convocation of the Yangon Institute of Technology had been postponed.

56. There were reports of teachers and regional officers being sacked as the authorities held them responsible for the unrest. On 15 November, in his address at the conclusion of the Special Refresher Course for Basic Education Teachers, the Chairman of the Education Committee, Secretary One Lt.Gen.Khin Nyunt, stated that "the crucial role of teachers is to be always guided seriously by political outlook in moulding the student youths to become reliable and patriotic intellegentia and intellectuals who will build the modern, developed and affluent nation of the future". He stated that teachers must safeguard students from "swaying to the luring of those with the false notion" that Myanmar will prosper only with assistance from the outside. He warned that teachers must guide the students and make them vigilant against the "neo-colonialists and those within the country who have lost their national identity so that they might not be used as stepping-stones in their schemes for enslaving the nation". Teachers are "duty-bound to nurture their pupils to have a strong moral base, free from thinking highly of counter-cultures and material development of other countries ... prevent them from becoming ones who will seek their own gain and betray the national cause". It is evident that the Basic Education courses, which take place on a regular basis, are used as important forums for senior SLORC officials to impart national policy and demand cooperation on the part of the teachers. The extracts show that the speeches are clearly aimed at controlling the student population which, as in the past, seems to be an integral part of the democratic movement.

57. It is significant to note that throughout that week, there was no direct reference made to the student demonstrations which took place in Yangon and which were said to be the most serious challenge to the Government since 1988. In the press there were only indirect indications that the situation in the capital was not normal. On 9 December 1996, Senior General Than Shwe addressed a gathering of USDA executives, stressing that it was "highly essential" for them to implement the Government's 12 political, economic and social objectives, and he urged students to observe discipline and warned them to conduct themselves peacefully and be vigilant against destructive elements.

58. Other than notices that appeared during the first week of December regarding the cancellation of courses, there was no indication in the press about the students' demonstrations as such. To the contrary, Myanmar authorities made several attempts to prevent the coverage of the events:

(a) On 4 December 1996, the Foreign Correspondents Club of Myanmar (FCCM), whose members are all Myanmar nationals working for foreign newspapers and wire services, issued a protest at the detention and beatings of one of their members, U Myo Thant, a photographer for the Japanese daily "Yomiuri Shimbun". U Myo Thant, aged 39, was repeatedly beaten around the head and upper body at the Shwedagon Pagoda on 3 December by Lone Htein riot police. He was then forced into a police van and taken to the Kyaikkasan racetrack. After finally convincing the authorities that he had an official journalist's pass and that he had the authorization to enter the Shwedagon area, at the time already cordoned-off by the Lone Htein, he was released and went to Insein General Hospital, suffering from head injuries;

(b) A Japanese journalist working for "Yomiuri Shimbun", Shigefumi Takasuka, was badly beaten as he watched the demonstrations. He was taken for questioning by military intelligence and finally released two days later;

(c) At least three other freelance journalists were deported from Myanmar during the first week of December 1996. All of those deported were on tourist visas, and government officials said they were deported because they had worked as journalists while in Myanmar without permission.

59. In the week following the last student demonstration, further arrests of students were reported. On 10 December about 20 students from Yangon Arts and Science University were reportedly

arrested after staging a demonstration outside the United States Embassy in Yangon. The Government of Myanmar, however, denied that there had been any arrests.

F. Measures adversely affecting democratic governance

60. The Special Rapporteur has already described, in Part III of his last report to the General Assembly, the events which have obstructed the establishment of a democratic order after the general elections of 1990. Some further observations are called for.

61. At a press conference held on 1 October 1996, SLORC stated that "the Government is holding power only transitionally. Its main duty is the peaceful transition which will lead towards a multiparty democratic nation". There have also been statements by SLORC that "there is no need for an opposition group, since the Government has the responsibility for a peaceful transition to democracy". It remains unclear how a multiparty democracy can function without opposition parties. On 21 September 1996, the Vice-President of SLORC, Gen. Maung Aye, is reported to have declared that the military could remain in power longer if elements receiving foreign support caused disorder and on 25 September 1996, the NLM indicated that Daw Aung San Suu Kyi would soon be charged with political crimes as she was conspiring with former colonial powers and aiding exiled dissident groups in a plot to overthrow the Government. Military intelligence officers also claimed to have charts and printed material allegedly proving Daw San Suu Kyi's involvement with exiled dissident groups. Finally, in the NLM of 1 October 1996, Senior General Than Shwe is reported to have stated that "drastic action will have to be taken in the interests of the nation and the people against attempts to destabilize and divide the Tatmadaw ... Confrontation and conflict hinder and obstruct national progress ... Whatever action is taken against the NLD is purely an internal matter".

62. The Special Rapporteur wishes to recall that the promotion and protection of human rights are not "purely an internal matter". In this regard, he wishes to recall in particular the observations he made at paragraphs 9, 10 and 12 of his last report to the General Assembly.

63. In the view of the Special Rapporteur, the absence of respect for the rights pertaining to democratic governance, as exemplified by the absence of meaningful measures towards the establishment of a democratic order, is at the root of all the major violations of human rights in Myanmar. It is most unlikely that these violations will cease as long as the democratic process initiated by the general elections of 1990 is not re-established. In this regard, the release in 1995 of Daw Aung San Suu Kyi and the cease-fire with armed ethnic forces during 1995 and 1996 did raise some hopes that a political dialogue might be about to begin. Disappointingly, however, the National Convention, by reason of its mandate, composition and procedures, including its protracted proceedings, has not proved a positive step and is devoid of democratic credibility. The political process continues to appear deadlocked, with sweeping restrictions in law and practice on the exercise of virtually all human rights and freedoms.

G. Remedial measures

64. The Special Rapporteur is convinced that necessary measures implementing the resolutions of the General Assembly and the Commission on Human Rights have become more urgent for the establishment of democracy in accordance with the will of the people, as expressed in the general elections held in 1990. To this end, a substantive political dialogue should be urgently engaged with the leaders of political parties returned at those elections, including representatives of ethnic groups, and political parties should be permitted to function freely.

III. THE MISSION TO THAILAND

65. Myanmar is one of the most ethnically diverse countries in the world, with ethnic minority groups making up at least one third of the population of 45 million, and inhabiting half the land area.

Although SLORC frequently makes reference to its "135 national races", no official population statistics indicating the current size of the different ethnic groups exist.

66. The 1974 Constitution divided the country into seven ethnic minority States (Chin, Karen, Kachin, Kayah (formerly Karenni), Mon, Rakhine (Arakan) and Shan States) and seven Divisions, largely inhabited by the majority Burman population. The 1947 Constitution guaranteed some of these States a right to secession after a trial period - a right which the 1974 Constitution abolished.

67. By article 1 of the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, Member States have undertaken to protect the existence and national, ethnic, religious or linguistic identity of minorities within their respective territories and to encourage the conditions for the promotion of that identity. Article 4(1) of the Declaration provides in addition that Member States shall "take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law".

68. Article 27 of the International Covenant on Civil and Political Rights provides that, "[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language". In its General Comment No.23 on that article (CCPR/C/21/Rev.1/Add.5 of 26 April 1994), the Human Rights Committee observed that, while the enjoyment of the rights to which article 27 relates does not prejudice the sovereignty and territorial integrity of a State, the article nevertheless establishes and recognizes a right which is conferred on individuals belonging to minority groups and which is distinct from, and additional to, all the other rights which, as individuals in common with everyone else, they are entitled to enjoy under the Covenant.

69. It is to be noted that persons belonging to minorities are to enjoy, in addition to minority rights, all other human rights. Article 2(5) of the 1992 Declaration provides that minorities may communicate with persons in other States with whom they are linked by their national or ethnic origin, religion or language. In this regard, freedom of expression, which includes freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers, is especially important for persons belonging to ethnic, religious or linguistic minorities.

70. In order to assess the human rights situation of these specific groups, and because the Special Rapporteur has so far been denied access by the Myanmar authorities to the country, the Special Rapporteur visited Thailand between 9 and 19 December in order to meet with persons of interest to his mandate and to visit camps of displaced persons from Myanmar. These displaced persons belong largely to ethnic minorities. With respect to the specific itinerary followed by the Special Rapporteur, he visited camps in the area of Mae Sot and met with Karens from Myanmar, then proceeded to Chiang Mai and visited gathering sites of displaced persons from Shan State. He continued on to the area of Mae Hong Son in order to visit camps of displaced persons from Kayah (Karenni) State. During his visit, the Special Rapporteur met with a total of 50 newly arrived persons from Myanmar, mostly Karen, Shan and Karenni. The information and views obtained in the course of his visits will be reflected below under the relevant subject headings.

71. Displacement has become a way of life for many persons belonging to the ethnic minorities of Myanmar. For the past 30 years Karen, Mon, Karenni and Shan have fled their homes and lands in the course of fights between the Tatmadaw and insurgent groups representing these ethnic groups. Many of them have sought asylum in other countries, notably Thailand.

A. Introduction: The problem of displacement

72. Since the independence of Myanmar from British colonial rule in 1948, Myanmar has suffered from unresolved conflicts between most of the ethnic minorities of the country and the central authorities. These conflicts precipitated insurgencies in several parts of the country which have

resulted in large numbers of internally displaced persons. Furthermore, following the events which occurred in 1988, it has been estimated that over 1 million persons have been forcibly relocated, without any compensation, to new towns, villages or relocation camps in which they are essentially detained. This displacement is also attributed to major development projects undertaken by the Government of Myanmar in the process of which large numbers of persons are removed from the lands designated for the projects without being assisted in relocation or appropriately compensated.

73. The Special Rapporteur is not in possession of any independently verified statistics on the number of displaced persons in Myanmar, but local and international NGOs estimate the number of the displaced to be at least 1 million.

74. While studying the situation, the Special Rapporteur has found three reasons accounting for the uncertainty. The first has to do with the fact that until now there seem to have been no attempts on the part of the Government of Myanmar to acknowledge this phenomenon and, therefore, no official statistics are available on the number of displaced persons in Myanmar.

75. The second reason has to do with the particular phenomenon of displacement in the country. Internally displaced persons rarely flee in large numbers as in other situations; usually they move in small groups of a few families or individuals. The areas of expulsion are numerous and spread throughout the country, including in the border areas between Myanmar and Thailand. The displaced usually move to neighbouring rural areas and from there to camps located in Thailand or directly to Thailand, often to join relatives or friends originating from the same area.

76. The third reason has to do with the attitude of the displaced themselves towards their displacement. The Special Rapporteur was told during his visit to Thailand that people in Myanmar flee in absolute silence, not wishing in most instances to be identified as displaced, in order to avoid persecution and fearing execution.

77. It has to be stressed that the situation in Myanmar is so complex and susceptible to so many different interpretations that comprehensiveness is elusive. The causes of displacement are numerous and differ from one region to another, although certain common parameters can be discerned - as reflected below.

B. The main causes of displacement

1. Forced relocation

78. At present, forcible relocations appear to be taking place in two main contexts: as part of development projects and under counter-insurgency operations in ethnic minority regions of the countryside. Although the practice of forced relocations by the military as a means to control the population living in ethnic regions is not new, the scale of these moves increased significantly after 1988 and it is still taking place today. Victims of displacement are mostly peasants, including members of the indigenous and/or ethnic groups such as the Karen, Karenni, Shan and Mon, who are living in areas of insurgency and victimized by counter-insurgency activities or caught in the crossfire.

79. In order to cut the main links between the insurgent groups and the civilian population, SLORC has forced entire communities living in the border area between Myanmar and Thailand to move to relocation sites which are subject to tight military control. Expulsion (military) orders have been issued, warning that anyone trying to remain in their homes will be shot on sight.

(a) In Central Shan state, SLORC initiated one of its largest forced relocation programmes, which still continues. It was reported that from March 1996 SLORC troops ordered village after village in eight townships (Larng Kher, Murng Nai, Nam Zarng, Lai Kha, Murng Kerng, Kun Hing, Ke See and Murng Su) to move to a total of 45 relocation sites. The estimated number of people being relocated is over 100,000 from over 600 villages;

(b) In Kayah (Karenni) state, it was reported that throughout June and July 1996, SLORC delivered orders to more than 100 villages located between the Pon and Salween Rivers instructing them to

move to relocation sites near SLORC army camps in Sha Daw and Ywa Thit townships. The estimated number of people being relocated is 20,000-30,000 and most of them are ethnically Kayah. The army's intention is said to isolate the population in that area from Karenni insurgents of the Kayinni National Progressive Party (KNPP). Army officers allegedly warned that those who remained in the deserted villages would be considered insurgents or "enemies".

2. Forced labour and portering

80. Forced conscription of civilians into compulsory labour duties for the military authorities, including the practice of forced recruitment of porters, is also one of the causes of people leaving their homes. No pay is given for such labour and the period of service can last months. This practice disrupts family life and precludes persons from carrying on their daily work in order to earn a living.

81. While development and industrial projects such as railway construction, and the creation of tourist attractions are carried out in areas inhabited by minorities, many people are having their lands confiscated without any compensation and are forced to move to designated sites.

C. Patterns and consequences of displacement

82. Testimonies received by the Special Rapporteur, as well as comments received from representatives of non-governmental organizations, indicate that victims of displacement are mostly villagers and farmers, living in remote areas of Karen, Shan and Karenni states. Most of them have not been officially registered and do not possess any identification cards or other documents.

83. Following orders to move from their homes, peasants usually try to move first to a nearby rural area or to the jungle, trying to work in their fields during the day and returning for safety at night; once they move to a designated relocation site, they are no longer entitled to leave the compound.

84. Family units and communities are invariably destroyed. The displaced lose their natural and cultural context which leads to a variety of serious social problems. Being forced to move means that peasants in particular have to abandon everything. Displacement leaves them in a worse economic and social situation.

85. Emotional trauma amongst the displaced is common. Families remain without support, battered by violence, while often meagre resources vanish. They often suffer from fear and anxiety associated with loss of work and social role. Women have been additionally affected by violence aimed particularly against them such as rapes and beatings.

D. Issues of humanitarian law

86. Numerous testimonies received by the Special Rapporteur indicate that the civilian population living in or near the combat zone is the most susceptible to being forced to move: in these "grey zones" (zones controlled or influenced by the insurgents) the armed forces often resort to ground searches, destruction and burning of houses, and confiscation of property and food, which lead the people to move temporarily or permanently.

87. Testimonies indicate that often, if not always, the distinction between insurgents and noncombatants

is not made and that, therefore, the inhabitants of these zones are also said to be subjected to indiscriminate torture, beatings and arbitrary arrests.

88. Cases of forced evictions seem to occur with great frequency or as a matter of policy. All the people interviewed by the Special Rapporteur stated that they were given at most one week's notice to move and were told that they would be shot if they did not comply. They were forced to leave their piece of land, their crops and most of their animals; much of the property was reportedly immediately stolen or confiscated by SLORC troops.

89. According to testimonies received, relocation sites consist mainly of a large and empty piece of land surrounded by fences or barbed-wire and near a military camp. Nothing is prepared by the

authorities to receive the new forced arrivals. There seems to be a food and a health crisis and a general lack of adequate housing and basic services. Villagers have to build their own makeshift huts and provide their own food. One member of each family living in the relocation site has to do various tasks for SLORC, such as building their compound. The interviews, did not make clear to what extent the rights to education and access to health care, especially for children, are being fulfilled. Each family also has to provide one person to work for the army whose compound is usually located on the same site. They perform different duties such as building the fences, cleaning the compound or guarding the site. The villagers are not entitled to leave the compound. Their freedom of movement is extremely limited and in all cases subject to authorization from the local military battalion.

90. Testimonies indicate that some persons who tried to flee were threatened or actually prohibited from doing so. Attempting to flee is said to be interpreted by the authorities as positive proof of participation in or sympathy with the insurgency and of an intention to report on the abuses committed by the Army. Others were required to obtain safe conduct passes or pay high fees at checkpoints for a "permission" to leave. Other sources have reported incidents of women and children being shot at while fleeing in areas near the border with Thailand.

E. Rights particularly relevant to displaced persons in Myanmar

91. In the first place, the forced displacement of persons is not consistent with human rights norms as proclaimed in article 13 of the Universal Declaration of Human Rights and article 12 of the International Covenant on Civil and Political Rights. Freedom of movement and freedom to choose one's residence in one's own country may be restricted on limited grounds and can only be derogated from during times of public emergency which threatens the life of a nation and the existence of which is officially proclaimed. Such derogations, however, are temporary and may not be resorted to in a manner which violates the right to life or the right to be free from torture or cruel, inhuman or degrading treatment or punishment, among other things, as proclaimed in article 4 of the International Covenant on Civil and Political Rights. In any event, displaced persons have a right to return to their place of residence and to the protection of the property that they leave behind. Further, where persons are displaced in circumstances which are consistent with international norms, they have a right to live in conditions in which basic rights to food, housing and health are secured, not to speak of reasonable social amenities and the enjoyment of all other basic rights to life, physical security and public freedoms.

92. Finally, and in analysing the information he has received, the Special Rapporteur observes that article 3 (1) common to the four Geneva Conventions of 12 August 1949 provide as follows:

"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

"1. Persons taking no active part in hostilities, including members of the armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

"To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

"(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

"(b) Taking of hostages;

"(c) Outrages upon human dignity, in particular humiliating and degrading treatment;

"(d) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are

recognized as indispensable by civilized peoples."

The obligation to apply common article 3 is absolute for governmental armed forces as well as armed dissidents, and is independent of the obligation of the other party.

93. The Special Rapporteur also observes that article 17 of Protocol II Additional to the Geneva Conventions of 12 August 1949 requires that, in the case of displacements carried out for the safety of civilians or for imperative military reasons, the responsible party must take "all possible measures ... in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition". Article 14 of the same instrument also stipulates a prohibition of starvation of civilians under the control of organized armed forces.

F. Remedial measures

94. The phenomenon of displacement would appear to relate largely, if not exclusively, to ethnic minorities. The problem is not new, and originates mainly from the absence of a political solution dating back to colonial times and before. The cease-fire agreements concluded over recent years are a beginning to a solution but are likely to be fruitless until serious and meaningful measures are taken to engage in a political dialogue which includes the ethnic minorities. The Special Rapporteur, therefore, reiterates his view that a political dialogue must urgently be engaged between the present regime and the political parties returned at the elections of 1990, including representatives of ethnic minorities, with a view to working out such measures as might be considered best to bring the democratic process engaged in 1990 to fruition.

95. Measures to ensure the protection of other human rights also have to be taken. In this respect, the Special Rapporteur expresses his concern over the seriousness of the evidence relating to the country's human rights record. As relates more specifically to the displaced persons, the Special Rapporteur would like to underline the importance of land and property rights and respect for humanitarian law including the rights to life and physical integrity, especially during and immediately following forced evictions.

96. Another important step would be for the Government of Myanmar to open up space for legitimate social action primarily at the micro-level. Grass-roots projects with the local participation of the citizens should have beneficial effects on the local population and should be promoted and supported. There is considerable need for measures strengthening public administration, an independent and impartial judiciary, decentralization and better control over the military.

97. Human rights promotion and protection at the local level are also very important, including in areas where the central Government has little influence. In this connection, there should be human rights training for the military and organization of workshops in relocation sites.

98. Projects for the provision of humanitarian assistance, shelter, health care and psychological assistance during the first days of arrival are to be encouraged. In this regard there should be greater cooperation between the State and the non-governmental organizations already working in Myanmar.

99. In rural areas and in the various regions of the country where the military has an especially strong position, the human rights situation seems to be particularly grave and too few violations are being investigated.

100. Very few returns to areas of origin seem to be taking place. The reason is that at the moment there exist very few solutions to the fundamental causes of displacement. For example, as the Special Rapporteur was told, for the peasants who have lost their land, either because they had to sell it very cheaply before they fled or because it was taken by the army, return is not possible; where the armed conflict is continuing, return is also not an option.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

101. The Special Rapporteur regrets that his efforts to obtain the cooperation of the Government of Myanmar and to visit the country have so far failed. Nevertheless, the Special Rapporteur is confident that much of the evidence brought to his attention speaks for itself.

102. The Special Rapporteur observes that the absence of respect for the rights pertaining to democratic governance is at the root of all the major violations of human rights in Myanmar in so far as this absence implies a structure of power which is autocratic and accountable only to itself, thus inherently resting on the denial and repression of fundamental rights. The Special Rapporteur concludes that genuine and enduring improvements in the situation of human rights in Myanmar cannot be attained without respect for the rights pertaining to democratic governance. In this regard, he notes with particular concern that the electoral process initiated in Myanmar by the general elections of 27 May 1990 has still not reached its conclusion and that the Government still has not implemented its commitments to take all necessary steps towards the establishment of democracy in the light of those elections.

103. Government representatives have repeatedly explained that the Government is willing to transfer power to a civilian government but that in order to do so there must be a strong constitution, and that in order to have a strong Constitution they are doing their best to complete the work of the National Convention. However, the Special Rapporteur cannot help but observe that, given the fact that most of the representatives democratically elected in 1990 have been excluded from participating in the meetings of the National Convention, the restrictions imposed upon the delegates (practically no freedoms to assemble, print and distribute leaflets or to make statements freely), and the general guidelines to be strictly followed (including the principle regarding the leading role of the Tatmadaw), the National Convention does not constitute the necessary "steps towards the restoration of democracy, fully respecting the will of the people as expressed in the democratic elections held in 1990".

104. Detailed reports and photographs seen by the Special Rapporteur lead him to conclude that extrajudicial, summary or arbitrary executions, the practice of torture, portering and forced labour continue to occur in Myanmar, particularly in the context of development programmes and of counter-insurgency operations in minority-dominated regions.

105. With regard to allegations of arbitrary arrest and detention, the Special Rapporteur does not doubt that such violations take place on a wide scale, if on no other basis than his examination of the laws in place which shows that such violations are legal and may easily occur. At the same time, the absence of an independent judiciary coupled with a host of executive orders criminalizing far too many aspects of normal civilian conduct, prescribing enormously disproportionate penalties and authorizing arrest and detention without judicial review or any other form of judicial authorization leads the Special Rapporteur to conclude that a significant percentage of all arrests and detentions in Myanmar are arbitrary when measured by generally accepted international standards. In this regard, the Special Rapporteur expresses his deep concern at the continued detention of many political prisoners, in particular elected representatives, and the recent arrests and harassment of other supporters of democratic groups in Myanmar, culminating at the end of September 1996 in the massive arrests of NLD supporters and the virtual blockade of the Secretary-General of the NLD in her compound.

106. On the basis of virtually unanimous reports and other information, the Special Rapporteur concludes that there is essentially no freedom of thought, opinion, expression or association in Myanmar. The absolute power of SLORC is exercised to silence opposition and penalize those holding dissenting views or beliefs. Because of both visible and invisible pressures, the people live in a climate of fear in which whatever they or their family members may say or do, particularly in

the area of politics, involves the risk of arrest and interrogation by the police or military intelligence. The Special Rapporteur notes that NLD leaders cannot assemble in a group, cannot freely discuss, and cannot publish or distribute printed material. In this situation it is difficult to assume that open discussion and free exchanges of views and opinions can possibly take place in Myanmar, unless they are in support of the present military regime.

107. Turning to freedom of movement and residence in Myanmar, including the right to leave and re-enter one's own country, the Special Rapporteur concludes that there are clear violations of these freedoms found in Myanmar law and practice themselves. Specifically, severe, unreasonable and, in the case of the Muslim Rakhine population, racially based restrictions are placed on travel inside the country and abroad. On the matter of internal deportations and forced relocations, the Special Rapporteur concludes that the Government's policy violates freedom of movement and residence and, in some cases, constitutes discriminatory practices based on ethnic considerations.

B. Recommendations

108. The Special Rapporteur regrets that he finds it necessary to repeat all of the recommendations made in his report to the General Assembly in 1996. In the light of the foregoing conclusions, the Special Rapporteur submits the following recommendations for the consideration of the Government of Myanmar:

(1) The Government of Myanmar is urged to fulfil in good faith the obligations it has assumed under Articles 55 and 56 of the Charter of the United Nations "to take joint and separate action in cooperation with the Organization for the achievement of ... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language and religion". In this respect, the Special Rapporteur would wish to note that the Government of Myanmar should encourage the adoption, as one of the basic constitutional principles of the provisions of the Universal Declaration of Human Rights, a copy of which should be made widely available in the Burmese language.

(2) The Government of Myanmar should further consider accession to the International Covenants on Human Rights; the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the two protocols additional to the Geneva Conventions of 1949.

(3) Myanmar law should be brought into line with accepted international standards regarding protection of physical integrity rights, including the right to life, protection against disappearance, prohibition of torture, cruel, inhuman or degrading treatment, providing humane conditions for all persons under detention and insurance of the minimum standards of judicial guarantees.

(4) In the interest of ensuring that the Government of Myanmar genuinely reflects the will of the people, steps should be taken to allow all citizens to participate freely in the political process, in accordance with the principles of the Universal Declaration of Human Rights, and to accelerate the process of transition to democracy, in particular through the transfer of power to the democratically elected representatives. The institutions of government should benefit from a separation of powers as to render the executive accountable to the citizenry in a clear and meaningful way and, furthermore, steps should also be taken to restore the independence of the Judiciary and to subject the Executive to the rule of law and render executive action justiciable.

(5) The Government of Myanmar is urged to take all necessary measures to accelerate the process of transition to democracy and to involve in a meaningful way in that process the representatives duly elected in 1990. In this regard, the Government of Myanmar should without delay begin a process of genuine and substantive dialogue with the leaders of the National League for Democracy and with other political leaders who were duly elected in the democratic elections of 1990, including representatives of the ethnic minorities.

(6) The Government of Myanmar should also take all necessary measures to guarantee and ensure that all political parties may freely exercise their activities without restrictions and that, in this

context, all restrictions imposed on the Secretary-General, the leaders and members of the NLD should be immediately lifted so that they may freely exercise their civil and political rights.

(7) All political detainees, including elected political representatives, students, workers, peasants and others arrested or detained under martial law after the 1988 and 1990 demonstrations or as a result of the National Convention, should be tried by a properly constituted and independent civilian court in open judicial proceedings and in accordance with all the guarantees of fair trial and due process in conformity with applicable international norms. If found guilty in such judicial proceedings, they should be given a just sentence proportionate to their offence. Otherwise, they should be immediately released with the Government responsible for refraining from all acts of intimidation, threats or reprisal against them or their families and for taking appropriate measures to compensate all those who have suffered arbitrary arrest or detention.

(8) The Government of Myanmar should ensure that all laws rendering violations of human rights legitimate are urgently repealed, that laws are given due publicity and that the principle of non-retroactivity of penal laws is respected.

(9) The Government of Myanmar should give particular attention to prison conditions in the country's prisons and take all the necessary steps to allow international humanitarian organizations to have access thereto and to communicate freely and confidentially with prisoners.

(10) The Government of Myanmar should take steps to facilitate and guarantee the enjoyment of the freedoms of opinion, expression and association, in particular by decriminalizing the expression of oppositional views, relinquishing government controls over the media and literary and artistic works.

(11) The Government of Myanmar should remove all restrictions relating to the entry and exit of citizens into and out of the country, as well as their movement within the country.

(12) The Government of Myanmar should cease all discriminatory policies which interfere with the free and equal enjoyment of property, and compensate appropriately those who have been arbitrarily or unjustly deprived of their property.

(13) The Government of Myanmar should fulfil its obligations under International Labour Organization Convention (ILO) No. 87 concerning Freedom of Association and Protection of the Right to Organize of 1948. In that respect, the Government of Myanmar is encouraged to cooperate more closely with ILO through a technical cooperation programme so that the very serious discrepancies between the law and the practice on the one hand, and the Convention, on the other hand, are urgently eliminated.

(14) The Government of Myanmar is urged to comply with its obligations under ILO Convention No. 29, prohibiting the practice of forced labour and forced portering. In this connection, the Government of Myanmar should urgently take the appropriate measures to repeal the offending legal provisions under the Village Act and the Towns Act to prevent the continuation of the practice of forced labour. In this regard, the Government of Myanmar is encouraged to cooperate with ILO to that end.

(15) The Government of Myanmar should take the necessary steps to bring the acts of soldiers, including privates and officers, in line with accepted international human rights and humanitarian standards so as to prevent arbitrary killings, rapes, and confiscations of property, or forcing persons into acts of labour, portering, relocation or otherwise treating persons without respect to their dignity as human beings. When villagers are hired for portering and other works, adequate wages should be paid. The nature of work should be reasonable and in accordance with established international labour standards.

(16) The Government of Myanmar should take urgent steps to put an end to the enforced displacement of persons and to create appropriate conditions to prevent the flow of refugees to neighbouring States. In the event that the relocation of villagers becomes necessary in circumstances which are in conformity with international norms, proper consultations should take place with the villagers, including the payment of appropriate compensation, reviewable by independent courts, and

the taking of measures to ensure that food, housing facilities, proper medical care and social amenities, including appropriate arrangements for the education of children, are provided in adequate measure in the interest of the displaced persons.

(17) Military and law enforcement personnel, including prison guards, should be thoroughly informed and trained as to their responsibilities towards all persons in full accord with international human rights norms and humanitarian law. Such standards should be incorporated into Myanmar law, including the new constitution to be drafted.

(18) Given the magnitude of the abuses, the Government should subject all officials committing human rights abuses and violations to strict disciplinary control and punishment and put an end to the culture of impunity that prevails at present in the public and military sectors.

[illegible]

Report to the Commission on Human Rights, March 1996

UNITED NATIONS

Economic and Social Council

Distr. GENERAL

E/CN.4/1996/65

5 February 1996

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Fifty-second session

Item 10 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS
IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND
OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Myanmar, prepared by Mr. Yozo Yokota, Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1995/72

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Introduction

A. Mandate

1. The mandate of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar has been described in each of the Special Rapporteur's previous reports to the General Assembly (A/47/651, A/48/578, A/49/594 and A/50/568) and to the Commission on Human Rights (E/CN.4/1993/37, E/CN.4/1994/57 and E/CN.4/1995/65). The mandate, initially articulated in Commission resolution 1992/58 and extended most recently by the Commission in its resolution 1995/72 of 8 March 1995 (approved by the Economic and Social Council in its decision 1995/283 of 25 July 1995), required the Special Rapporteur to establish or to continue direct contacts with the Government and the people of Myanmar, including political leaders deprived of their liberty, their families and their lawyers, with a view to examining the situation of human rights in Myanmar and following any progress made towards the transfer of power to a civilian government and the drafting of a new constitution, the lifting of restrictions on personal freedoms and the restoration of human rights in Myanmar. In resolution 1995/72, the Commission urged the Government of Myanmar to extend its full and unreserved cooperation to the Commission and the Special Rapporteur and, to that end, to ensure that the Special Rapporteur had effectively free access to any person in Myanmar whom he might deem it appropriate to meet in the performance of his mandate, including Daw Aung San Suu Kyi; requested the Secretary-General to give all necessary assistance to the Special Rapporteur; and requested the Special Rapporteur to report to the General Assembly at its fiftieth session and to the Commission at its fifty-second session.

2. The substantive issues addressed by the Commission on Human Rights in resolution 1995/72 included the following concerns: that the electoral process initiated in Myanmar by the general elections of 27 May 1990 had not yet reached its conclusion and that the Government still had not implemented its commitments to take all the necessary steps towards democracy in the light of those elections; that many political leaders, in particular elected representatives, remained deprived of their liberty; that Daw Aung San Suu Kyi, Nobel Peace Prize laureate, was still under house arrest; that there had been a recent offensive against the Karen National Union, Burmese student activists and other groups of the political opposition which resulted in an exodus of refugees into Thailand. The Commission also expressed its grave concern that serious violations of a variety of fundamental rights continued, inter alia the practice of forced labour, including forced portering, and forced displacement of the population.

3. In addition, the Commission took note of the fact that the Government of Myanmar had acceded to the Geneva Conventions of 12 August 1949; withdrawn reservations it had entered concerning the Convention on the Rights of the Child; freed a certain number of political prisoners, in response to the concerns repeatedly expressed by the international community; received the Special Rapporteur for a visit to Myanmar; and observed cease-fire agreements with ethnic groups.

4. The Special Rapporteur submitted a preliminary report to the General Assembly at its fiftieth session in October 1995 (A/50/568). The present comprehensive report is submitted to the Commission on Human Rights at its fifty-second session for its consideration.

B. Historical background

5. In 1948, the Union of Myanmar (then called Burma) gained independence from British colonial rule. From 1948 until 1962, the country was governed by a parliamentary democracy based on the Constitution of 2 September 1947. It provided for a federal system of government with separate executive, legislative and judicial branches. The States under the Union were considered autonomous. According to article 201 of the Constitution of 1947, ethnic minorities had, in theory, the right to secede from the Union, but, under article 202, this right was not to be exercised until 10 years from the date of entry into force of the Constitution. In March 1948, an armed insurgency against the then Government of Burma was begun by the Communist Party of Burma. Between 1948 and 1961, various minority ethnic groups joined the armed insurgency.

6. In March 1962, General Ne Win took power in a coup d'état. He installed one-party (the Burma Socialist Programme Party) rule under military control. He embarked upon a programme known as the "Burmese Way to Socialism". In 1974, a new Constitution was drafted under which one-party rule continued.

7. Towards 1988, nationwide demonstrations began in reaction to the suppression of all civil and political rights since the overthrow of the constitutional government in 1962 and to the economic failure as a consequence of the policy of the Burmese Way to Socialism.

8. From March to June 1988, students, workers and monks demonstrated for more freedom and democracy, but the army used harsh measures to crush the demonstrations. Hundreds of civilians were arrested and many suffered severe injuries or died from ill-treatment in detention. Many persons were summarily or arbitrarily executed. On 21 June 1988, the Government imposed a ban on all public gatherings.

9. On 23 July 1988, General Ne Win resigned as party leader and promised economic reform and the holding of a referendum to end one-party rule and institute a multi-party system. However, demonstrations continued and the Army and riot police attacked the demonstrators. It was reported that approximately 3,000 persons were killed in August 1988 alone. On 18 September 1988, the military took power and the State Law and Order Restoration Council (SLORC) was set up under the chairmanship of the Chief of Staff, Senior General Saw Maung. The National Assembly (Pyithu Hluttaw), the Council of State and other governmental bodies were dissolved. Free elections were promised by SLORC but Daw Aung San Suu Kyi, daughter of General Aung San (the national hero of independence who was assassinated in 1947) and General Secretary of the National League for Democracy (NLD), was banned from campaigning on the grounds that she kept unlawful association with insurgent organizations. On 20 July 1989, Daw Aung San Suu Kyi was detained by government forces. She was kept under house arrest without trial and, in 1991, she was awarded the Nobel Prize for Peace. Many others, including most of the important opposition political leaders, were also detained.

10. On 27 May 1990, general elections were held in which the main opposition party (NLD) won 81 per cent of the seats (392 seats out of 485 in total) and 60 per cent of the votes. However, the official announcement of the results of the elections was postponed by SLORC in order to allow the Election Commission set up by SLORC to scrutinize the expense accounts of all elected representatives.

11. Beginning in early 1992, a mass exodus of Myanmar Muslims from Rakhine State into

Bangladesh was reported. At least 250,000 such persons sought refuge for fear of persecution. On 28 April 1992, the Governments of Myanmar and Bangladesh signed an agreement for the voluntary and safe return of the refugees. By October 1993, approximately 40,000 refugees had returned to Myanmar under this arrangement.

12. On 5 November 1993, the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Government of Myanmar signed a memorandum of understanding in an effort to ensure the voluntary and safe repatriation of the persons who had left the country for Bangladesh. This memorandum of understanding was similar to the one between UNHCR and the Government of Bangladesh signed on 12 May 1993. Both Governments expressed satisfaction at this accord and the participation of UNHCR, since it was the responsibility of the country of refuge to assure the voluntariness of repatriation, while it was the responsibility of Myanmar to assure safety upon return. From September 1992 to the end of October 1995, a total of more than 190,000 refugees out of approximately 250,000 have returned to Myanmar.

13. In April 1992, General Than Shwe became Chairman of SLORC after General Saw Maung had resigned from the post for reasons of health. Since this change of leadership, a number of new policies had been announced and implemented, including: the release of many political leaders in detention (including the former Prime Minister U Nu, but not Daw Aung San Suu Kyi); the holding of a national convention for drafting the principles and guidelines for a new constitution; the granting of permission to the family of Daw Aung San Suu Kyi to visit her; the opening of universities and other institutions of higher education; the lifting of the curfew order and martial law; and the cessation of military tribunals for civilian cases.

14. On 9 January 1993, the National Convention was convened. The participants were composed of 702 delegates from eight categories, as follows: (a) representatives of political parties, including NLD (49); (b) representatives elected in the 1990 elections (107); (c) representatives of national racial groups (215); (d) representatives of peasants (93); (e) representatives of workers (48); (f) representatives of the intelligentsia and technocrats (41); (g) representatives of State service personnel (92); and (h) other invited persons (57). The meeting of the National Convention has been adjourned several times for reasons not quite clear to outside observers.

15. On 15 March 1995, the Government of Myanmar released two prominent NLD leaders, namely U Kyi Maung and U Tin Oo.

16. When the National Convention adjourned on 8 April 1995, the Chairman of the National Convention and Chief Justice U Aung Toe stated that agreement had been reached on laying down principles for the designation of self-administered divisions and self-administered zones under the chapter of the constitution entitled "State structure".

17. On 10 July 1995, after six years of house arrest, the Government of Myanmar announced that restrictions on Daw Aung San Suu Kyi had been lifted and that she had been released without conditions.

18. On 28 November 1995, the Government of Myanmar reconvened the National Convention. The subjects on its current agenda are: the legislature; the executive and the judiciary branch. Like the previous sessions, the plenary opening session was attended by, among others, five NDL delegates included in the political parties delegates group, and 81 elected NLD representatives included in the elected representatives group. Following the opening address delivered by Lt.Gen. Myo Nyunt, Chairman of the National Convention Convening Commission, the representatives and delegates of NLD decided to withdraw from the Convention and to boycott its current session. The NLD leaders said that its delegates would only attend the Convention again if the military authorities began a dialogue with party leaders. After the withdrawal of the members of NLD, which, despite winning 80 per cent of the seats in the 1990 general elections had been allocated only 15 per cent of the 702 delegates, the Chairman of the Convention invited the remaining delegates to continue their work in accordance with the original arrangements.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Introduction

19. As regards his efforts to fulfil the mandate entrusted to him by Commission resolution 1995/72, the Special Rapporteur would have to report that the restrictive measures taken by the United Nations Secretariat in New York, as a result of the financial crisis, have created great difficulties to him and seriously impeded his activities. In particular, the Special Rapporteur would like to record his disappointment as to the fact that his travel to Myanmar was authorized with only 24 hours' notice and that no interpreter was assigned to him to enable him to carry out this very important mission efficiently and effectively. This is contrary to paragraph 24 of the Commission's resolution, which specifically "requests the Secretary-General to give all necessary assistance to the Special Rapporteur".

B. Visit to Myanmar

20. On 4 September 1995, the Special Rapporteur addressed a letter to the Government of Myanmar requesting permission to visit the country from 8 to 17 October 1995. On 28 September 1995, in a letter from the Permanent Representative of Myanmar to the United Nations Office at Geneva, the Special Rapporteur was informed that the proposed dates for his visit had been tentatively agreed to. On 29 September 1995, the Special Rapporteur addressed another letter to the Government of Myanmar, in which he requested audiences with high governmental officials and meetings in circumstances providing full confidentiality with leaders of political parties, including those in detention or under restriction. The Special Rapporteur also requested full and free access to all individuals, representatives of non-governmental and intergovernmental organizations, whom he might deem it necessary to meet in carrying out his mandate or who might have expressed the wish to meet him. He further requested permission to visit prisons and other centres of detention, with confidential and unrestricted access to those detained. In addition, the Special Rapporteur requested that he be granted full access to other areas of the country, in particular Shan and Kachin States, for the purpose of visiting some development or construction sites, specifically the Mong Kwan electric power plant where many forced labourers are reported to be working and Myitkyiana-Sumprabom Road or Myitkyana-Shibwe Lawkhaungng Road.

21. The Special Rapporteur visited Myanmar from 8 to 17 October 1995. Prior to the visit, he had been in frequent contact with the Permanent Representative of Myanmar to the United Nations Office at Geneva and with the Minister for Foreign Affairs, who cooperated fully and facilitated the visit. During his visit to Myanmar all of the Special Rapporteur's specific requests for meetings with high-level government officials were met. Similarly, visits to Shan and Kachin States were facilitated with appropriate briefings, meetings and visits. During this visit, the Special Rapporteur enjoyed freedom of movement and freedom of access to private persons and others of interest, with some notable exceptions which will be addressed below. The Special Rapporteur would like to record his deep appreciation to the Government of Myanmar for its cooperation in facilitating his visit to the country and in responding to his requests for information and explanation.

22. In Yangon, the Special Rapporteur met with the following governmental representatives: Lieutenant-General Khin Nyunt, Secretary One of SLORC; U Nyunt Swe, Deputy Minister for Foreign Affairs; Lieutenant-General Mya Thinn, Minister for Home Affairs; Brigadier-General D.O. Abel, Minister for National Planning and Economic Development; Major-General Aye Kyaw, Minister for Information; U Tha Tun, the Attorney-General; and U Aung Toe, Chief Justice of the Supreme Court.

23. In the course of his visit to Myanmar, the Special Rapporteur paid visits to the following governmental institutions and facilities: Insein and Myitkyina prisons.

24. The Special Rapporteur met with representatives of the following political parties which are participating in the National Convention drafting the new constitution of the Union of Myanmar: the National League for Democracy (NLD); the Union Kayene League; and the National Unity Party (NUP).

25. While the information and views obtained in the course of his visits and meetings will be reflected below under relevant subject headings, the Special Rapporteur draws attention here to the salient aspects of the visits and meetings mentioned above.

1. Meeting with Secretary One

26. On the morning of 16 October 1995, Secretary One of SLORC, Lt.Gen. Khin Nyunt, received the Special Rapporteur at the Ministry of Defence. They discussed political, economic and social changes and enjoyed a frank, open and lengthy exchange of views which touched upon issues of concern for the respect of human rights and the restoration of democracy in Myanmar.

27. Lt.Gen. Khin Nyunt described a variety of political, social and economic development initiatives which had been taken by the Government since it took power in 1988 in order to achieve political stability, economic progress and improvement of social conditions.

28. On the matter of the general political organization of the State, Lt.Gen. Khin Nyunt explained that the stability of the State was the most basic requirement for the development of the Union of Myanmar. National reconsolidation, therefore, was an indispensable component of the Government's policy to achieve peace and political stability. Success was being achieved in that task with the unprecedented return to "the legal fold" of 15 out of 16 ethnic armed groups.

29. In the economic sector, Lt.Gen. Khin Nyunt described to the Special Rapporteur a variety of initiatives which had been taken by the Government in order to improve the life of the people, to develop all the regions and to reduce the gaps between the rich and the poor and between urban and rural areas. In this regard, Lt.Gen. Khin Nyunt cited the implementation of a variety of projects launched by the Government, i.e. the construction of roads, bridges, railroads, hydropower stations and reservoirs. Special efforts were being made for the development of the border areas where more than US\$ 400,000 had already been spent by SLORC on projects aimed at enhancing the infrastructure of those regions and improving the standard of living of the population concerned. The Government was taking several measures to increase agricultural production, investing in projects for greening arid districts and extending irrigation networks including those storing rainwater and pumped water for use when needed. Altogether 52 dams had been built in the time of SLORC and several other projects were being carried out.

30. In connection with these development projects, Lt.Gen. Khin Nyunt said that the slanderous stories about forced labour were not true and were only invented by unscrupulous persons who did not want to see Myanmar develop under the present Government, or by insurgent groups. He stated that the people of Myanmar were of the Buddhist faith and were willing to contribute voluntarily to the development projects, believing that they would be the first ones to enjoy the results on Earth and thereafter.

31. With regard to the social sector, progress was being sought to strengthen political stability and economic progress, which was paving the way for the emergence of a peaceful, prosperous and modern State. The Government was endeavouring to preserve the national character and cultural heritage and raise the standard of education and health of the entire population.

32. On the general subject of human rights, Lt.Gen. Khin Nyunt explained that the character of the Myanmar people, their notions and way of life had been formed and shaped by Buddhist teachings which were in harmony with the international human rights standards and prohibited killings, torture and violence in general.

33. Concerning the Special Rapporteur's specific questions about the lack of freedom of expression and restrictions with regard to the distribution of pamphlets by political parties, Lt.Gen. Khin Nyunt

stated that for the moment such activities would affect negatively the stability and peace which were prevailing in the country. He added that it was not the appropriate moment for the country to open up to democracy. The main priority was to avoid "chaos". Accordingly, the Government was trying first to educate people to behave in conformity with democratic principles. He added that a democratic system could only be established in an atmosphere of peace, tranquillity and prosperity, rather than under anarchy, disintegration of the nation and disorder.

34. Regarding the arrest of several students during the funeral of former Prime Minister U Nu and of three political leaders in mid-June 1995, Secretary One said that politicians were quite free to go about their business and to travel freely in the country with the permission of the Government. However, they could not be allowed to disturb the peace and tranquillity or bring about disorder.

Otherwise, conditions in the country would deteriorate and, consequently, the majority of the population would suffer. As a responsible Government, SLORC had to take into consideration economic and political, including security, concerns. It was in that connection that he justified the arrests of the three opposition activists and the students. Responding to the Special Rapporteur's specific request to meet with them in Insein Prison, Secretary One replied that it was difficult to respond positively because the detainees would provide him with false and negative opinion of the country since legal action had been taken against them.

35. Secretary One assured the Special Rapporteur that SLORC had direct contact with Daw Aung San Suu Kyi, but the Government had so many important tasks to achieve in terms of economic and social development that for the moment it was not a priority to resume its dialogue with her.

36. With regard to possible visits by the International Committee of the Red Cross (ICRC) to places of detention in Myanmar, Secretary One imputed the failing of the negotiations to the "harsh and rude" attitude of the ICRC chief of delegation. He added that the Government had already intimated to ICRC that it should continue the ongoing dialogue in that regard as they were collaborating in many other instances.

37. With regard to the postponement of the National Convention, Secretary One told the Special Rapporteur that there was no political reason behind that decision. He explained that many of the delegates of the respective delegate groups were inclined to attend to their business, especially agricultural matters, as well as charities at a time when the rainy season was ending. Therefore, they had expressed their wish that the National Convention should be reconvened later. Taking into consideration the wishes of many of the National Convention delegates, the National Convention Convening Commission had designated 28 November 1995 as the date for reconvening the National Convention, to enable all the delegates to attend.

38. Lt.Gen. Khin Nyunt ended the meeting by stating that the Government was attempting to develop the country politically, economically and socially and that, although there were problems, they would be overcome. It could not allow the country to be destroyed or to disintegrate and it would not accept any pressure, either from the inside or from other countries. It would carry on action, in accordance with the law, against any activity aimed at disunity and destruction of the country.

2. Meetings with the Attorney-General and the Chief Justice

39. On the morning of 10 October 1995, the Special Rapporteur met with Attorney-General U Tha Tun after having earlier met with Chief Justice U Aung Toe.

40. His discussion with the Chief Justice focused on the National Convention (which the Chief Justice is chairing). The Minister recounted the process from its very start, explaining how the Preparatory Committee for the National Convention had been constituted, specifying the composition of delegates to the National Convention and highlighting the achievements of each meeting of the National Convention, since it began on 7 January 1993 up to the recent developments. With regard to the time-frame for the drafting of the Constitution, the Minister stressed that priority

must be given to national reconciliation and achieving peaceful relations between all the national races in order to obtain a consensus in the country and secure union. When asked by the Special Rapporteur why no copy of the Universal Declaration of Human Rights, in the Burmese language, had been provided to every National Convention delegate as he had recommended, the Minister said that it was impossible to distribute it among 700 delegates, but an English copy was available at the Convention library. With regard to the postponement of the National Convention, the Minister of Justice told the Special Rapporteur that there was no political reason behind that decision. He explained that many of the delegates, because of the harvest season and owing to religious activities, had expressed the desire to reconvene the National Convention at a later date. Taking into consideration the wishes of the delegates, the National Convention Convening Commission had designated 28 November 1995 as the date for reconvening the National Convention, to enable all the delegates to attend.

41. The discussion with Attorney-General U Tha Tun revolved around new legislation, such as reform of existing Myanmar legislation, for which the Attorney-General has responsibility both in his governmental office and as Chairman of the Law Revision Commission. In response to the Special Rapporteur's inquiries about the Government's intention to consider accession to the International Covenants on Human Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Attorney-General explained that the role of his office was mainly technical and advisory and that it therefore had no authority for such political decisions.

42. In response to the Special Rapporteur's inquiries about the collaboration between the Government of Myanmar and ICRC, the Attorney-General informed the Special Rapporteur that his office had scrutinized the draft memorandum of understanding and made some amendments in order to bring them into conformity with the national laws. The ICRC standard requirements for visits to places of detention and to have private meetings with the prisoners had been rejected because they were contrary to Myanmar law, specifically provision 784, section 40 of the Prisons Act, which stipulated that "every interview with a convicted prisoner shall take place in the presence of a jail officer ... who shall be so placed to be able to see and to hear what passes". (See annex I).

3. Meeting with the Minister of Information

43. On the morning of 11 October 1995, the Special Rapporteur met with Major-General Aye Kyaw, Minister of Information, together with members of the Information Committee over which the Minister presides. The Minister provided information on the availability of national and international publications in Myanmar. Nevertheless, responding to a question regarding freedom of expression and whether any independent publication existed in Myanmar, the Special Rapporteur was informed that within Myanmar the written press, radio and television were subjected to governmental control and scrutiny. The Minister added that the conditions to permit a liberalization of the media were not met for the moment and no decision had been taken in that regard.

44. Responding to the suggestion made by the Special Rapporteur to disseminate publications referring to international human rights standards, Maj.Gen. Aye Kyaw explained that most of the human rights provisions were contained in Buddhist publications. Therefore, there was no need to have a specific publication referring to the human rights standards.

4. Meeting with the Minister for National Planning and Economic Development

45. On the morning of 11 October 1995, the Special Rapporteur met with Brigadier General D.O. Abel, Minister of National Planning and Economic Development. He explained about the Myanmar economy, economic projects and accomplishments, investment laws, procedures and potential, and rules and regulations amended in conformity with the market oriented economy. Confident of continued economic growth, Brigadier General Abel said that special efforts were being made to

promote development of the agriculture sector to provide enough food for the nation and to increase exports. Farmers were being encouraged to cultivate double crop paddy to multiply their income and contribute towards raising their living standards.

46. With respect to the allegations of human rights violations regarding forced labour, the Minister of National Planning and Economic Development denied the existence of such a practice and said that the allegations were completely false and that such a practice would be a nonsense in economic terms. He explained that local inhabitants were voluntarily contributing during their spare time to community projects which would bring direct benefit, such as building a road, bridge, school, dispensary or monastery.

5. Meeting with the Minister for Home Affairs

47. On the morning of 16 October 1995, the Special Rapporteur met with Lt.Gen. Mya Thinn, Minister for Home Affairs.

48. Responding to the Special Rapporteur's specific request to receive information on whether any civil servant or police officer had been tried or sentenced, dismissed from duty or sanctioned for their part in any verified violation of human rights, Lt.Gen. Mya Thinn told the Special Rapporteur that he was not in possession of any information of such a nature and explained the rules and regulations to be followed by the Special Investigation Department in the event of any violations. Each case of violation would be transferred to the relevant Ministry and would be tried by an appropriate court. In the case of serious offences, such as murder or rape, the case might be transferred to an ordinary court to assure impartiality.

49. On the particular question of forced labour, the Special Rapporteur told Lt.Gen. Mya Thinn that, while in Myanmar, he had been informed about the existence of a "secret directive" aimed at discouraging the practice of forced labour without payment, and he requested an official copy of the document. The Minister did not deny the existence of such a directive and promised to give him a copy before his departure from the country, although such a matter was considered "classified". The Special Rapporteur would like to note that, before leaving the country, he was indeed provided with a copy of both directives. They are reproduced in annex II to the present report.

50. Regarding the status of Muslim refugees who had returned from Bangladesh to Myanmar, the Minister for Home Affairs informed the Special Rapporteur that the Government had agreed to grant returnees over 18 years of age an identity document called "temporary identification card". He added that those identity documents would not change the status of the persons concerned. Lt.Gen. Mya Thinn recalled that the Muslim population of Rakhine State were not recognized as citizens of Myanmar under the existing naturalization regulations and they were not even registered as so-called foreign residents. Consequently, the Minister added, their status situation did not permit them to travel within the country.

6. Meeting with Daw Aung San Suu Kyi and NLD leaders

51. During his stay in Yangon, the Special Rapporteur met twice with Daw Aung San Suu Kyi, on 10 and 16 October 1995. U Aung Shwe, U Tin Oo, U Kyi Maung and other representatives of NLD were also present during both meetings. They discussed the political, economic and social situation in Myanmar and enjoyed an open and lengthy exchange of views which touched upon issues of concern for the respect of human rights and the restoration of democracy in Myanmar.

52. During these meetings, the Special Rapporteur was informed about the new composition of the Executive Committee of the National League for Democracy which was now constituted as follows: U Aung Shwe as Chairman; U Kyi Maung and U Tin Oo as Deputy Chairmen, Daw Aung San Suu Kyi as General-Secretary and U Lwin as Secretary.

53. The NLD representatives explained how the civil and political rights of NLD leaders/members were severely restricted. Because of both visible and invisible pressures, they could not assemble in

a group, could not have free discussion and could not publish or distribute printed materials.

54. The NLD delegates reported their concern about the problem of the relocation of parts of the population from their homelands to newly constructed townships in order to provide space for the building of new towns or construction projects such as hotels.

55. With regard to the National Convention, the NLD representatives expressed their concern about the current process of drafting the Constitution, which did not permit an open and free exchange of views and opinions and, therefore, could not produce a truly democratic Constitution.

56. The NLD representatives informed the Special Rapporteur about the economic development which was taking place in Myanmar. They said that the economic growth was not benefiting everyone. They expressed their concern about inflation in Myanmar, which had averaged around 30 per cent per annum in recent years. Prices for basic consumer goods such as rice had risen and the majority of local people could not keep up with them. They concluded the discussion on the economy by saying that the rich, who were only a tiny portion of the population, were becoming richer, while the poor who represented the majority, were suffering more.

57. The NLD representatives told the Special Rapporteur that they were not satisfied with the delay, due to SLORC, in initiating the beginning of a dialogue. They added that only a genuine and constructive dialogue would lead to peace, in order to pave the way for democracy and a sustainable economic development.

7. Meetings with leaders of political parties

58. On the morning of 10 October 1995, the Special Rapporteur met with representatives of three political parties participating in the National Convention, the National League for Democracy (NLD), the National Unity Party (NUP) and the Union Kayene League. As last year, and in spite of the strong request by the Special Rapporteur to meet with them in private at his office in the United Nations compound in Yangon, the meetings were arranged to take place at a Government Guest House (36 Inya Road). The location and atmosphere of the meetings were obviously not conducive to a free and unencumbered exchange of views.

59. The Special Rapporteur first met with the Chairman of NLD, U Aung Shwe. The NLD delegate stated that the situation of freedom of movement, expression and organization had improved little from previous years, and serious infringements of those basic human rights were still prevalent in the country. He informed the Special Rapporteur that, as of 1995, the delegates to the National Convention were not permitted to publish or distribute any documents or newsletters. When the NLD members wished to organize meetings through the country to meet the local population, they had to seek permission from the Government. The Chairman of NLD further reported that he was still not allowed to travel outside Yangon without permission from the Local Council.

60. The Special Rapporteur met with two representatives of the National Unity Party (NUP): U Sein Win, Central Executive Committee member, and a member of the Secretariat. The National Unity Party was formed out of the former Burma Socialist Programme Party. Although there was no deadline to achieve the drafting of the Constitution, they felt that the work at the National Convention was progressing and the major substantive principles to be included in the Constitution had already been formulated. The NUP preferred a parliamentary system rather than a presidential system. However, they respected the majority decision of the delegates to agree upon a presidential system.

61. The NUP delegates informed the Special Rapporteur that their party was permitted to produce a bi-weekly pamphlet informing readers about their activities, and also pamphlets on political education. It could circulate those publications among its members, but not in the National Convention. It could also organize meetings within the country, except in some areas for security reasons.

62. With regard to the NUP position pertaining to the recent release from house arrest of Daw Aung San Suu Kyi, U Sein Win informed the Special Rapporteur that she was considered just as a citizen of the country.

63. The Special Rapporteur met with two representatives of the Union Kayene League: President U Mah and a joint secretary. The representatives stated that the group, which was composed of two subgroups, the Pwo Kayin and Sgaw Kayin, was the only Karen group recognized by SLORC. The League's membership was said to be approximately 50,000. It had five delegates attending the meetings held in the context of the National Convention. The representatives of the League welcomed the release of Daw Aung San Suu Kyi as a positive step.

64. They informed the Special Rapporteur that most Karen in Myanmar were poor peasants living in villages. The great majority were Buddhists (80 per cent) and some were Christians (15 per cent). As a group they had no information about the fights which had occurred in Karen State at the beginning of 1995 and no connection with the insurgents living at the frontier between Karen State and Thailand.

8. Visit to Myitkyina Jail

65. On the afternoon of 13 October 1995, the Special Rapporteur visited Myitkyina Jail. He was not allowed to see any of the detainees, nor was he allowed to see the cells. At the time of the prison visit, the prison authorities stated that they were unable to comply with the Special Rapporteur's request to see the detainees and the cells because they required permission from the higher authorities.

66. The Prison Director, U Sein Wein, informed the Special Rapporteur that there were 369 prison inmates, of whom 307 were males and 62 were females. The prison had a capacity of 300.

67. The length of the sentences of the inmates varied from one day to 10 years. Four prisoners (of whom one was a woman) were serving the maximum 10 years' sentence. The majority of the prisoners had been convicted under common law charges and for drug offences.

68. The Prison Warden told the Special Rapporteur that inmates were kept in cells having an opening high on one wall. Bamboo mats and potable water were available in the cells. Each inmate was provided with food three times a day and had access to information through newspapers and magazines. Contributions to labour, such as cleaning the prison facilities, were undertaken on a voluntary basis.

69. The inmates had the right to receive visits from their families twice a month. In addition, special permissions were granted to their lawyers to visit them.

70. The Prison Director informed the Special Rapporteur that 33 staff members were working in the prison. Inmates were provided with medical assistance in the prison dispensary and twice a week a medical doctor visited the prisoners. One day per week, an officer visited all the cells and recorded the complaints of the inmates, if any.

9. Visit to Insein Prison

71. On the morning of 12 October 1995, the Special Rapporteur visited Insein Prison. The Director-General of Insein Prison, U Kyaw Than, welcomed the Special Rapporteur and told him that he was not allowed to see any of the detainees.

72. The Special Rapporteur had made a request in writing on the first day of his stay in Myanmar as to the detainees he wished to see and had asked for free access to those and other detainees in Insein Prison. Despite repeated requests made orally during his meetings with government officials, the prison authorities stated that they were unable to comply with the Special Rapporteur's request to see the detainees and the cells because they required authorization from the higher authorities.

73. The Prison Warden informed the Special Rapporteur that he was only authorized to show him such facilities as the hospital building, the kitchen and the garden. The Special Rapporteur declined

the invitation and requested, once again, at the time of the prison visit, the Director-General to contact the Minister for Home Affairs to obtain authorization to meet with the detainees. While waiting for a reply, the Special Rapporteur remained in the reception room and sought some clarifications regarding the organization of the prison.

74. Among the prisoners that the Special Rapporteur requested to see were those detained under section 5 (j) of the 1950 Emergency Provisions Act for having collected and distributed antigovernment

sedition pamphlets or for having created disturbances. Some of them belonged to political parties (U Tun Shwe, U Thu Wai and U Htwe Myint) and several others were students arrested during U Nu's funeral. In addition, the Special Rapporteur requested to see Myin Ko Naing with whom he had met during his last visit, and Ma Thida. According to the prison authorities, all of the detainees the Special Rapporteur requested to see were in Insein Prison and in good health. When asked if these detainees were kept in solitary confinement, the Prison Warden told the Special Rapporteur that he could not remember their present situation in the prison.

75. The Director-General informed the Special Rapporteur that Insein Prison had a capacity of 5,000. At the moment of his visit, he was told that there were 3,107 prison inmates, of whom 391 were females. Thirty-nine prisoners were facing the death penalty, but their sentence would not be carried out because all death sentences had been commuted to life imprisonment by a governmental order of November 1992.

76. The Prison Warden told the Special Rapporteur that each inmate was provided with food three times a day and had access to potable water. Family members had the right to visit the inmates twice a month and were permitted to bring additional food to their relatives.

77. A prison medical doctor informed the Special Rapporteur that a team of one doctor and four nursing staff were taking care of the health of the prisoners. When an emergency case or serious illness arose, arrangements were made for the patients to receive the necessary treatment at general or specialized hospitals. With respect to the specific problem of AIDS, the prison medical doctor informed the Special Rapporteur that he was aware of a few cases of inmates who were HIV positive. Those inmates were kept among the other detainees without any specific precautions. He added that owing to the lack of appropriate equipment for HIV diagnosis, no systematic screenings were conducted among the prisoners. In response to an inquiry from the Special Rapporteur, the Director-General stated that there was no drug problem in Insein Prison.

10. Visits to Myitkyina in Kachin State and Kyainge Tong in Shan State

78. Prior to his departure for Myanmar, in a letter addressed to the Government on Myanmar, the Special Rapporteur requested to visit the Mong Kwan electric power plant in Shan State and Myitkyina-Sumprabom Road or Myitkyina-Shibwe Lawkhaungng Road in Kachin State.

79. Once in Myanmar, the Special Rapporteur was told that, owing to weather conditions and difficulties of access, he could not visit the construction site of the Myitkyina-Sumprabom Road or Myitkyina-Shibwe Lawkhaungng Road. Instead, on 14 October 1995, he was taken to the construction site of the "Ayeyarwady Bridge". The bridge will link Sitapu and Mine Nar in order to connect the city of Myitkyina with the other side of the river. According to the managing director of the project, 250 workers were involved in the project. All of them were labourers from lower Myanmar and were paid 3,000 kyats per month. They were provided by the Government with free accommodation and rice.

80. Given the absence of a United Nations interpreter, the Special Rapporteur could not interview the group of workers who were at that time digging a hole and taking out the earth manually with basic instruments.

81. On 15 October 1995, the Special Rapporteur travelled to Kyainge Tong in Shan State. Instead of the Mong Kwan electric power plant, the Special Rapporteur was taken to visit the Nam Wop

hydroelectric project, a small hydroelectric station located 10 miles south of Kyainge Tong. The project started in January 1992 and was completed in July 1994. According to the managing director of the project, inhabitants of surrounding villages were involved in the construction of the site. They were paid 20 kyats per day and were provided with food. In response to an inquiry from the Special Rapporteur, the managing director stated that none of the workers was forced to work on the project. He added that some farmers preferred to leave because that was economically more attractive to them.

82. On 16 October 1995, the Special Rapporteur had the opportunity to visit, in Kyainge Tong, a nursery school, a boarding school for the orphans of victims of insurrection along the border and a technical school for young women. All these institutions were initiated by the Ministry for the Progress of the Border Areas and National Races and Development Affairs in order to carry out a comprehensive integrated socio-economic development programme in the border areas.

83. The Special Rapporteur wishes to note that while in Myitkyina and Kyainge Tong, he generally observed that there were visible signs of relaxation of tension in the life of the people. There were many consumer goods in market places where many shoppers crowded.

C. Visits to camps in Thailand

84. Following his visit to Myanmar, the Special Rapporteur travelled to the Thai side of the frontier in order to meet with persons from Myanmar living in camps which skirt the Myanmar-Thai border. The visit to Thailand was conducted between 17 and 20 October 1995. The two camps visited were in driving distance from Mae Hong Son and Mae Sariang respectively. It is believed that approximately 80,000 persons who have fled Myanmar are living in similar camps in the border area. During the above-mentioned visit, the Special Rapporteur met with a total of 35 newly arrived persons from Myanmar, mostly Karen, Karenni and Shan. All interviewees were able to provide recent information on the situation in Myanmar, especially in the border area. Most interviewees were in poor physical and psychological condition. The information and views obtained in the course of his visits will be reflected below under relevant subject headings.

II. ALLEGATIONS

A. Extrajudicial, summary or arbitrary executions

85. As noted in his interim report to the General Assembly at its fiftieth session (A/50/651), the Special Rapporteur did not this year receive information of an explicit or systematic government policy encouraging summary killings.

86. However, there continued to be credible reports of instances of brutality, sometimes resulting in the killing of civilians, by Myanmar military forces under a variety of circumstances. This is often the case in the border areas where ethnic insurgencies have been taking place. Many of those allegedly killed were civilians who were accused either of being insurgents or of collaborating with insurgents.

87. Other reports from non-governmental sources have described cases of civilians who were allegedly executed when they resisted becoming porters for the Army or were beaten to death while being used as porters. The Army is also reported to have executed civilians for failure to provide goods or services demanded. These would include labour, food, money or arms.

88. In addition to the reports received by the Special Rapporteur alleging summary or arbitrary executions, he himself interviewed persons, during his visit to the refugee camps in Thailand, who claimed that either members of their families had been killed or severely injured as a consequence of attacks by the Myanmar Army, or that they had themselves been victims of such human rights violations.

89. Some cases of reported summary or arbitrary executions were described in paragraphs 3 to 5 of the interim report of the Special Rapporteur to the General Assembly at its fiftieth session (A/50/568 of 16 October 1995). These cases included allegations of: severe torture causing the death of the victims; the killing of civilians for having disobeyed orders from the Army (Tatmadaw) to relocate their homes, to supply goods or provide labour for little or no compensation; arbitrary "revenge" killings of persons from villages near to the locations of attacks carried out by insurgent forces against the Tatmadaw. Collective and arbitrary punishments are often said to include summary executions of civilians present in the area.

90. In response to the request of the Special Rapporteur to be provided with information describing any investigations undertaken by the Government into these allegations, the Government of Myanmar replied as follows:

"No instances of extrajudicial, summary or arbitrary execution can be permitted in the Union of Myanmar and no provision is made in the law for such."

91. Although the Special Rapporteur is aware that sometimes reports of arbitrary killings tend to be exaggerated or distorted, that there are cases of good treatment of villagers and captured insurgents by the Tatmadaw soldiers, that instances of such violations appear to be decreasing and that the insurgents also commit serious violations of human rights, he cannot deny, in view of so many detailed and prima facie reliable reports, that violations appear to be committed consistently by the soldiers of the Myanmar Army against innocent villagers (particularly those belonging to ethnic minorities) in the form of summary or extrajudicial executions and arbitrary killings, which often occur in the course of forced labour, rape, forced relocation and confiscation of property.

92. In relation to some specific cases, the Special Rapporteur draws attention to the report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (E/CN.4/1996/4). In this connection, the Special Rapporteur is aware that the Government of Myanmar has recently responded in detail to most of the allegations transmitted by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions.

B. Arbitrary arrest and detention

93. As stated in his interim report to the General Assembly at its fiftieth session (A/50/551), the Special Rapporteur noted with satisfaction the release in 1995 of some detainees, among whom were pre-eminent NLD leaders. Dr. Aung Khin Sint and Tin Moe were among a group of 23 prisoners freed on 24 February 1995 from Insein Prison. The Special Rapporteur welcomed the release, on 15 March 1995, from various centres of detention of Myanmar of 31 detainees, including U Kyi Maung and U Tin Oo. U Tin Oo, a retired general and one of the founders of the NLD was arrested on 20 July 1989; the Special Rapporteur met him twice in Insein Prison in 1993 and 1994. U Kyi Maung, a retired colonel, was the Chairman of the NLD during the 1990 elections. He was arrested in September 1990 for allegedly passing on material to foreigners. The Special Rapporteur also welcomed with great satisfaction the announcement, made on 10 July 1995, that restrictions on Daw Aung San Suu Kyi were being lifted by the Government of Myanmar and that she had been released without conditions.

94. However, despite the reported release of over 2,000 political detainees since April 1992, hundreds of other political prisoners are still serving long jail terms and other citizens continue to be arrested for the peaceful expression of their opinions and ideas.

95. In February 1995, nine young activists, namely, Aung Zeya, Tin Than Oo, Nyunt Myaing, Moe Maung Maung, Maung Maung Oo, Moe Myat Thu, Moe Kalayar Oo, Cho Nwe Oo and Aye Aye Moe, were arrested for having reportedly chanted slogans during U Nu's funeral. By letter dated 5 September 1995, the Special Rapporteur requested the Government of Myanmar to provide information regarding their present situation. In its note verbale dated 4 October 1995, the Government provided the Special Rapporteur with the following response to the above inquiry:

"Action is being taken against them under section 5 (j) of the 1950 Emergency Provisions Act for having created disturbances at the funeral with the aim of disrupting it and for having instigated the people to unrest. There should exist no anxiety or fear of torture or ill-treatment in detention as such practices are strictly prohibited in the Prison Manual and the Police Act, and the authorities concerned scrupulously follow the regulations laid down."

96. In mid-June 1995, three political party leaders, namely U Thu Wai and U Htwe Myint (respectively former Chairman and Vice-Chairman of the now defunct Democracy Party) and U Tun Shwe, were also arrested for having allegedly met with foreign residents. Responding to the Special Rapporteur's inquiry about their situation, the Government of Myanmar provided, in its note verbale dated 4 October 1995, the following response:

"U Tun Shwe, U Thu Wai and U Htwe Myint were charged under section 5 (j) of the Emergency Provisions Act for collecting and distributing anti-government seditious pamphlets, and were sentenced to seven years' imprisonment on 3 July 1995 after due process of law. Action was taken against these individuals not because of their contacts with resident foreigners as alleged, but because they transgressed existing laws."

97. On 27 September 1995, Ye Htut, a 27-year-old student, was arrested in Yangon for having allegedly sent "incriminating documents" about Myanmar to dissident Burmese groups based outside the country.

98. On 18 November 1995, among the crowd which gathered that day to listen to Daw Aung San Suu Kyi's speech, the Special Rapporteur has been informed that three NLD members, namely, Toe Aung, Maung Aye and Myo Zoe, were arrested for having allegedly intervened with the police who were erecting barricades in front of her house. According to the information received, the three persons were charged with assaulting a police officer and were reportedly sentenced to two years' imprisonment.

99. Most recently, on 16 December 1995, U Sein Hla Aung, a 45-year-old NLD member was reportedly arrested near his home in Mandalay for having distributed videos of the weekend gatherings which have been taking place regularly outside Aung San Suu Kyi's home since her release in July 1995.

Due process of law

100. In its note verbale dated 4 October 1995, the Government of Myanmar provided the Special Rapporteur with the following general response to his enquiry with regard to due process of law during and after trials in Myanmar.

"In the Union of Myanmar, a person cannot be arrested and detained if it is not in accordance with the law. It is provided in section 61 of the Code of Criminal Procedure that no police officer shall detain in custody a person for a period exceeding 24 hours. Where it is necessary to detain such an accused for more than 24 hours, special order of a magistrate has to be obtained under section 167 of the Code of Criminal Procedure. The arrested person has the right of defence and the right to have legal defence counsel. Moreover, the arrested or detained person has the right to apply freely for bail to the magistrate concerned and the court may grant him bail according to the merits of the case."

101. In spite of the Government's position with regard to certain cases, and based on information received from several independent reliable sources, the Special Rapporteur considers that the notion of "due process of law" as defined particularly in terms of articles 10 and 11 of the Universal Declaration of Human Rights is generally not respected in Myanmar. On the contrary, information and testimony received reveal a consistent, if not routine, failure to respect due process. Numerous testimonies alleged the absence of counsel during trial, the absence of time and support to prepare a defence and all other such attendant guarantees. In addition, there is no proportionality between offences committed and punishments applied, particularly in political cases where sentences of 7 to 20 years have been given for what could be described as peaceful political activity, such as the

distribution of leaflets, criticism of the Government and appeal for democratic process in the National Convention deliberations.

102. The following are some examples. According to reliable sources, the Special Rapporteur was informed that in June 1995, subsequent to the arrests of U Tun Shwe, U Thu Wai and U Htwe Myint, their families did not know where they had been taken. Later they were reportedly sent from the Military Intelligence Interrogation Centre to Insein Prison. On 3 July 1995, all of them were taken to Bahan Township court and summarily sentenced to seven years' imprisonment. It was further reported that lawyers were not allowed to contact the defendants for consultation, nor were defence lawyers present at the trial. Only after they had been sentenced were the three men told that they might appeal if they wished. But even for this purpose they have not been allowed to meet their lawyers. They could only sign statements to the effect that their lawyers might act for them.

103. With regard to the three NLD leaders arrested on 18 November 1995 in front of Daw Aung San Suu Kyi's house, the Special Rapporteur was informed that only 48 hours passed between their arrest and their sentencing. Although the Special Rapporteur has no details of the trial proceedings, it would appear that the accused could not possibly mount an effective defence with regard to the legal and factual basis for their arrest and incarceration in such a short time.

104. In the regions of the country with a predominantly non-Burman population, reports from various reliable sources continue to describe how an unknown number of civilians have been arrested as suspected insurgents (or sympathizers therewith) and how they remain detained in the countryside jails. It is reported that the few prisoners who gained access to defence counsel had to rely on "defenders" who were inadequately-trained government officials. In some areas, civilians were often summarily tried for minor offences, as well as for robbery, rape or murder, while military personnel who committed the same crimes were rarely punished.

105. The following are the detailed charges against 15 Members of Parliament mentioned in the summary of allegations received by the Special Rapporteur from the Government of Myanmar in its note verbale of 4 October 1995.

Name, Charge(s)

U Ohn Kyaing "Sentenced to seven years' imprisonment on 17 October 1990 for sending a letter defying the authority of the Government; Sentenced to 10 years' imprisonment on 15 May 1991 for co-authorship of a seditious paper entitled 'Three ways to attain power'."

U Tin Htut (Einme-1) "Sentenced to seven years' imprisonment on 15 May 1991 for co-authorship of a seditious paper entitled 'Three Ways to Attain Power'."

U Win Hlaing U Naing Naing U Mya Win U Hla Tun "Sentenced to 10 years' imprisonment on 30 April 1991 for their involvement in organizing a meeting for setting up an illegal parallel Government."

U Tin Aung Aung U Zaw Myint Aung U Zaw Myint U Hla Than "Sentenced to 25 years' imprisonment on 30 April 1991 for their involvement in organizing a meeting for setting up an illegal parallel Government."

Dr. Myint Aung "No person by the name of Dr. Myint Aung has been detained."

U Tin Soe "Sentenced to two years' imprisonment and was fined 300 kyats on 25 August 1993 for criminal trespass into U Khin Htay's premises at No. 107, Myanma Gon Ye Street, Mingala Taung Nyunt Township in October 1992. In the course of a squabble between them over the sale of an apartment, U Tin Soe used abusive language and took photographs without the latter's express consent. U Khin Maung Htay reported the incident to the Mingala Taung Nyunt Police Station, whereby U Tin Soe was charged by the police under sections 447, 294 and 506 with criminal trespass. The Court found him guilty of the charge. Released from detention on 9 March 1995 upon completion of his sentence."

U San Win "Sentenced to 11 years' imprisonment on 23 August 1991 for misappropriation of teakwood which was to be supplied to the Thanlyin bridge project."

U Khin Maung Swe U Sein Hla Oo "Sentenced to seven years' imprisonment on 6 October 1991 for their collaboration with Dr. Khin Zaw Win in writing and distributing false news that would jeopardize the security of the State."

Prison conditions and the treatment of prisoners

106. This year, unlike his two last visits, despite his repeated requests, the Special Rapporteur was not permitted to see any prisoner either in Insein Prison or in Myitkyina Jail. The Special Rapporteur was also denied access to the cells of both prisons. Similarly, the Government of Myanmar rejected the ICRC standard requirements for visits to places of detention (i.e., that it meet prisoners in private, have access to all prisons and be assured of repeated visits). The non-acceptance of the customary ICRC procedures for visits to places of detention and the non-acceptance of the Special Rapporteur's request to meet with some detainees while in Insein Prison and Myitkyina Jail would indicate that the Myanmar authorities are unwilling to open their jails to public scrutiny.

107. Given the lack of access to Myanmar prisons, the Special Rapporteur could only rely on reports from former detainees which indicate that conditions in the prisons fall far below minimum international standards established by the United Nations. Prisoners are said to be denied adequate food (in amount and quality) and health care, to be housed in insanitary and degrading conditions and subjected to cruel disciplinary practices or torture.

108. Numerous allegations, often in considerable detail, have been received from various sources alleging that members of the Myanmar military, intelligence and security services and police continue to torture persons in detention or otherwise subject them to cruel, inhuman or degrading treatment and punishment. Such treatment seems to be routinely employed during the interrogation of persons who have been arbitrarily arrested. Many former political detainees testified to having been put into leg irons and beaten with canes, sometimes to the point of unconsciousness.

109. According to information received, Saw Naing Naing, Monywa Tin Shwe, U Win Tin, Myo Myint Nyein and Dr. Myint Aung, all members of the NLD, have been subjected to severe ill-treatment since mid-November 1995 at Insein Prison, where they are at present being held. During this period, the prisoners were said to have been interrogated in respect to letters addressed to the Special Rapporteur which had reportedly been smuggled out of the prison and which contained allegations of ill-treatment and poor conditions. U Win Tin is said to suffer from Spondylitis (an inflammation of the vertebrae). According to the information received, prison officials forced the five prisoners to sleep on concrete floors without mats or blankets in "military dog cells", which are small cells where military dogs are normally kept. The five have also been denied access to their families. On the basis of the information received, the Special Rapporteur, in a letter addressed on 15 January 1995 to the Government of Myanmar, expressed his fears and preoccupation over these allegations. He pointed out that the impartial and free assessment of the situation of human rights in Myanmar requires him to have access to any letters, documents or materials of any kind and no person should be subjected to punishment or maltreatment because of their collaboration with him. He added that such a practice would clearly be in contravention of Commission on Human Rights resolution 1995/75 which urges Governments to refrain from all acts of intimidation or reprisal to those who have provided testimony or information to representatives of United Nations human rights bodies.

110. The Special Rapporteur received testimony from reliable sources indicating that detainees are very often forced to sleep on cold cement, and that many of them suffer from sickness and serious diseases. The same reliable testimony indicates that cells are often overcrowded and that prisoners are provided with inadequate hygiene or medical care. A former woman inmate reported to the Special Rapporteur that during her stay in Insein Prison between 1989 and 1992, around 170 to a maximum of 250 women were held in a two floor dormitory measuring 60 by 40 feet. During that period, she said, at least 30 children and new-born infants were living with their mothers in the

prison. The mortality rate among the new-born children in the prison was very high and this was due mainly to the inadequate food provided to them.

111. Bribery and corruption were said to be a major problem in Myanmar prisons. Although families can bring food and medicines to their relatives, such supplies are reportedly sometimes confiscated by the prison authorities. It was said that about one eighth of the items brought to prisoners are confiscated.

112. The Special Rapporteur was told by the Myanmar authorities that prisoners convicted of criminal offences could participate in voluntary labour at project sites and, by participating in such projects, could have their sentences reduced. Despite the Government's explanation, the Special Rapporteur remains concerned at current reports of hundreds of prisoners who have been forced to work under extremely harsh conditions on infrastructure projects without being released at the completion of their duties. Several detainees from prisons throughout Myanmar have been reportedly forced, together with the people of Mong Nai, to build a railway section from Mong Nai to Nam Zarng, with the commitment that they be released after the completion of the section. Now, the same prisoners are reportedly being forced to continue working on different sections, from Mong Nai to Mawmai and from Ho Nam Sai Khao to Shwe Nyong. One prisoner reported that three of his companions had died during the construction. Apparently, prisoners can avoid going to such camps if they pay large bribes to the prison authorities.

113. The Special Rapporteur was also informed by persons released from prison that during their detention they were not allowed to have any reading material, including the State-run newspaper, or material with which to write, or non-political literature; they were reportedly also denied access to radios.

C. Torture and other cruel, inhuman or degrading treatment

114. Allegations concerning the practice of torture and other cruel, inhuman or degrading treatment or punishment have previously been addressed by the Special Rapporteur in his reports to the Commission and the General Assembly (A/47/651, paras. 46-52; E/CN.4/1993/37, paras. 97-114; A/48/578, paras. 9-11; E/CN.4/1994/57, paras.48-50; A/49/594, paras. 13-15; E/CN.4/1995/65, paras. 114-117; A/50/568, paras. 20-23). On the basis of the information received throughout the past year it appears that the practice of torture remains widespread. Reports of torture and inhuman treatment in the past year include severe beatings, shackling, near suffocation, burning, stabbing, rubbing of salt and chemicals into open wounds and psychological torture, including threats of death. Other reported methods of torture include sexual assaults and rape, mostly among women serving as porters. In some cases, victims alleged that they had suffered burns and the cutting off of parts of their bodies (for example, ears and tongue).

115. According to reports received, torture and ill-treatment would seem to be a common method to extract confessions from civilians suspected of real or perceived anti-government activities. It also seems to be a means for the Myanmar authorities to punish citizens who do not comply with their orders. The most vulnerable populations are porters in the course of their duties, and civilians living in areas of active insurgency. It has also been reported that some victims of torture have to pay bribes to avoid such treatment.

116. In addition to receiving several reports alleging widespread torture and other cruel, inhuman and degrading treatment in Myanmar, the Special Rapporteur has interviewed persons claiming to be victims or to have witnessed such human rights violations. Several persons gave testimony, corroborated by their own scars and disabilities, about torture which they suffered during the time they were serving as porters for the Army.

117. With respect to some specific cases, the Special Rapporteur draws attention to his latest report to the General Assembly at its fiftieth session (A/50/568) and to the report of the Special Rapporteur on torture to the Commission on Human Rights at its present session (E/CN.4/1996/35, paras. 113-

114; E/CN.4/1996/35/Add.1, paras. 458-475). In this connection, the Special Rapporteur is aware that the Government of Myanmar has responded to some of the allegations transmitted by the Special Rapporteur on torture.

D. Freedom of expression and association

118. The freedoms of expression and association are guaranteed respectively by articles 19 and 20 of the Universal Declaration of Human Rights. These rights include the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers, and the freedoms of peaceful assembly and association. The Special Rapporteur has previously reported on the interference of Myanmar law and SLORC orders with the freedoms of expression and association (E/CN.4/1993/37, para. 186). In Myanmar, it would appear that SLORC does not permit any freedom of expression or association that significantly conflicts with or opposes SLORC, the regional Law and Order Restorations Councils (LORC) at different levels, or the Government.

Freedom of expression

119. the Special Rapporteur was informed that there has been increased access for foreign journalists in Myanmar. Their movement and access to contacts were reportedly less restricted or monitored than in previous years. Foreign newspapers were also available in some bookstores in Yangon, and more than 80 Myanmar magazines, of social and cultural interest, are available to the public. To a large extent, these developments are a reflection of the increasing scale of international business and domestic commercialization resulting from open door policy of SLORC.

120. In 1995, during his visit to Myanmar, the Special Rapporteur noticed that, within the country, the written press, radio and television continue to be subject to governmental censorship and that the distribution of written material was also subject to governmental restrictions and control. All magazines must be read by a governmental body, the "Press Scrutiny Board", before their distribution.

121. The Myanmar media are largely used as an instrument to propagate and promulgate what SLORC has defined as the political, economic and social objectives of the Union of Myanmar. The Special Rapporteur received information from several reliable sources which demonstrates the extent of governmental supervision over and application of restrictions on freedom of expression. For example, it is reported that since the beginning of 1995, Myanmar's most popular public speaker, U Aung Thin, has been completely barred from giving public lectures in any part of the country.

Whenever his name comes up before SLORC officials for approval to speak, permission for the rallies is immediately refused or withdrawn. Another example brought to his attention concerns the failed attempt of the popular literary journal, "Sa-pay Gya-neh," to dedicate its June 1995 issue to the Myanmar poet and NLD elected member, Min Thu Wun. The issue was reportedly blocked at the very last moment by an order from the Deputy Minister of Home and Religious Affairs, although the cover of the publication carrying Min Thu Wun's portrait had already been passed by the censors.

122. While a multiethnic society such as Myanmar might reasonably be expected to have its diversity reflected in the media, the Special Rapporteur notes that, to his knowledge, there are no newspapers in any minority language. It is also reported that writing and publishing books in minority languages is a very difficult task which requires a very long procedure. All books and printed material have to pass before a censorship board, but minority-language texts have to pass the additional obstacle of translation into Burmese before they can be reviewed.

123. Apart from censorship, the Government of Myanmar continues to intimidate its citizens and discourages them from exercising their fundamental right to freedom of expression by prosecuting persons through the use of criminal and treason-related charges. The Special Rapporteur mentioned in his previous report to the Commission on Human Rights (E/CN.4/1995/65) that one of the charges

against Khin Zaw Win, Daw San Nwe and U Khin Maung Swe, who were arrested in July 1994, was that of "writing and distributing false news that could jeopardize the security of the State". The Special Rapporteur notes that other citizens are still being arrested for peaceful expression of their ideas. As mentioned above (see para. 96), three political party leaders were sentenced on 3 July 1995 to seven years' imprisonment "for collecting and distributing anti-government seditious pamphlets". More recently, a student, U Ye Htut, was sentenced on 14 November 1995 to seven years' imprisonment for "writing false and fabricated news about Myanmar since 1992, which could cause foreign countries to misunderstand the actual situation prevailing in the country".

124. It is evident that the total State domination of the media, together with the existence of a wide range of SLORC orders limiting the freedom of expression, seriously undermines the possibility of the citizens freely expressing their opinions.

Freedom of association

125. Turning to the issue of freedom of association, violations come in two principal forms: restrictions on association of a political nature, and on the right to form and join independent trade unions.

126. With respect to the right to form and join trade unions, and notwithstanding the fact that Myanmar is a party to International Labour Organization (ILO) Convention No. 87 of 1948 concerning Freedom of Association and Protection of the Right to Organize, workers and employees in Myanmar do not enjoy the right to join organizations of their own choice outside the existing structure. Furthermore, such organizations do not have the right to join federations and confederations or to affiliate with international organizations without impediment.

127. The situation in Myanmar was examined by the ILO Committee on the Application of Standards at its eighty-second session, in June 1995. As regards the application by Myanmar of ILO Convention No. 87, the Committee took note of the statement of the Myanmar Government representative indicating his Government's commitment to harmonize law and practice with the Convention. The Committee, however, felt serious concern that the Government had not acted on the observations of the Committee of Experts over many years, and that no trade unions in the true sense of the term existed. It recalled that it has been commenting upon the serious incompatibilities between the Government's law and practice, on the one hand, and the Convention, on the other hand, for 40 years. Seafarers in Myanmar were reportedly denied the right to form an independent trade union for the defence of their basic rights and interests and could not affiliate with an international federation. It was reported that, through the Seamen Employment Control Division, the Government of Myanmar has total control over the placement of the approximately 30,000 Myanmar seafarers, who are allegedly required to sign a contract that they will not contact the International Transport Workers' Federation.

128. With respect to restrictions on political parties, reports indicate that in Myanmar political parties are subject to intense and constant monitoring by SLORC. In this regard, the Special Rapporteur received several reports of acts aimed at restricting the activities of political parties, in addition to the existing SLORC orders, including Order 2/88 prohibiting the assembly of "five or more persons" which remains in effect.

129. Although the Special Rapporteur is aware that since the release of Daw Aung San Suu Kyi, a crowd of two to three thousand people is gathering every weekend outside the gate of her residence to hear what she and other NLD leaders say, the law prohibiting public gatherings without obtaining permission from local administrative bodies remains in force.

130. Leaders of some political parties are reportedly not allowed to leave their locality without prior permission from the authorities concerned. During the Special Rapporteur's meeting with leaders of political parties, U Aung Shwe, Chairman of NLD, informed him that on 23 October 1991 he was told verbally not to go outside the Yangon city municipal limits. This restrictive order still applies to

him at the present time. It is reported that Central Executive Committee and Central Committee members who wish to travel outside Yangon are required to inform the authorities in advance. On arrival at their destination they have to report to the local authorities as well.

131. Distribution of party literature to the public is not allowed and political parties are generally forbidden to use any printing equipment for the reproduction and distribution of their bulletins, pamphlets and statements. The Special Rapporteur is aware of one notable exception, enjoyed by NUP, which is mentioned in paragraph 61 above.

132. Oppositional or critical political views are not given coverage in the media. For instance, it was reported that in August 1995 the Myanmar Government had been jamming Burmese language radio programming by the British Broadcasting Corporation. This was allegedly done after Daw Aung San Suu Kyi had given a series of interviews to foreign journalists that were broadcast into Myanmar that month.

133. Since the withdrawal of the NLD delegates from the National Convention on 29 November 1995, the Special Rapporteur has received several reports which indicate that new restrictions have been placed on NLD members and that Vice-Chairmen U tin Oo and U Kyi Maung are reportedly under constant surveillance and routinely harassed.

E. Freedom of movement and forced relocation

134. Freedom of movement is guaranteed by article 13 of the Universal Declaration of Human Rights. This right includes freedom of movement and residence within the borders of each State, and the right to leave any country, including one's own, and to return to one's country.

135. Information received by the Special Rapporteur indicates that freedom of movement is restricted in Myanmar. Exit from the country requires possession of specific government authorization, which is allegedly difficult to obtain. Application for exit visa and passport requires certificates of nationality and security clearances which many citizens either do not have or cannot obtain. Passport applications are reviewed by a board and decisions appear to be dependent on political considerations. Entry visas for Myanmar citizens who left the country legally or for those who acquired foreign citizenship are said to be more readily available.

136. With regard to restrictions on the freedom of movement inside the country, the Special Rapporteur notes that only citizens carrying identity cards are free to travel within the country, which precludes those residents unable to meet the restrictive provisions of the citizenship law, for example, the Muslim population living in Rakhine State. In addition, all citizens are required to inform the authorities of their movements within the country and the names of overnight guests must be reported to and registered with the local authorities.

137. During his visit to Myanmar, the Special Rapporteur was pleased to note that the Government had continued to ease restrictions on foreign travellers. Several members of intergovernmental and international non-governmental organizations are permitted to travel through the country to implement their programmes directly with the concerned population. Nevertheless, reliable sources informed the Special Rapporteur that certain persons, such as human rights advocates, journalists and political figures, continued to be denied entry visas.

138. Other well-documented reports received by the Special Rapporteur concern violations of the right to own property, as articulated in article 17 of the Universal Declaration of Human Rights. The reports refer to cases of confiscation or destruction of movable and immovable property, for which only in a very few cases were the victims said to have been given some form of compensation. People continue to be forcibly relocated, with little or no compensation, to new towns and villages. In some areas, such as Hlaing, Thngangyun and Tamwe, displaced home-owners do not get any compensation, although some were reportedly given the option of buying apartments in the buildings constructed on the site of their old homes. Usually the cost of these new apartments is beyond the means of the displaced owners. Most of those displaced have to buy plots of land in the new

townships with their own money, causing them great financial hardship. The displaced population are usually faced with great economic difficulties, as their means of livelihood were connected to the area where they previously lived.

139. The Special Rapporteur received other disturbing reports of the seizure of arable lands by the authorities to establish new towns or for military purposes. This results in some farmers being deprived of their traditional means of subsistence. For example, in September 1995, the military under the East Command (Taunggyi Headquarters) reportedly started to occupy agricultural land claimed by the local farmers in Alegyaung Village, Ywangan Township, Taunggyi Division, Shan State, which belongs to the Kinda Watershed area. As a result, 30 to 40 farmers have reportedly lost all of their land, and many others are left with plots too small to survive.

140. Several minority groups have in the past been affected by violations of property rights. Among the victims were individuals, families and even entire villages considered guilty by association and consequently subjected to a policy of extended punishment. Confiscation or demolition of property has also been systematically applied as a sanction against alleged insurgent sympathizers. At present, forcible relocations appear to be taking place mostly in the context of development projects.

F. Labour rights

141. On the question of forced labour, the Special Rapporteur received during his visit to Myanmar the texts of two recent secret directives of SLORC which prohibit the practice of labour without payment. The secret directives in question are SLORC Directives No. 82 and No. 125, the full and authentic texts of which were received by the Special Rapporteur in the original Burmese language; an unofficial English translation is reproduced in annex II to the present report. Directive No. 82, which was promulgated on 27 April 1995, instructs "to stop obtaining labour without compensation from the local people in irrigation projects". Directive No. 125 "prohibits unpaid labour contributions in national developments projects". The Special Rapporteur welcomes the Government's intention to cease the practice of labour without payment but notes that the contents of neither directive constitutes abrogation of any of the laws under the 1908 Village Act and the Towns Act, which authorize forced labour under certain conditions and which are still in force in the country. In addition, the Special Rapporteur notes that several months after their publication, these directives are still not public and therefore not accessible to those to whom they would apply and to those protecting the rights of persons accused of breaking the laws.

142. Given the many complaints received by the Special Rapporteur from several reliable sources, it seems that neither of the directives is being implemented rigorously. Men, women and children are allegedly still used as forced labour for the construction of railways, roads and bridges. They are reportedly not paid for their work and are allowed only a minimum of food and rest. Various sources have reported an especially extensive use of forced labour in relation to several completed or ongoing railway construction projects. Eyewitnesses travelling through Myanmar by land from Moulmein to Ye in the Tenassarim Division have reported that resumption of forced labour on the Ye-Tavoy railway is occurring. According to the source, more than 50,000 people are being forced to work on a new section of the railway from Ye to Kanbaw. Other reports indicate that forced labour is also being used to repair and widen the highway in Pegu township. Each household is being allegedly ordered to pay 50 kyats per member every 2 weeks as their contribution to the construction of this highway. The duties that people are said to perform range from sorting out stones that come from a quarry, carrying the stones from one point to another, shifting gravel through bamboo leaves and mixing and laying down the tar. The living conditions on the construction site are said to be very poor, heat and dust being the major factor of hardship.

143. In June 1995, at the eighty-first session of the International Labour Conference in Geneva, the Special Rapporteur took note of the fact that the matter of forced labour in Myanmar had been raised before the Committee on the Application of Standards. The Committee could not find a way to agree

with the position of the Government, as reported to the Committee of Experts, that what was being alleged to be forced labour was actually voluntary labour. Further, the Committee called upon the Government of Myanmar to repeal urgently the offensive legal provisions of the Village Act and the Towns Act to bring them into line with the letter and spirit of the ILO Convention No. 29 concerning Forced or Compulsory Labour, of 1930, ratified by the Government of Myanmar in 1955.

144. Apart from forced labour, the Special Rapporteur has been informed that workers in Myanmar do not enjoy basic labour rights including, in particular, freedom of association and the right to organize. There is hardly any trade union movement, and workers and trade unionists who criticized the Government would risk interrogation and arrest.

G. The National Convention and the process of democratization

145. When the National Convention adjourned on 8 April 1995, its Chairman, Chief Justice U Aung Toe, stated that agreement had been reached to lay down principles for the designation of self-administered divisions and self-administered zones under the chapter of the Constitution entitled "State structure".

146. On 28 November 1995 the Government of Myanmar reconvened the National Convention. The subjects on its agenda were: the legislature; the executive and the judiciary branch. Like the previous sessions, the plenary opening session was attended, among others by 5 delegates from the National League for Democracy included in the political parties delegates group and 81 representatives elected from the NLD included in the representatives elected group. Following the opening address delivered by Lt.Gen. Myo Nyunt, Chairman of the National Convention Convening Commission, the NLD representatives decided to withdraw from the Convention and to boycott its current session.

147. Article 21.1 and 21.3 of the Universal Declaration of Human Rights provides that everyone has the right to take part in the government of his country, directly or through freely chosen representatives, and that the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections.

148. The Special Rapporteur notes that of the 702 National Convention delegates from 8 categories, 49 are selected by the 10 political parties remaining after the 1990 elections, 106 are elected representatives and the remainder of the delegates from the other 6 categories were chosen by SLORC. In fact, NLD members, despite winning 80 per cent of the seats in the 1990 general elections comprise only about 15 per cent of the 702 delegates.

149. Furthermore, the Special Rapporteur has been informed that each of the eight groups represented were to have a panel of five chairmen who would lead the discussions and that, in the political parties group, only one chairman was from the NLD - the party that won a majority in the 1990 elections. In the elected representatives group, where 89 of the remaining 106 delegates were from the NLD, no NLD representatives were selected as chairmen.

150. Given these figures and the process of selection of the delegates, the Special Rapporteur notes that the National Convention is not truly representative in the sense of article 21.1 and 21.3 of the Universal Declaration of Human Rights, because its membership does not reflect the results of the elections.

151. Freedom of expression in general and political debate in particular in the National Convention compound seem to be severely restricted and circumscribed. Delegates cannot distribute discussion papers among themselves: all papers have to be submitted first to the chairmen of the groups. The chairmen scrutinize the contents and, if the statements are found to be contradictory with the agreed principles, the relevant parts are deleted. Only then can the papers be read at the group meetings. When the proposed statements are to be read before the plenary meeting, they have to be submitted again for scrutiny by the Work Committee. Moreover, it appears that delegates are not totally free to meet with other delegates and to exchange their views inside the compound. They are reportedly not

entitled to distribute leaflets, to wear badges or to bring any written or printed materials to the Convention without prior approval by the National Committee.

152. During the Special Rapporteur's visit to Myanmar in 1995, he was also informed that all the delegates to the National Convention are required to stay in the Convention compound. Five delegates live together in each dormitory. There is one sergeant clerk in each dormitory serving the delegates. It is reported that these sergeant clerks may also observe the activities of the delegates. It was also reported to the Special Rapporteur that when the delegates return to their states to see their families they are sometimes harassed and monitored by the local authorities. In this regard, the Special Rapporteur fears that this atmosphere of intimidation does not permit the delegates to be in touch with the populations they represent to enable them to take into account their grievances, wishes and points of view and, thus, to represent them meaningfully during the debates which are taking place in the National Convention.

H. The movement towards reconciliation with the insurgents

153. During the Special Rapporteur's meetings in Myanmar, the Government proclaimed the recent cease-fire agreements as its most significant achievement, as an example of national reconciliation and as the starting-point for national and regional development. In response to the Government's invitation to the armed groups "to return to the legal fold", it has been reported that on 21 March 1995, the Kayinni National Progressive Party (KNPP) reached a cease-fire agreement with the Government of Myanmar. Three months later, on 29 June 1995, the Government signed another cease-fire agreement with the Mon minority group. The New Mon State Party (NMSP) was the fifteenth rebel ethnic group to agree to a cease-fire with the Government.

154. With regard to the cease-fire agreement concluded between KNPP and the Government of Myanmar, the Special Rapporteur is concerned that it has not been faithfully respected by SLORC. According to several reports received, the Myanmar Army, on 15 June 1995, breached certain terms of the agreement. It deployed its troops into the KNPP designated areas and continued to collect porter fees and to conscript Kayenni and other civilians for army operations, such as carrying military equipment, ammunition and other supplies.

155. During the Special Rapporteur's stay in Myitkyina (Kachin State), the Government invited U Zaw Hra, Vice-Chairman of the Kachin Independent Organization (KIO) and U Khun Nawng, the liaison officer of the Myitkina office, to meet with him. The meeting took place in the presence of the governmental delegation which was accompanying the Special Rapporteur and which recorded the entire conversation. Given the fact that no interpreter was assigned to the Special Rapporteur during his mission, he had to rely on a governmental interpreter during the meeting.

156. U Zaw Hra informed the Special Rapporteur that KIO had signed a cease-fire agreement with the Government of Myanmar on 24 February 1994 after four years of negotiations. Although the terms of the agreement were not publicized, U Zaw Hra told the Special Rapporteur that the principal point agreed upon was the maintenance of the present military status quo in both SLORC and KIO designated areas.

157. During the meeting, U Zaw Hra explained to the Special Rapporteur that the central Government of Myanmar has denied the Kachin population its basic social, human and economic rights. He said that the profits extracted from the natural resources available in Kachin State, such as teak and jade, were not benefiting the Kachin population but the central Government. When compared with other States, Kachin State was the poorest and was lagging behind in development owing to the civil war, but also to the policy of the central Government, which never reinvested in that region, always favoured the Burmese and considered the Kachin as second-class citizens. With regard to the human rights situation, the Vice-Chairman told the Special Rapporteur that between 1988 and 1992 the Kachin population had suffered deportation, forced relocation and destruction of their villages. Many villagers had been forced to work as porters or as labourers building roads.

158. U Zaw Hra admitted that since the signature of the cease-fire agreement, the human rights situation had improved considerably in Kachin State. Cases of forced relocation, forced labour and forced portering had decreased noticeably, except in some remote areas.

159. U Zaw Hra expressed the hope that the signature of the cease-fire agreement would enhance opportunities for implementing regional development programmes and making the entire Kachin State prosperous. He also hoped that efforts and arrangements would be made in order to permit wider participation of the local population in governing and benefiting from the resources of their own region. U Zaw Hra concluded the meeting by saying that it was only through political settlement that genuine peace could be reached in Myanmar.

160. The Special Rapporteur was informed about the absence of genuine representatives of the ethnic nationalities in the National Convention. Despite the fact that the Government of Myanmar had made various cease-fires with ethnic nationalities, these groups are only allowed seats as observers and therefore cannot participate in the process of drafting the Constitution. I. The treatment of the Muslim population in Rakhine State

161. In 1992, there was a mass influx of some 250,000 Muslim refugees into Bangladesh from Rakhine State in Myanmar. In order to address this problem, memoranda of understanding concerning the voluntary repatriation of the refugees, were signed between UNHCR and the Governments of Bangladesh and Myanmar, on 12 May 1993 and 5 November 1993 respectively. Repatriation to Myanmar is continuing and more than 190,000 Myanmar refugees out of an estimated total of about 250,000 have so far been repatriated from neighbouring Bangladesh.

162. UNHCR is playing a key role in helping ensure conditions in Rakhine State that are conducive to the return of the refugees and in monitoring their treatment by the Myanmar authorities.

According to reliable sources, since the beginning of UNHCR assistance to the repatriation process, very few cases of human rights violations have been reported to them.

163. Most of the Muslim population of Rakhine State are not entitled to citizenship under the existing naturalization regulations and most of them are not even registered as so-called foreign residents, as is the case with foreigners/stateless persons living in other parts of Myanmar. In this regard, the Special Rapporteur would like to point out that since Myanmar is a party to the Convention on the Rights of the Child, Myanmar is obligated, in accordance with article 7 of the Convention, to afford nationality to every child born on its territory, in particular where the child would otherwise be stateless.

164. The Special Rapporteur has been informed that the Government of Myanmar has agreed to grant returnees over 18 years of age identity documents called "Temporary identification cards", but these identity documents would not change the status of the persons concerned. The present status situation of the Muslim population in Rakhine State does not permit them to leave their villages without authorization from the local SLORC commander. They are also not allowed to serve in State positions and are barred from attending higher educational institutions.

III. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

165. The visit of the Special Rapporteur to the Union of Myanmar at the invitation of the Government was facilitated by the efforts, cooperation and courtesy extended to him by the officials of the Government, in particular General Khin Nyunt, Secretary One of SLORC, and U Ohn Gyaw, Minister for Foreign Affairs. All of the requests of the Special Rapporteur to meet with government representatives were met, including with the Chief Justice, the Attorney-General, the Minister of Information, the Minister for National Planning and Economic Development, and the Minister for Home Affairs.

166. The Special Rapporteur wishes to express his appreciation to the Government for arranging his visits to Kachin State and Shan State, Insein Prison, Myitkyina Jail and other places and facilities which he had requested to visit.

167. However, the Special Rapporteur was disappointed that this year, despite a formal written request before going to Myanmar and despite his repeated requests while in Myanmar, he was not permitted to see any prisoner, either in Insein Prison or in Myitkyina Jail. He also regrets that the meetings with the representatives of political parties were held at a place and in an atmosphere not conducive to a free and unencumbered exchange of views.

168. The Special Rapporteur generally observed in Yangon, Myitkyina and Kyaington that there were visible signs of relaxation of tension in the life of the people. There were many consumer goods in market places where many shoppers crowded. Physical developments in the construction or improvement of roads, bridges, buildings and railways are taking place in different parts of the country and in some border areas. However, just as last year, he was informed that only a small portion of the population was enjoying an improved lifestyle and the majority who were poor were suffering from the high prices of basic necessities such as rice and medicine.

169. The Special Rapporteur welcomes the expanding cooperation between the Government of Myanmar and various other United Nations organs and international humanitarian non-governmental organizations.

170. The Special Rapporteur is pleased to note that the Government of Myanmar has continued to release persons who have been detained for political activities, including Daw Aung San Suu Kyi. However, he expresses his concern that there are still hundreds of such persons detained in Myanmar.

171. The Special Rapporteur notes problems in the field of the administration of justice with regard to fair trials, free access to defence lawyers, prescription of disproportionate penalties and time for careful examination of the cases by courts.

172. The non-acceptance by Myanmar of the customary procedures of ICRC for visits to places of detention is a negative step for the amelioration of conditions of detention in Myanmar. Conditions in Myanmar prisons seem to fall short of international standards; i.e., the Standard Minimum Rules for the Treatment of Prisoners; the Basic Principles for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Special Rapporteur believes that suspicion of mistreatment of prisoners will continue as long as access to public scrutiny is denied.

173. Detailed reports, photographs, video recordings and a variety of physical evidence seen by the Special Rapporteur indicate that the practices of forced labour, forced portering, torture and arbitrary killings are still widespread in Myanmar. They seem to be occurring in the context of development programmes and of counter-insurgency operations in ethnic minority regions. Many of the victims of such acts belong to ethnic national populations. In particular, they are peasants, women, daily wage-earners and other peaceful civilians who do not have enough money to avoid mistreatment by bribing.

174. The Special Rapporteur continues to be concerned about the serious restrictions imposed upon the enjoyment of civil and political rights. The people do not enjoy the freedoms of opinion, expression, publication and peaceful assembly and association. They seem to be always fearful that whatever they or their family members say or do, particularly in the area of politics, would risk arrest and interrogation by the police or military intelligence. This is a result of the existence of a complex array of security laws which provide the Government with sweeping powers of arbitrary arrest and detention. These laws include the 1950 Emergency Provisions Act, the 1975 State Protection Law, the 1962 Printers and Publishers Registration Law, the 1923 Official Secrets Act and the 1908 Unlawful Association Act. In this connection, more than 15 individuals, who were exercising their rights to freedom of expression and association, were arrested in the course of 1995 on a

combination of charges under these laws, including such charges as writing and distributing "illegal leaflets, spreading false information injurious to the State and contact with illegal organizations".

175. The persons whose civil and political rights are most severely restricted are the members of political parties, particularly the NLD leaders, and delegates to the National Convention, again those from the NLD. Because of both visible and invisible pressures, they cannot assemble in a group, cannot have free discussion, and cannot publish or distribute printed materials. In this situation, it is difficult to assume that open and free exchanges of views and opinions are taking place in Myanmar in order to produce a truly multi-party democratic society.

176. Turning to the freedoms of movement and residence in Myanmar, including the right to leave and re-enter one's own country, the Special Rapporteur concludes that clear violations of these freedoms are to be found in Myanmar law and practice. Specifically, severe restrictions are placed on travel abroad. On the matter of internal deportations and forced relocations, the Special Rapporteur concludes that government policies violate the freedoms of movement and residence and, in some cases, constitute discriminatory practices based on ethnic or religious affiliations.

177. Government representatives have repeatedly explained to the Special Rapporteur that the Government is willing to transfer power to a civilian government, but that, in order to do so, there must be a strong Constitution and that, in order to have a strong Constitution, they are doing their best to complete the work of the National Convention. However, the Special Rapporteur cannot help but continue to feel that, given the composition of the delegates (only one out of seven delegates was elected in the 1990 elections), the restrictions imposed upon the delegates (practically no freedom to assemble, print and distribute leaflets or to make statements freely), and the general guidelines to be strictly followed (including the principle regarding the leading role of the Tatmadaw), the National Convention does not appear to constitute the necessary "steps towards the restoration of democracy, fully respecting the will of the people as expressed in the democratic elections held in 1990" (General Assembly resolution 47/144, para. 4).

178. The Special Rapporteur is paying special attention to the recent successes of the government initiative to invite the armed insurgent groups to enter into talks with the Government and he notes, in particular, an initially positive response this year from the Karen National Progressive Party and the New Mon Socialist Party. He considers that cease-fire agreements are a helpful basis for lasting peace but that they do not represent lasting peace. Serious dialogue with ethnic representatives for permanent reconciliation is essential. He is hopeful that the process will move forward from a military cease-fire agreement to a political agreement, which is the only solution to obtain true reconciliation and peace throughout the country.

179. The Special Rapporteur welcomes the fact that, subsequent to the signing on 5 November 1993 of the Memorandum of Understanding between the Union of Myanmar and the Office of the United Nations High Commissioner for Refugees (UNHCR) to facilitate and guarantee the voluntary and safe return of Myanmar residents from Bangladesh, and the subsequent opening of a UNHCR field office in Rakhine State to allow UNHCR international staff to monitor the repatriation of the refugees, tens of thousands of refugees have been successfully repatriated.

B. Recommendations

180. The Special Rapporteur regrets that he finds it necessary to repeat most of the recommendations made in his report to the Commission on Human rights in 1995. In the light of the foregoing conclusions, the Special Rapporteur also finds it necessary to make additional recommendations for the consideration of the Government of Myanmar.

(a) The Government of Myanmar should fulfil the obligations it has assumed under Articles 55 and 56 of the Charter of the United Nations "to take joint and separate action in cooperation with the Organization for the achievement of ... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion". In this

respect, the Special Rapporteur wishes to state that the Government of Myanmar is in an ideal position because it could encourage the delegates of the National Convention to include various human rights provisions in the new Constitution using, as a reference, the provisions of the Universal Declaration of Human Rights, a copy of which should be circulated to each delegate in the Burmese language.

(b) The Government of Myanmar should consider accession to the International Covenants on Human Rights; the Convention against Torture, Cruel, Inhuman or Degrading Treatment or Punishment; and the two Protocols additional to the Geneva Conventions of 1949.

(c) Myanmar law should be brought into line with accepted international standards regarding the protection of the right to physical integrity, including the right to life, and prohibition of torture, cruel, inhuman or degrading treatment. In this regard, the Government of Myanmar should take immediate and unequivocal steps to stop the practices of torture and other cruel, inhuman or degrading treatment.

(d) All political leaders, including elected political representatives, students, workers, peasants and others arrested or detained under martial law after the 1988 and 1990 demonstrations or as a result of the National Convention, should be tried by a properly constituted and independent civilian court in an open and internationally accessible judicial process in which all defendants could have access to counsel of their choice. If found guilty in such judicial proceedings, they should be given a just sentence. Alternatively, they should be immediately released and the Government should undertake to refrain from all acts of intimidation, threat or reprisal against them or their families and to take appropriate measures to compensate all those who suffered arbitrary arrest or detention.

(e) The Government of Myanmar should repeal or amend, as appropriate, the relevant provisions which at present prevent the International Committee of the Red Cross from carrying out its humanitarian activities with regard to prison visits. In that respect, the Government of Myanmar is encouraged to invite ICRC to return to Myanmar in order to carry out its purely humanitarian tasks.

(f) The Government of Myanmar should take steps to facilitate and guarantee enjoyment of the freedoms of opinion, expression and association, in particular by decriminalizing the expression of oppositional views and by relinquishing government control over the media and literary and artistic communities. The Government of Myanmar should, therefore, consider repealing or amending all existing laws restricting freedom of expression, including the Printers and Publishers Registration Law of 1962, in order to guarantee to all people in Myanmar, including members of ethnic minorities, full protection of their right to freedom of opinion and expression, as established in article 19 of the Universal Declaration of Human Rights.

(g) The Government of Myanmar should also comply with the obligations under International Labour Organization Convention No. 87, permitting the formation of independently organized trade unions. The Government of Myanmar should also take all necessary measures to guarantee and ensure that all political parties may freely exercise their activities without restrictions. To this end, all restrictions on freedom of movement, association and assembly, including the 1908 Unlawful Association Act, should be removed.

(h) The Government of Myanmar should remove all restrictions relating to the entry and exit of citizens into and out of the country, as well as their movement within the country.

(i) The Government of Myanmar should cease all discriminatory policies which interfere with the free and equal enjoyment of property, and compensate appropriately those whose property has been arbitrarily or unjustly destroyed.

(j) The Government of Myanmar should comply with obligations under the International Labour Organization Convention No. 29, prohibiting the practice of forced portering and forced labour. In this connection, the Government of Myanmar should urgently take the appropriate measures to repeal the offensive legal provisions under the Village Act and the Towns Act to prevent the continuation of the practice of forced labour. The Government of Myanmar should also publicize

and rigorously implement the "Secret Directives" which discourage the practice of forced labour without payment.

(k) The Government of Myanmar should take all necessary measures to accelerate the process of transition to democracy and to include in that process the representatives duly elected in 1990 who are excluded from participating in the meetings of the National Convention. In this regard, the Government of Myanmar should without delay begin a process of genuine and substantive dialogue with the leaders of the National League for Democracy and with other political leaders, including representatives from ethnic groups.

(l) The Government of Myanmar is encouraged to continue its cooperation with UNHCR in facilitating and ensuring the voluntary and safe return of Rakhine Muslims from Bangladesh.

(m) The Government of Myanmar should consider the revision of the 1982 Citizenship Law to abolish its burdensome requirements for citizenship. The law should not apply its categories of second-class citizenship, which have discriminatory effects on racial or ethnic minorities, particularly the Rakhine Muslim population. It should be brought into line with the principles embodied in the Convention on the Reduction of Statelessness of 30 August 1961.

(n) The Government of Myanmar should take the necessary steps to bring the acts of soldiers, both private soldiers and officers, into line with accepted international human rights and humanitarian standards so that they will not commit arbitrary killings, rape, or confiscations of property, or force persons into labour, portering, relocation or otherwise treat persons without respect to their dignity as human beings. When the hiring of the labour of local villagers for portering and other works is required for governmental purposes, it should be obtained on a voluntary basis and adequate wages should be paid. The nature of the work should be reasonable and in accordance with established international labour standards. When relocation of villages is considered necessary for military operations or for development projects, proper consultation with the villagers should take place and appropriate compensation should be paid for those relocations which may be determined necessary for reasons of the public good.

(o) Military and law enforcement personnel, including prison guards, should be thoroughly informed and trained as to their responsibilities in full accordance with the standards set out in international human rights instruments and humanitarian law. Such standards should be incorporated in Myanmar law and legislation, including the new constitution to be drafted.

(p) Given the magnitude of the abuses, official condemnation should be made by the Government of all acts by authorities involving human rights violations. Such acts, including all acts of intimidation, threat or reprisal, should not benefit from the present system of almost complete denial by, and impunity under, the Government.

(q) The Government of Myanmar is also encouraged to continue its cooperation with various United Nations organs and international humanitarian non-governmental organizations in facilitating and ensuring the free access of their international staff to ordinary persons in the townships and villages to establish contacts and provide assistance to persons who suffer from a shortage or lack of food, safe water, medicine, medical care and proper education.

(r) In the light of all of the above, the Special Rapporteur recommends that the Commission on Human Rights request the High Commissioner for Human Rights to consider placing a team of human rights field officers in such locations as would facilitate improved information flow and assessment and would help in the independent verification of reports on the situation of human rights in Myanmar. The implementation of this mechanism, for which the Commission on Human Rights should request the necessary additional resources, would help the Special Rapporteur to assess better the continuing situation of human rights in Myanmar and contribute constructive criticisms and comments.

Annex I

EXTRACT FROM THE PRISONS ACT, 1894 (SECTION 40, 784)

"Time for interview

1. The Superintendent shall fix the days and hours at which all interviews shall be allowed, and no interviews shall be allowed at any other time, except with the special permission of the Superintendent. A notice of the hours during which prisoners may be interviewed shall be posted outside the jail.

Place of interview

2. Every interview shall take place in a special part of the jail appointed for the purpose, if possible at, or near, the main gate. Provided that interviews with female prisoners shall, if practicable, take place in the female enclosure. Provided also that, if a prisoner is seriously ill, the Superintendent may permit the interview to take place in the hospital, and a condemned prisoner shall ordinarily be interviewed in his cell. Provided further that the Superintendent may, for special reasons, to be recorded in writing, permit an interview to take place in any part of the jail.

Interview to take place in the presence of a jail officer

3. Every interview with a convicted prisoner shall take place in the presence of a jail officer, who shall be responsible that no irregularity occurs and who shall be so placed as to be able to see and hear what passes and to prevent any article being passed between the parties. No politics should be allowed to be brought out at the interview.

Termination of interview

4. Any interview may be terminated at any moment if the officer present considers that sufficient cause exists. In every such case the reason for terminating the interview shall be reported at once for the orders of the senior officer present in the jail.

Duration of interview

5. The time allowed for an interview shall not ordinarily exceed 20 minutes but may be extended by the Superintendent at his discretion.

Search before, and after, interview

6. Every convicted prisoner, and every unconvicted criminal prisoner, shall be carefully searched before and after an interview."

Annex II

DIRECTIVE NO. 125 PROHIBITING UNPAID LABOUR CONTRIBUTIONS IN NATIONAL DEVELOPMENT PROJECTS

Unofficial Translation

Secret

Union of Myanmar

The State Law and Order Restoration Council

Office of the Chairman

No. 125/Na Wa Ta (00)/Nyaka - 2

Dated: 2 June 1995

To,

State/Division Law and Order Restoration Councils

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Report to the Commission on Human Rights, March 1995

UNITED NATIONS

Economic and Social Council

Distr. GENERAL

E/CN.4/1995/65

12 January 1995

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Fifty-first session

Item 12 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS,
IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND
OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Myanmar, prepared by the Special Rapporteur, Mr. Yozo Yokota, in accordance with Commission resolution 1994/85*/

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Introduction

A. Mandate

1. The mandate of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar has been described in each of the Special Rapporteur's previous reports to the General Assembly (A/47/651, A/48/578 and A/49/594), and to the Commission on Human Rights (E/CN.4/1993/37 and E/CN.4/1994/57). The mandate, initially articulated in Commission resolution 1992/58 and extended most recently by the Commission in its resolution 1994/85 of 9 March 1994 (approved by the Economic and Social Council in its decision 1994/269 of 25 July 1994), required the Special Rapporteur to establish or to continue direct contacts with the Government and the people of Myanmar, including political leaders deprived of their liberty, their families and their lawyers, with a view to examining the situation of human rights in Myanmar and following any progress made towards the transfer of power to a civilian government and the drafting of a new constitution, the lifting of restrictions on personal freedoms and the restoration of human rights in Myanmar. In resolution 1994/85, the Commission urged the Government of Myanmar to extend its full and unreserved cooperation to the Commission and the Special Rapporteur and, to that end, to ensure that the Special Rapporteur had effectively free access to any person in Myanmar whom he might deem it appropriate to meet in the performance of his mandate, including Daw Aung San Suu Kyi; and requested the Special Rapporteur to report to the General Assembly at its forty-ninth session and to the Commission at its fifty-first session.

2. The substantive issues addressed by the Commission on Human Rights in resolution 1994/85 include the following concerns: that the electoral process initiated in Myanmar by the general elections of 27 May 1990 has not yet reached its conclusion and that the Government still has not implemented its commitments to take all the necessary steps towards democracy in the light of those elections; that many political leaders, in particular elected representatives, remain deprived of their liberty and that Daw Aung San Suu Kyi, a Nobel Peace Prize laureate, is still under house arrest; and that serious violations of a variety of fundamental rights continue, inter alia the practice of forced labour, including forced portering and forced displacement of the population. The Commission also expressed its concern about the continuous problems created in neighbouring countries by the exodus of refugees from Myanmar.

3. In addition, the Commission took note of the fact that the Government of Myanmar had acceded to the Geneva Conventions of 12 August 1949; signed a memorandum of understanding on 5 November 1993 with the Office of the United Nations High Commissioner for Refugees (UNHCR) concerning the voluntary and safe repatriation of refugees from Bangladesh; received the Special Rapporteur for a visit to Myanmar; and observed cease-fires and undertaken negotiations with several minority groups.

4. The Special Rapporteur submitted a preliminary report to the General Assembly at its forty-ninth session in October 1994 (A/49/594 and Add 1). The present comprehensive report is submitted to the Commission on Human Rights at its fifty-first session for its consideration.

B. Historical background

5. In 1948, the Union of Myanmar (then called Burma) gained independence from British colonial rule. From 1948 until 1962, the country was governed by a parliamentary democracy based on the Constitution of 2 September 1947. It provided for a federal system of government with separate executive, legislative and judicial branches. The states under the Union were considered

autonomous. According to article 201 of the Constitution of 1947, ethnic minorities had, in theory, the right to secede from the Union, but, under article 202, this right was not to be exercised until 10 years from the date of entry into force of the Constitution. In March 1948, an armed insurgency against the then Government of Burma was begun by the Communist Party of Burma. Between 1948 and 1961, various minority ethnic groups joined the armed insurgency.

6. In March 1962, General Ne Win took power in a coup d'état. He installed one-party (the Burma Socialist Programme Party) rule under military control and embarked upon a programme known as the "Burmese Way to Socialism". In 1974, a new constitution was drafted under which one-party rule continued.

7. Towards 1988, nationwide demonstrations began in reaction to the suppression of all civil and political rights since the overthrow of the constitutional Government in 1962 and to the economic failure as a consequence of the policy of the "Burmese Way to Socialism".

8. From March to June 1988, students, workers and monks demonstrated for more freedom and democracy, but the army used harsh measures to crush the demonstrations. Hundreds of civilians were arrested and many suffered severe injuries or died from ill-treatment in detention. Many persons were summarily or arbitrarily executed. On 21 June 1988, the Government imposed a ban on all public gatherings.

9. On 23 July 1988, General Ne Win resigned as party leader and promised economic reform and the holding of a referendum to end one-party rule and institute a multi-party system. However, demonstrations continued and the army and riot police attacked the demonstrators. It was reported that approximately 3,000 persons were killed in August 1988 alone. On 18 September 1988, the military took power and the State Law and Order Restoration Council (SLORC) was set up under the chairmanship of the Chief of Staff, Senior General Saw Maung. The National Assembly (Pyithu Hluttaw), the Council of State and other governmental bodies were dissolved. Free elections were promised by SLORC, but Daw Aung San Suu Kyi, daughter of General U Aung San (the national hero of independence who was assassinated in 1947) and General Secretary of the National League for Democracy (NLD), was banned from campaigning on the grounds that she kept unlawful association with insurgent organizations. On 20 July 1989, Daw Aung San Suu Kyi was detained by government forces. She has been under house arrest without trial since then and, in 1991, she was awarded the Nobel Prize for Peace. Many others, including most of the important opposition political leaders, were also detained.

10. On 27 May 1990, general elections were held in which the main opposition party (NLD) won 81 per cent of the seats (392 seats out of a total 485) and 60 per cent of the vote. However, the official announcement of the results of the elections was postponed by SLORC in order to allow the Election Commission set up by SLORC to scrutinize the expense accounts of all elected representatives.

11. Beginning in early 1992, a mass exodus of Myanmar Muslims from Rakhine State into Bangladesh was reported. At least 250,000 such persons sought refuge for fear of persecution. On 28 April 1992, the Governments of Myanmar and Bangladesh signed an agreement for the voluntary and safe return of the refugees. By October 1993, approximately 40,000 refugees had returned to Myanmar under this arrangement.

12. On 5 November 1993, the United Nations High Commissioner for Refugees (UNHCR) and the Government of Myanmar signed a memorandum of understanding in an effort to ensure the voluntary and safe repatriation of the persons who had left the country. This memorandum of understanding was similar to the one between UNHCR and the Government of Bangladesh signed on 12 May 1993. Both Governments expressed satisfaction at this accord and at the participation of UNHCR. Between September 1992 and the end of September 1994, a total of 75,000 refugees returned to Myanmar. Another 45,000 refugees are expected to return before the end of 1994.

13. In April 1992, General Than Shwe became Chairman of SLORC after General Sa Maung had resigned from the post for reasons of health. Since this change of leadership, a number of new

policies have been announced and implemented, including the release of many political leaders in detention (among them the former Prime Minister U Nu, but not Daw Aung San Suu Kyi); the holding of a national convention to draft the principles and guidelines for a new constitution; the granting of permission to the family of Daw Aung San Suu Kyi to visit her; the opening of universities and other institutions of higher education; the lifting of the curfew order and martial law; and cessation of the hearing of civilian cases by military tribunals.

14. On 9 January 1993, the National Convention was convened, composed of 702 delegates in eight categories: (a) representatives of political parties, including NLD (49); (b) representatives elected in the 1990 elections (107); (c) representatives of national racial groups (215); (d) representatives of peasants (93); (e) representatives of workers (48); (f) representatives of the intelligentsia and technocrats (41); (g) representatives of state service personnel (92); and (h) other invited persons (57). The meeting of the National Convention has been adjourned several times for reasons not clear to outside observers.

15. When the National Convention adjourned on 9 April 1994, the Chairman of the National Convention, Chief Justice U Aung Toe, stated that agreement had been reached on the principles for drafting the chapters of the constitution on the State, the state structure and the Head of State. According to these principles, the country would be governed by an executive president and two vice presidents, elected by presidential electoral colleges formed by all members of the two houses of Parliament. The National Convention reconvened on 2 September 1994. The subjects on its current agenda are self-administered divisions and self-administered zones, the legislature, the executive and the judiciary.

16. In July 1994, Daw Aung San Suu Kyi, began her sixth year of house arrest. Earlier in the year, and for the first time since her arrest, she was allowed to meet with persons other than her immediate family. United States Congressman William Richardson met with her twice at her home during his visit to Myanmar from 15 to 17 February. Also present at the meetings were the Resident Representative of the United Nations Development Programme (UNDP) in Myanmar, a representative of the United States Embassy, and a reporter from The New York Times. On 20 September 1994, Daw Aung San Suu Kyi attended another meeting with the Chairman of SLORC, General Than Shwe, and Secretary One, Lieutenant General Khin Nyunt, at a governmental guesthouse.

The meeting was the result of mediation by Dr. Rewata Dhamma, a Burmese Buddhist monk living in the United Kingdom. During two visits to Myanmar in 1994, Dr. Rewata Dhamma met with Daw Aung San Suu Kyi, whom he has known for many years, and also with members of SLORC. A second meeting between SLORC representatives, Lieutenant General Khin Nyunt, Armed Forces Judge-Advocate, General Brigadier Than Oo and Armed Forces Inspector-General, Brigadier General Tin Aye and Daw Aung San Suu Kyi took place on 28 October 1994 at a governmental guest-house.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Introduction

17. In carrying out his mandate, the Special Rapporteur has continued to seek information from all relevant sources. During the past year, information in the form of letters and reports has been received on a regular basis from a wide variety of individuals and non-governmental organizations, as well as from the Government of Myanmar. In November 1994, the Special Rapporteur visited Myanmar, conducted interviews with high-level government officials, as well as representatives of various United Nations specialized agencies and bodies, including the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Development Programme (UNDP) and the United Nations Children's Fund (UNICEF), representatives of various non-governmental

organizations and the people of Myanmar both inside the country and outside as he paid visits to places relevant to his mandate.

B. Visit to Myanmar

18. On 10 August 1994, the Special Rapporteur addressed a letter to the Government of Myanmar requesting permission to visit the country from 7 to 16 November 1994 and to have audiences with high governmental officials and meetings in circumstances providing full confidentiality with leaders of political parties, including those in detention or under restriction, in particular Daw Aung San Suu Kyi. The Special Rapporteur also requested full and free access to all individuals and representatives of non-governmental and intergovernmental organizations, whom he might deem it necessary to meet in the carrying out of his mandate or who might have expressed the wish to meet him. He further requested permission to visit prisons and other centres of detention, and to have confidential contact with those detained. In addition, the Special Rapporteur requested that he be granted full access to other areas of the country, in particular the eastern part, for the purpose of carrying out unrestricted and confidential visits with the recent returnees. By letter dated 23 September 1994, the Government replied that the Special Rapporteur would be welcome in Myanmar.

19. The Special Rapporteur visited Myanmar from 7 to 16 November 1994. Prior to the visit, the Special Rapporteur had been in frequent contact with the Permanent Representative of Myanmar to the United Nations Office at Geneva and with the Minister for Foreign Affairs, who cooperated fully and facilitated the visit. During his visit to Myanmar all of the Special Rapporteur's specific requests for meetings with high-level government officials were met. Similarly, visits to Mon, Mandalay and Mengwe States were facilitated with appropriate briefings, meetings and visits in the areas concerned. In general, the Special Rapporteur enjoyed relative freedom of movement and access to private persons and others of interest, with some notable exceptions which will be addressed below. In addition, he was promptly furnished with all the documentary information he requested before, during and after his visit. Consequently, the Special Rapporteur would like to record his deep appreciation to the Government of Myanmar for its cooperation in facilitating his visit to the country and in responding to his requests for information and explanations.

20. In Yangon the Special Rapporteur met with the following governmental representatives: Lieutenant General Khin Nyunt, Secretary One of SLORC; U Ohn Gyaw, Minister for Foreign Affairs; Colonel Kyaw Win, Deputy-Director of the Directorate of Defence Services Intelligence; Brigadier General Myo Thant, Minister of Information; U Tha Tun, Attorney-General; and U Aung Toe, Chief Justice of the Supreme Court. In Mawlamyine, Mon State, the Special Rapporteur met with the Vice-Commandant of South Eastern Command, Col. Mya Nyein; in Mandalay, Mandalay State, with the Commander of Central Command, Major-General Kyaw Than; and in Pakkokhu, Mengwe State, with the Commander of North Western Command, Major-General Hla Myint Swe.

21. In the course of his visit to Myanmar, the Special Rapporteur paid visits to the following governmental institutions and facilities: administrative offices of the Ministry of Home Affairs, Insein and Mandalay prisons; the National Convention premises; Yangon University campus; and Dagon University in the Dagon New Township.

22. The Special Rapporteur also visited and met with representatives of the following national organizations and institutions: the Myanmar Maternal and Child Welfare Association, the Union Solidarity and Development Association, the Myanmar Red Cross Society and representatives of the Department of Law at Yangon University.

23. On 11 November 1994, the Special Rapporteur met with representatives of the following political parties which are participating in the National Convention drafting the new constitution of the Union of Myanmar: the National League for Democracy (NLD); the Union Kayene League; and the National Unity Party (NUP).

24. While the information and views obtained in the course of his visits and meetings will be reflected below under relevant subject headings, the Special Rapporteur draws attention here to the salient aspects of the visits and meetings mentioned above.

1. Meeting with Secretary One

25. On the morning of 14 November 1994, Secretary One of SLORC, Lieutenant General Khin Nyunt, received the Special Rapporteur at the Ministry of Defence. They discussed political, economic and social changes and enjoyed a frank, open and lengthy exchange of views which touched upon issues of concern for the respect of human rights in Myanmar.

26. On the matter of the general political organization of the State, Lieutenant General Khin Nyunt explained that SLORC took power in 1988 to counter anarchy that was prevailing in the country during the riots and to re-establish security for the people and maintain stability in a country that is composed of 135 ethnic groups. Lieutenant General Khin Nyunt said that, to achieve unity in Myanmar, SLORC was managing a process of national reconciliation in which a variety of insurgent groups were now being brought back into the legal framework of discussions and the National Convention was engaged in a process that would lead to the drafting of a new, strong constitution for the country. Lieutenant General Khin Nyunt assured the Special Rapporteur that once the new constitution had been drafted and adopted elections would take place and a civilian government would take power. With regard to the time frame for the transfer of power to a civilian government, Lieutenant General Khin Nyunt stated that it was not yet the moment to specify when a new civilian government would be formed under such a constitution. However, he explained that it was the intention of the Government to complete the process of the National Convention as soon as possible because it was costing half a million kyats a day to manage. He also explained that, before those goals were achieved, two basic conditions would have to be met: (a) political and social stability must be maintained and (b) the "Union" as a multi-ethnic State must be secured so as to avoid a disastrous dissolution of the State. He strongly stressed that the Tatmadaw (the army) had no intention of remaining in political power for ever.

27. Lieutenant General Khin Nyunt described a variety of social and economic development initiatives which had been taken by the Government in managing the process of national reconciliation and restoring law and order since it took power in 1988, in order to improve the lives of the people and help "build nationalism", i.e. the general sentiment of belonging to one's beloved country and building and protecting the nation. In this regard, Lieutenant General Khin Nyunt cited different projects launched by the Government, for example, the construction of roads, bridges and railroads. He said that such projects had been realized all around the country in order to develop all the regions and to reduce the gap between rich and poor and between urban and rural areas. Specifically, the transportation system in the country was being improved and the Government was also attempting to improve agricultural production by building several dams in the country. Regarding these development projects, Lieutenant General Khin Nyunt said that the slanderous stories about forced labour were not true and were only invented by persons who did not want to see Myanmar developed, or by insurgent groups. He stated that the people of Myanmar were of the Buddhist faith and they contributed voluntarily to the development projects, believing that they would be the first to enjoy the results on earth and thereafter. He said that the army was also taking part in those works, together with prisoners, who would have their sentences reduced.

28. On the general subject of human rights, Lieutenant General Khin Nyunt explained that Myanmar had a population of 43 million persons, yet only a few hundred persons were criticizing the situation of human rights in the country and writing and reporting false information.

29. Regarding the reasons for the detention of Daw Aung San Suu Kyi, Lieutenant General Khin Nyunt noted that she was the daughter of the national hero and had only come back into the country in 1988, after several years of absence, in order to see her mother, who was ill. Her absence from the

country for a long period had not permitted her to understand the political and social situation, i.e. the chaos instigated by the Communists, which had prevailed in the country in 1988 and, therefore, while she had been getting involved in political affairs, she had not realized that she was being manipulated by "the Communists". Consequently she had accepted leadership of the movement, which had then been unable to control the riots. Concerning the Special Rapporteur's specific questions and his requests to visit her, Lieutenant General Khin Nyunt stated that it was not yet the appropriate moment for a visit. Since the Government was meeting her and holding discussions with her, it did not want any interference in that dialogue, which was being conducted in a "good manner" and based on a "mutual understanding". He hoped that the Special Rapporteur understood the circumstances and all the security, political and administrative concerns that such a decision involved. When asked if the Government intended to release her on 20 July 1995 in conformity with the law, Lieutenant General Khin Nyunt answered that it was still too early to say and that the decision had to be taken by the Council of Ministers and also at the level of SLORC. Secretary One assured the Special Rapporteur that SLORC intended to continue its dialogue with Daw Aung San Suu Kyi in the future.

30. Regarding the venue of the meetings between political leaders and the Special Rapporteur, which were arranged to take place at a government guest-house despite the strong request by the Special Rapporteur to meet with them in private at his office in the United Nations compound in Yangon, Secretary One said that politicians were quite free to go about their business and to travel freely in the country with the permission of the Government. However, they could not be allowed to disturb the peace and tranquillity or bring about disorder. As a government, SLORC had to take into consideration several concerns, i.e. economic and political, including security, concerns. It was in that connection that he justified the arrests of the five opposition activists which occurred between July and October 1994. He added that, in order to understand the human rights situation in the country, the situation had to be seen in the overall framework as explained by him; people were not severely repressed.

31. Regarding collaboration with the International Committee of the Red Cross (ICRC), Secretary One indicated that a memorandum of understanding with ICRC was under active consideration and that a favourable decision was expected in due course.

32. Lieutenant General Khin Nyunt ended the meeting by stating that the Government was attempting to develop the country politically, economically and socially, and that, although there were problems, these would be overcome. It could not allow the country to be destroyed or to disintegrate. It would carry on action, in accordance with the law, against any activity aimed at disunity and destruction of the country.

2. Meeting with the Minister for Foreign Affairs

33. The Minister for Foreign Affairs, U Ohn Gyaw, received the Special Rapporteur on 8 November 1994. During the meeting, various issues relevant to the mandate of the Special Rapporteur were discussed.

34. The Minister for Foreign Affairs outlined the cooperation of the Government of Myanmar with the United Nations and the Special Rapporteur, whose tasks had been facilitated and requests met despite the fact that the Government did not agree with the resolution of the Commission on Human Rights. Regarding the Special Rapporteur's request to meet Daw Aung San Suu Kyi, the Minister replied that the Government of Myanmar could not respond to all the requests made by the various personalities who would like to meet Daw Aung San Suu Kyi; otherwise it would become a "kind of circus". He explained the long process which United States Congressman William Richardson and Dr. Rewata Dhamma, a Burmese Buddhist monk, had followed in order to see her, and added that Daw Aung San Suu Kyi as an individual had also the right to refuse to see people.

35. With respect to the allegations of human rights violations regarding forced portering and forced

labour, the Foreign Minister rejected them and said that they were completely false. According to him, local inhabitants, because of their Buddhist faith, were voluntarily cooperating in the various development projects in the country. These citizens did not even ask for money because they would consider it to be an insult.

36. With regard to the National Convention and the drafting of the Constitution, priority must be given to national reconciliation and achieving peaceful relations between all the national races in order to obtain a consensus in the country and secure the Union. When asked by the Special Rapporteur if a copy of the Universal Declaration of it was impossible to distribute it among 700 delegates, but an English copy was available at the Convention Library.

3. Meeting with the Deputy Director of the Directorate of Defence Services Intelligence

37. On the afternoon of 10 November 1994, the Special Rapporteur met with Col. Kyaw Win, Deputy Director of the Directorate of Defence Services Intelligence. During the meeting, various issues relevant to the mandate of the Special Rapporteur were discussed.

38. Col. Kyaw Win explained to the Special Rapporteur that the principal aim of the current Government was to achieve democracy in the country. He added that that objective could not be achieved without stability in the country. Therefore, priority was being given to national reconciliation and economic development.

39. Regarding political stability, Col. Kyaw Win informed the Special Rapporteur that there were still three "insurgent" groups (the Karen National Union (KNU); a Mon faction; and the Karen National Union Party (KNUPP)) who were not taking part in the work of the National Convention.

40. Regarding economic development, Col. Kyaw Win provided the Special Rapporteur with details of the progress that had been made in that domain, as well as the various development projects which were under way in the country. He added that if the people of Myanmar did not have food, clothes and houses, there would be no human rights in the country.

41. With regard to the allegations of human rights violations regarding forced portering and forced labour, Col. Kyaw Win said that those accusations mainly concerned locations where insurgent groups were fighting against the Myanmar Army. Such false information was provided by the insurgents to destroy the image of the Government.

4. Meeting with the Minister of Information

42. On the afternoon of 11 November 1994, the Special Rapporteur met with Brigadier General Myo Thant, Minister of Information, together with members of the Information Committee over which the Minister presides. The discussion focused on the democratization process and, in particular, the National Convention. The Minister first recounted the process from its very start, explaining how the Preparatory Committee for the National Convention was constituted, specifying the composition of delegations to the National Convention and highlighting the achievements of each meeting of the National Convention, since it began on 7 January 1993 up to recent developments.

43. Regarding the suggestion made last year by the Special Rapporteur that a copy of the Universal Declaration of Human Rights, in the Burmese language, be provided to every National Convention delegate in relation to deliberations on a future constitution, while the Minister accepted the Special Rapporteur's suggestion and received an authentic copy of the Universal Declaration of Human Rights in the English language, together with an unofficial translation in the Burmese language, the Declaration was not circulated to National Convention delegates as agreed. The Minister told the Special Rapporteur that only an English copy was available at the Convention Library.

44. The Minister provided further basic information on the following subjects: (a) the availability of international newspapers and magazines in Yangon; (b) the preparation of the country for the celebration of 1996 as The Year of Tourism (Visit Myanmar Year); (c) the composition of the Government, which was the same as the previous year; (d) the cost and availability of basic

commodities; and (e) the remaining number of political leaders in detention or in prison.

5. Meetings with the Attorney-General and the Chief Justice

45. On the morning of 15 November 1994, the Special Rapporteur met with Attorney-General U Tha Tun after having earlier met with Chief Justice Aung Toe. In his discussion with the Chief Justice, the recent trials of political leaders, the National Convention (which the Chief Justice is Chairing) and some issues of legislative reform (for which the Chief Justice is not responsible, but of which he has some knowledge as a Member of the Law Revision Commission formed by the Government) were addressed.

46. The discussion with Attorney-General U Tha Tun revolved around new legislation, such as reform of existing Myanmar legislation, for which the Attorney-General has some responsibility both in his governmental office and as Chairman of the Law Revision Commission.

47. In response to the Special Rapporteur's inquiries about the collaboration between the Government of Myanmar and ICRC, the Attorney-General informed him that the Myanmar authorities were still scrutinizing the draft memorandum of understanding to see if it affected the sovereignty of the country and if it was in accordance with the national laws. The Attorney-General also informed the Special Rapporteur that ICRC was assisting the authorities in their task of spreading knowledge of international humanitarian law within the armed forces. To that end, ICRC had held an introductory three-day course for 27 high-ranking officers of the Myanmar Defence Forces in April 1993. A full five-day course for tactical operations commanders had taken place in Yangon in November 1993. It had been attended by 30 officers. A six-day seminar-workshop for trainers of the Myanmar Defence Forces had been held in early November 1994.

6. Meetings with leaders of political parties

48. On the morning of 11 November 1994, the Special Rapporteur met with representatives of three political parties participating in the National Convention, i.e. the National League for Democracy (NLD), the National Unity Party (NUP) and the Union Kayene League. As last year, and in spite of the strong request by the Special Rapporteur to meet with them in private at his office in the United Nations compound in Yangon, the meetings were arranged to take place at a government guesthouse (at 36 Inya Road). The location and atmosphere of the meetings were obviously not conducive to a free and unencumbered exchange of views. In addition, one of the party delegates told the Special Rapporteur that they had been notified to meet with the Special Rapporteur only three hours before the meeting.

49. The Special Rapporteur first met with the two representatives of NLD; Chairman U Aung Shwe and a member of the Central Executive Committee, U Than Tun. They explained that, in the National Convention, three headings of the 16 chapters in the forthcoming new constitution had been agreed upon by November 1994. The NLD delegates told the Special Rapporteur that most of their proposals in the National Convention had not been agreed upon except for a very few parts. In the process, should there be any disagreement which had to be settled through discussion, the position of NLD was never taken into consideration. They were requesting that a clause containing human rights provisions be included in the new constitution and they were hoping that the Government would accept that proposition.

50. The representatives of NLD also informed the Special Rapporteur that the delegates to the National Convention were not permitted to publish or distribute any documents or newsletters. During the sessions, they could read statements which were preapproved by the Chairmen of the group. When the NLD members wished to organize meetings around the country to meet the local population, they had to seek permission from the Government. Permission was generally received, but not for everywhere. For example, in Rakhine State, NLD leaders had wanted to meet with local inhabitants to explain the work they were doing in the National Convention, but the Government had

not authorized the gathering. In any case, attendance at the meetings was not allowed to exceed 50 persons. The Chairman of NLD further reported that three years previously he had been told by the Government not to travel outside Yangon without permission from the Local Council. The NLD delegates stated that the situation of freedom of movement, expression and organization had improved a little over previous years, but serious infringements of those basic human rights were still prevalent in the country.

51. The NLD delegates agreed that Myanmar was developing its infrastructure and that cities like Yangon and Mandalay were growing. But that development was not benefiting everyone: the rich were becoming richer, while the poor were suffering more. They reported their concern about the problem of relocation of parts of the population from their homelands to newly constructed townships in order to provide space for new construction. They concluded the discussion on the economy by saying that the economy in Myanmar would grow but the people would suffer a lot and that was why they were asking the United Nations and international non-governmental organizations to help the people of Myanmar, especially the children and women, who had the greatest needs.

52. The NLD delegates informed the Special Rapporteur about their knowledge of the meetings between SLORC and Daw Aung San Suu Kyi through the coverage in the media. They hoped that a result would soon be achieved and mentioned their preoccupation with the fact that, as she was alone, she might not be able to conduct appropriate negotiations with SLORC over a long period.

53. The Special Rapporteur met with two representatives of the National Unity Party (NUP): U Chit Hlai, a member of the Central Executive Committee, and U Tinlatt, a member of the secretariat. The National Unity Party was formed out of the former Burma Socialist Programme Party. They felt that the work at the National Convention was progressing and the major principles for the Constitution had been formulated. The Convention was now in the process of drafting articles on the basis of the principles. There was no deadline for finishing the drafting of the Constitution. NUP had eight delegates in the National Convention (five for the Party and three from the elected representatives) and at every stage during the sessions the delegates had made various proposals. But so far, they had not discussed major issues. For instance, NUP preferred a parliamentary system because Myanmar people were familiar with it from the period of British rule. However, the majority of the delegates at the National Convention had agreed to a presidential system. Therefore, the NUP delegates respected the majority's decision. The Special Rapporteur was also told that there would be provisions regarding human rights in the forthcoming constitution.

54. The NUP delegates informed the Special Rapporteur that NUP was permitted to produce a monthly booklet informing readers about its activities, the National Convention and human rights abuses, and also pamphlets on political education. It could circulate those publications among its members, but not in the National Convention. It could also organize meetings within the country, except in some areas for security reasons.

55. Regarding the meetings between Daw Aung San Suu Kyi and SLORC, the NUP delegates hoped that they would lead to concrete results, but said that they had no position on the process. They thought that Daw Aung San Suu Kyi had had a poor knowledge of the country when she came back in 1988 after several years of absence from Myanmar. They added that, when Daw Aung San Suu Kyi got involved in the political context, she had a biased analysis of the situation because she was misinformed and manipulated. They hoped that the SLORC delegation which was to meet with her would be able to change her mind.

56. The NUP delegates informed the Special Rapporteur that the economic situation was improving, especially in the agricultural sector where production had increased and much progress has been made, particularly in dry areas. They would like to see the same progress in the industrial sector and in trade where much had still to be achieved.

57. The NUP delegates ended the meeting by saying that some of their members had been in government and understood how difficult it was to govern the country, especially after the events

which had occurred in 1988.

58. The Special Rapporteur met with two representatives of the Union Kayene League: President U Mah and Joint Secretary U Mahn Tan Maung. The representatives stated that the group, which was composed by Pwo Kayin and Sgaw Kayin, was the only Karen group recognized by SLORC. It had been organized in 1988 and had five delegates who attended freely the meetings held in the context of the National Convention and a membership of approximately 50,000. The representatives of the League said that work at the National Convention was not going as fast as they would like, but that was better than rushing things since there was a unique chance to achieve better understanding among all the groups composing the country.

59. They informed the Special Rapporteur that most of the Karens in Myanmar were poor peasants living in villages. The great majority were Buddhists (85 per cent) and some were Christians (15 per cent). The League had no information about and no connection with the insurgents living at the frontier between Karen State and Thailand.

60. Regarding the economic situation, they informed the Special Rapporteur that the market had changed from a socialist system in which prices had been fixed by the State, to a free-market one. Therefore, prices were going up and people were complaining. They hoped that with free competition there would be some regulation and prices would drop. Otherwise, they agreed that the Government was working hard to improve the situation by launching all sorts of development programmes.

7. Visit to Mandalay jail

61. On the afternoon of 12 November 1994, the Special Rapporteur visited the newly built central jail in Mandalay. He was taken to the central tower of the prison, from where he had a view of land on which new vegetables and flowers had been planted, the pagoda of the prison, the infirmary and the cells.

62. The Special Rapporteur was not allowed to see any of the detainees, nor was he allowed to see the cells. At the time of the prison visit, the prison authorities stated that they were unable to comply with the Special Rapporteur's request to see the detainees and the cells because they required authorization from the higher authorities.

63. The Prison Warden informed the Special Rapporteur that there were 4,715 prison inmates of whom 3,866 were males and 849 were females. The prison has a capacity of 3,000.

64. The severity of the sentences varied from the death sentence to one-day sentences. Sixty-one prisoners (of whom three were women) were serving 20-year sentences and nine prisoners (of whom one was a woman) had been sentenced to the death penalty, but those sentences had been commuted to life imprisonment by a governmental order of November 1992.

65. The Prison Warden told the Special Rapporteur that one or two inmates were kept per cell of approximately 8 square metres having an opening high on one wall. Bamboo mats and potable water were available in the cells. Each inmate was provided with food three times a day and had access to information through books. They were also contributing to several kinds of labour, such as the renovation work of the Mandalay Palace moat.

66. The families had the right to visit the inmates twice a month, in addition to special permissions granted to their lawyers. They were also provided with medical assistance in the prison dispensary, which had 50 beds and where 3 doctors and 15 nurses were working full-time.

67. The Prison Warden informed the Special Rapporteur that a complaints procedure had been established at the prison. One day a week, an officer visited all the cells and recorded the complaints of the inmates. Most of those complaints were not founded and concerned relations between inmates.

9. Visit to Insein Prison

68. On the afternoon of 14 November 1994, the Special Rapporteur visited Insein Prison. The Prison Warden informed the Special Rapporteur that there were 4,696 prison inmates, of whom 868 were women. The prison had a capacity of 5,000. No prisoners were awaiting death because all death sentences had been commuted by an order of November 1992.

69. The Special Rapporteur was given an extensive tour of the grounds, in which vegetables and flowers had been newly planted. He was shown the hospital building, the tower and a kitchen with pots of freshly prepared food. The facilities had been freshly painted.

70. The Special Rapporteur was not allowed to see all the detainees he had requested to meet. These prisoners were detained under section 5 (e) of the 1950 Emergency Provisions Act ("causes or intends to spread false news, knowing beforehand that it is untrue"), under section 5 of the 1923 Official Secrets Act (possession or control of secret official information) or under section 17/1 of the 1908 Unlawful Associations Act (membership or contact with an illegal organization). Several of them belonged to political parties and in this connection the Special Rapporteur wished particularly to see the five NLD opposition activists arrested between July and October 1994, including Khin Zaw Win who was arrested in July 1994.

71. After repeated requests made orally from the first day of his stay in Myanmar concerning detainees he wished to see, and having asked for free access to those and other detainees at Insein Prison, the Special Rapporteur was allowed to meet only three detained political leaders, two of whom he had seen during his last visit in November 1993. In addition to U Tin U, who had a distinguished military career and had been in command of the military and was subsequently Minister of Defence, and Dr. Aung Khin Sint, an NLD member elected in the 1990 elections and a delegate to the National Convention, the Special Rapporteur met a student activist, Myin Ko Naing. The meetings took place in the presence of the Prison Warden; several of the prison guards recorded the interviews and a group of photographers were also present.

72. U Tin U greeted the Special Rapporteur and told him of his appreciation at meeting him again. He was in good health and seemed to speak freely without any fear. He told the Special Rapporteur that inmates had been busy for three days prior to his arrival, painting and cleaning the prison premises.

73. The meeting took place in front of a small shack where he was being kept in isolation. The shack was a separate one-story house with an entrance, sleeping section and a toilet and kitchen facilities behind. At the outset, U Tin U proclaimed that he was a "political prisoner" despite the claim of the authorities that he was an "ordinary criminal". He stated that he had suffered five months of effective house arrest before being brought before a martial court on numerous charges. He said that he had been charged, in particular, with: (a) inciting the entire population for democracy and human rights; (b) corresponding with parliamentarians of the European Community, Japan and the United States of America; and (c) meeting with military personnel and others in groups. Government witnesses had presented testimony at his trial, but he had been denied the right to cross-examine them. After hearing the witnesses, the court had proceeded to sentence him to three years' imprisonment; he assumes that it was preconceived. He had already served three years in prison and had, in fact, already served another year. Instead of being released, he was now serving an additional seven years to which he was sentenced by a second military court on exactly the same charges. He pleaded *res judicata*, but the judge did not seem to understand what he was saying, and found him guilty again and sentenced him to a second (more severe) term of imprisonment to be served consecutively to the first. U Tin U declared: "I love the army, but I love the people more than the army". He stated that after the 1990 elections many people had been detained for a long time without trial as "ordinary criminals". He had sought their release and remedies. So, he had come to this fate. U Tin U indicated that his treatment was good (he appeared to be physically and mentally healthy). The doctor took good care of him although a shortage of medicines was a problem. His wife came to see him every

two weeks. He had access to all the religious books and the New Light of Myanmar, but he received no other information and had no other entertainment.

74. Following the meeting with U Tin U, the Special Rapporteur was taken to another building, adjacent to the house where U Tin U was kept, with a few empty cells; among these cells one was occupied by Dr. Aung Khin Sint.

75. The Special Rapporteur could not enter into the cell where Dr. Aung Khin Sint was kept but he was able to speak with Dr. Aung Khin Sint through the locked grill of the cell door. The Prison Warden and several guards recording the interview were also present, as well as photographers. The interview was very short and the inmate seemed nervous but in good health.

76. Contrary to last year, Dr. Aung Khin Sint addressed the Special Rapporteur in the Burmese and English languages. Dr. Aung Khin Sint had done his medical training in England. He had been sentenced to 20-year imprisonment after being tried in a special court, i.e. not an ordinary court. He had not hired a lawyer. That was his own choice because he wanted to defend himself on his own. After receiving his sentence in 1993, he indicated to the Special Rapporteur during his last visit in November 1993 his intention to appeal through the proper channels. During the Special Rapporteur's latest visit, Dr. Aung Khin Sint informed him that he had not appealed but did not give any specific reason why he had changed his mind. He also told the Special Rapporteur that he was being treated well in the prison and had even received a new tooth in his first week there. In concluding, he repeated that he would like to serve a democratic government from the bottom of his heart.

77. Following the meeting with Dr. Aung Khin Sint, the Special Rapporteur was taken to another building with a few empty cells and one occupied by a young student activist, Myin Ko Naing. The Special Rapporteur could not enter the cell where Myin Ko Naing was kept, but was able to speak with him through the locked grill of the cell door. The Prison Warden and several guards recording the interview were also present, as well as photographers. The interview was very short and the inmate seemed nervous and thin, but in good health. He told the Special Rapporteur that he had been especially transferred to that cell for the meeting. When asked what he needed, Myin Ko Naing told the Special Rapporteur that he was bored, with nothing to do, and that he wished to read religious books.

78. Following the meetings with the political leaders in prison, the Special Rapporteur returned to the reception room where he sought some clarifications regarding the registration of the three inmates he had met. The Prison Warden gave all the information requested, including the bases for their imprisonment, dates, etc. The Special Rapporteur made a special request to the Prison Warden to allow Myin Ko Naing to read religious books in his cell and the Prison Warden promised the Special Rapporteur to take the necessary steps for that purpose.

9. Visit to Mon State

79. On 9 November 1994, the Special Rapporteur visited a construction site of the Ye-Dawei railway project in Mon State, as arranged by the Government of Myanmar and the Vice-Commandant of South Eastern Command, Colonel Mya Nyein. The Special Rapporteur, accompanied by Director-General U Aye Lwin and the Managing Director of Myanmar Railways, U Thaung Lwin, arrived at Kalawtgyi village in Ye Township and met the people who were working on the construction. The construction project of the Ye-Dawei railway section was started in January 1993. The entire section of 100.08 miles will pass through four stations and will include 66 bridges.

80. The Special Rapporteur was told by the local authorities that over 55,000 persons from towns and villages around the railway had already participated voluntarily in the construction project. The local authorities instructed the headmen of the various villages to provide a number of labourers and to assign duties among them. At the beginning of the construction, villagers were used to cut down trees and clear bushes to make way for the rail track. When the route was mostly cleared, villagers

began digging ditches, and taking out and piling up the earth to form the embankment for the railway.

81. Workers have been given work by the piece rather than by the day and a given piece of work must be completed in a set period of time. The working hours are from 8 a.m. to 11 a.m. and from 1 p.m. to 4 p.m. Each household/family is normally required to contribute one labourer in one round of duty and each round of duty normally lasts one to two weeks. The authorities told the Special Rapporteur that the workers are each paid 30 kyats for a piece of 1 cubic metre, which means a working day for one or two persons. Wages are paid by the Government to the whole village at the end of its contribution. The workers are not provided with food: they have to take their own food or to pay an amount of 2 kyats per meal. The Special Rapporteur had the opportunity to visit a dispensary built near the construction site to assist workers who suffer minor sickness and require to rest from work. When the sickness of the worker is serious, the authorities release the sick worker from his duty and send him to an appropriate hospital.

10. Visit to Mandalay and Mengwe States

82. On 12 November 1994, the Special Rapporteur met in Mandalay with the Commander of Central Command, Major-General Kyaw Than, and visited the construction site of the Mandalay Palace moat which is being dredged by Tatmadaw soldiers, civilians and prisoners from the Central Jail in Mandalay.

83. Around 200 unchained prisoners were involved in the building of the moat by piling and transporting rocks. They seemed in good health and the local authorities informed the Special Rapporteur about their working conditions. Generally, prisoners as well as soldiers work eight hours a day on a voluntary basis. Once the defined part of the work is accomplished, a wage is distributed among the prisoners who are involved in the labour. Food is provided for free and they are entitled to three meals a day. On the day of the Special Rapporteur's visit, well-wisher families were donating lunch, which looked quite appropriate, to all the prisoners and soldiers working at the moat construction site.

84. On 13 November 1994, the Special Rapporteur travelled to Mengwe State to visit the newly completed Pakokku-Myaing-Myosoe section of the Pakokku-Gangaw-Kalay railway. The Minister for Rail Transportation, U Win Sein, and the Commander of North-West Command Major-General Hla Myint Swe, outlined the benefits that would accrue to the regions surrounding the railway. The Minister attributed the successful completion of the new railway section to "the goodwill and support of the Government and the noble-mindedness and conscientiousness of the local population who contributed voluntary labour for the future of their own region". The ground survey for the construction of the Pakokku-Myaing-Myosoe section of the railway was started on 11 June 1993. After completion of the earth bed on 20 December 1993, the rails were laid, starting on 12 February 1994. The entire section, 34.62 miles long, was completed on 17 October 1994.

85. During the Special Rapporteur's trip, he had the opportunity to speak briefly with people among the large crowds assembling around the railway stations at which the train stopped. Apparently, the local population seemed to enjoy the opening ceremony and was happy to benefit from the new facilities.

11. Visits to the Myanmar Red Cross Society and the Myanmar Maternal and Child Welfare Association

86. On the morning of 8 November 1994, the Special Rapporteur met with the representatives of the Myanmar Maternal and Child Welfare Association at their headquarters and was given an overview of their recent activities. Regarding the problem of AIDS, Dr. Tin Tin Hmun, Chairman of the Association, informed the Special Rapporteur that the Association was currently implementing a programme of education especially addressed to mothers, in order to inform them how to safeguard

themselves and their children from infection. For this purpose training courses were being organized for volunteers (students, doctors, young people) who would then travel around the country to reach the population at the grass-roots level.

87. Concerned about the high rate of child mortality, malnutrition and illiteracy, the Association was continuing to develop, with the collaboration of international organizations such as UNICEF and NGOs, activities and services in those areas for mothers, young women and children throughout the country.

88. On the afternoon of 15 November 1994, the Special Rapporteur visited the offices of the Myanmar Red Cross Society (MRCS). The discussion went directly to the problem of AIDS. In response to an inquiry from the Special Rapporteur, the President of MRCS, Dr. Tin U explained that of 7,500 persons tested for HIV infection in Myanmar an estimated 4,000 had tested positive. Persons who had already contracted AIDS were estimated to number around 300; most of them had contracted tuberculosis and were being kept in quarantine in a section of Yangon Hospital.

89. The first cause of HIV infection is drug injection. Seventy per cent of AIDS cases are among injecting drug users. The rapid and extensive spread of infection among new intravenous drug users is linked to high levels of sharing syringes and the lack of effective sterilization between injections. Drugs are injected with a variety of self-made equipment that is often in poor condition and impossible to sterilize. The second cause is transmission through sexual activity.

90. With respect to the specific problem of the Myanmar women who had returned from Thailand diagnosed as being HIV positive the Special Rapporteur was informed that the MRCS was working closely with the Myanmar Council of Churches and a Swiss NGO, the "Association François Xavier Bagnoud", for their rehabilitation. The girls who had returned from Thailand were living together and were being "rehabilitated" by being taught cooking and sewing and other skills in the facility operated under the Department of Social Welfare. Most of the returnees had tested HIV positive. The reason for the high ratio of HIV positive cases among these women, it was explained, was that they were sent back to Myanmar because they were suspected of having been infected.

91. On the subject of the Geneva Conventions, MRCS was cooperating with ICRC in a dissemination project about the ideals and principles of the Red Cross Movement, as well as the basic principles of international humanitarian law. Three three-day courses and seven one-day sessions had been held in the framework of this programme in the Yangon area, and training sessions for Red Cross volunteers had taken place in Myaungmya and Prome as well. To date, according to MRCS, 60 per cent of the programme launched with ICRC in 1993 had been achieved.

13. Visits to university campuses

92. On the morning of 16 November 1994, the Special Rapporteur briefly visited the campus of Yangon University. In contrast to his previous visit in November 1993, the University was open, life on the campus appeared normal and students were casually walking about. During the Special Rapporteur's brief visit, he met with professors from the Department of Law. Professor Tin Aung Aye, Professor of Labour and Constitutional Law, who is also a member of the working committee of the drafting team at the National Convention, discussed topics related to the National Convention, citizenship and human rights. When asked by the Special Rapporteur if the new constitution would contain a chapter relating to human rights, he pointed out that although human rights were important, they should be linked to duties.

93. On the morning of 16 November 1994, the Special Rapporteur also visited briefly Dagon University, which had newly opened buildings in Dagon township. It is a large campus with vast classrooms and auditoriums. The atmosphere on the campus seemed normal. The Special Rapporteur had the opportunity to meet with enthusiastic young students who informed him about their interests in several topics other than politics.

C. Visits to camps in Thailand

94. Following his visit to Myanmar, the Special Rapporteur travelled to the frontier with Thailand in order to meet persons from Myanmar living in camps on the Thai side of the border. The visit to Thailand was conducted between 16 and 20 November 1994. The two camps visited were within driving distance of the Thai city of Mae Sot. It is believed that approximately 60,000 persons who have fled Myanmar are living in similar camps in the border area. During this visit, the Special Rapporteur met a total of 31 newly arrived persons from Myanmar, mostly from Karen State. All the interviewees were able to provide recent information on the situation in Myanmar, especially in the border area. Most of them were in poor physical and psychological condition. The information and views obtained in the course of the visits will be reflected below under relevant subject headings.

II. ALLEGATIONS

A. Extrajudicial, summary or arbitrary execution

95. Numerous communications from non-governmental sources continue to be received by the Special Rapporteur reporting extrajudicial, summary or arbitrary killings of civilians by Myanmar military forces under a variety of circumstances.

96. In the regions of the country with predominantly non-Burman populations and where insurgencies have been taking place, many of the alleged killings are summary executions of civilians who are accused of either being insurgents or collaborating with insurgents. For example, in March 1994, members of the Myanmar military's Western Military Command patrolling the Naf River (Rakhine State) came across some Muslims fishing from a small boat. The soldiers reportedly tried to extort money from the fishermen and, when unsuccessful, tied them up with rope and brought them to Balu Khali village in Maungdaw Township. Eight of the fishermen were reportedly interrogated and tortured over five days; the soldiers charged them with carrying out clandestine operations rather than simply fishing. On 31 March 1994, the fishermen were reportedly executed.

97. Many of the reports from non-governmental sources have described occasions on which soldiers of the Myanmar army have opened fire with light arms against civilians without any evident provocation. Such situations have frequently been reported in the context of attempts by the army to arrest and detain civilians for the purposes of forced portering and other labour; as villagers attempt to avoid being arrested or to escape the approaching troops, soldiers are often reported to open fire. For example, on 11 September 1994, Myanmar Army forces from Division No. 33, Battalion No. 27, reportedly entered Kyaun Sein village. When the villagers ran away because they were afraid to be taken as porters, the Tatmadaw reportedly opened fire on them. One villager was hit by a bullet and died the same evening, while three other men were captured by the soldiers and executed on 12 September 1994.

98. In addition to the reports received by the Special Rapporteur alleging summary or arbitrary executions, he also interviewed persons, during his visit to the refugee camps in Thailand, who claim to be witnesses to such human rights violations.

99. The Special Rapporteur has received testimonies alleging governmental responsibility for a pattern of deaths in custody. In the cases received by the Special Rapporteur of alleged violations of the right to life of persons held in detention in which charges were filed, the detentions were primarily carried out under SLORC orders, in application of the 1950 Emergency Provisions Act, particularly section 5 (J), and article 17 of the 1908 Unlawful Association Act. During his visit to Myanmar, the Special Rapporteur requested the Government of Myanmar to provide information concerning the fate of 25 political leaders and elected representatives, students and monks who had allegedly died while in custody. Prior to his departure from Myanmar, the Government provided the Special Rapporteur with its response to his inquiries; the response of the Government of Myanmar is reproduced in annex I to this report. Concerning the 25 cases raised by the Special Rapporteur, this

response may be summarized as follows: the Government denied detention in 7 cases; 4 persons were said to have been released; 3 persons were said to be still serving their terms; 10 persons were said to have been given medical treatment upon falling ill, but to have succumbed to disease nevertheless; and 1 person was said to have committed suicide.

100. Other cases of reported summary or arbitrary executions were described in paragraphs 53 to 55 of the interim report of the Special Rapporteur to the General Assembly at its forty-ninth session (A/49/651 of 8 November 1994). These cases included allegations of: severe torture, causing the death of the victims; the killing of civilians for having disobeyed orders from the Tatmadaw to relocate their homes, to supply goods or provide labour for little or no compensation; arbitrary "revenge" killings of persons from villages near to the locations of attacks carried out by insurgent forces against the Tatmadaw. Collective and arbitrary punishments are often said to include summary executions of civilians present in the area.

101. In response to the request of the Special Rapporteur for information on any investigations into these allegations undertaken by the Government, the Government of Myanmar replied, in a note verbale dated 4 November 1994, as follows:

"No instances of extrajudicial, summary or arbitrary execution can be permitted in the Union of Myanmar and no provision is made in the law for such."

102. The Special Rapporteur is aware that sometimes reports of arbitrary killings tend to be exaggerated or distorted, that there are cases of good treatment of villagers and captured insurgents by the Tatmadaw soldiers, that there is evidence that the Government is trying to discipline those soldiers who have committed serious human rights violations, that instances of such violations appear to be decreasing and that the insurgents also commit serious violations of human rights from time to time. However, the Special Rapporteur cannot deny, in view of so many detailed and seemingly reliable reports, that violations appear to be committed consistently and on a wide scale by the soldiers of the Myanmar Army against innocent villagers (particularly those belonging to ethnic minorities) in the form of summary or extrajudicial executions and arbitrary killings which occur in the contexts of forced labour, rape, forced relocation and confiscation of property.

103. In relation to specific cases, the Special Rapporteur draws attention to the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/1995/61, paras. 227-230). In this connection, the Special Rapporteur is aware that the Government of Myanmar has recently responded in detail to the allegations transmitted to it by the Special Rapporteur on extrajudicial, summary or arbitrary executions.

B. Arbitrary arrest and detention

104. Although some political prisoners have been released during the last two years from centres of detention in Myanmar, reports from various sources describe how an unknown number of civilians continue to be arrested for criticizing SLORC, the Tatmadaw and the process being undertaken in the National Convention of drafting a new constitution aimed at facilitating the transfer of power to a civilian government. Other persons reportedly arrested in large numbers are suspected insurgents (or sympathizers therewith) who remain detained in prisons in country areas, especially in the regions with predominantly non-Burman populations.

105. The Nobel Prize winner, Daw Aung San Suu Kyi, is still being held under prolonged house detention without trial; on 20 July 1994, she had completed five years in detention. Seeking her release and return to freedom in Myanmar, including respect for all of her civil and political rights under international law, parliamentarians, non-governmental organizations and individuals throughout the world have sent thousands of petitions to the United Nations in the last few months.

106. In a letter dated 5 October 1994, the Special Rapporteur requested the Government of Myanmar to provide specific reasons, including reference to specific legal authority, for keeping Daw Aung

San Suu Kyi under house arrest after 20 July 1994, and to indicate precisely when the Government intends to release her.

107. In a note verbale dated 4 November 1994, the Government of Myanmar provided the Special Rapporteur with the following detailed responses to the above inquiries:

"1. (a) ... she [Daw Aung San Suu Kyi] had been influenced by anti-government, opportunistic politicians and insurgent groups in their attempt to seize political power for their own end, at a time when political vacuum developed by the people's genuine desire to forsake the socialist economic system and their yearning for the return to a multi-party democratic system;

"(b) For her own good and for the good of the country she had to be restrained in order to prevent her from promoting the cause of these unsavoury political elements who found their way and got themselves into positions of influence around her to create disunity among the only unified establishment left in this country, the Tatmadaw, which was endeavouring to stabilize the situation created by the political vacuum;

"(c) Despite repeated caution on the part of the authorities, she made seditious speeches inciting the people to acts of violence and to cause division within the armed forces and division between the armed forces and the people.

"2. The specific legal authority for restraining Daw Aung San Suu Kyi is the 1975 Law to Safeguard the State Against the Dangers of Those Desiring to Cause Subversive Acts. Under this law, if there are reasons to believe that any citizen has done or is doing or is about to do any act which infringes the sovereignty and security of the State or public peace and tranquillity, the Council of Ministers is empowered to pass an order, as may be necessary, restricting any fundamental right of such person.

"3. Also, under Section 10 (b) and Section 14 of this 1975 Law to Safeguard the State Against the Dangers of Those Desiring to Cause Subversive Acts, there is the legal basis for the restraint of Daw Aung San Suu Kyi after 20 July 1994. Under this Law the Council of Ministers may pass an order as may be necessary restricting any fundamental right of a citizen if there are reasons to believe that he has committed, or is committing, or is about to commit, any act which infringes the sovereignty and security of the State or public peace and tranquillity. To exercise such power a Central Body, consisting of the Minister for Home Affairs as Chairman, and the Minister for Defence and the Minister for Foreign Affairs as members has been formed.

"4. The Central Body in passing restriction orders for safeguarding the State against dangers has the following powers:

(a) Arresting and detaining a person for a period not exceeding 60 days at a time up to a total of 180 days;

(b) Restraining a person up to one year.

"5. If it becomes necessary to extend the period of detention or restraint, the Central Body may be authorized by the Council of Ministers to detain or restrain a person for a period not exceeding one year at a time up to a total of five years.

"6. In accordance with Section (13) of the Law, the Central Body shall obtain the prior sanction of the Council of Ministers if it is necessary to continue the restraint of the person against whom action is taken for a period longer than contained in Section 10 (b).

"7. In so doing, in accordance with Section (14) of the Law, the Council of Ministers may, in granting prior sanction to continue the detention and arrest or to continue to restrain, permit a period not exceeding one year at a time up to a total of five years.

"8. Hence, the Central Body can restrain a person for one year with its own mandate entrusted by Section 10 (b) of the Law and, with prior sanction of the Council of Ministers, can extend the period of restraint for five years in accordance with Section (14) of the Law.

"9. In view of the foregoing, there is the legal basis for restraining Daw Aung San Suu Kyi after 20 July 1994 based on Section 10 (b) and Section (14) of the 1975 Law to Safeguard the State Against the Dangers of Those Desiring to Cause Subversive Acts."

108. In his letter dated 5 October 1994, the Special Rapporteur also requested the Government of Myanmar to provide information regarding: Khin Zaw Win; U Khin Maung Swe (aged 52 years, a prominent dissident Member of Parliament-elect and member of the Central Executive Committee of the National League for Democracy); U Sein Hla Oo (aged 58 years, a journalist and opposition politician); Dr. Htun Myat Aye (a dentist); Daw San San Tin (a translator); Daw San San Nwe (a writer) and her daughter.

109. In its note verbale dated 4 November 1994, the Government of Myanmar provided the Special Rapporteur with the following general response to the above inquiries:

"In the Union of Myanmar, a person cannot be arrested and detained if it is not in accordance with the law. It is provided in Section 61 of the Code of Criminal Procedure that no police officer shall detain in custody a person for a period exceeding 24 hours. Where it is necessary to detain such an accused for more than 24 hours, special order of a Magistrate has to be obtained under Section 167 of the Code of Criminal Procedure. The arrested person has the right of defence and the right to have legal defence counsel. Moreover, the arrested or detained person has the right to apply freely for bail to the Magistrate concerned and the Court may grant him bail according to the merits of the case."

110. The following are the detailed charges against the persons mentioned in the summary of allegations received by the Special Rapporteur in the note verbale of 4 November 1994 from the Government of Myanmar:

Name, Charge(s)

Khin Zaw Win

"(a) Under Section 17 (a) of the Unlawful Associations Act (1908) for contacting some members of the terrorist groups and providing funds for them. He was sentenced on 6 October 1994 to three years' imprisonment after due process of law;

"(b) Under Section 5 (e) of the Emergency Provisions Act for arranging to write and distribute seditious literature. He was sentenced on 6 October 1994 to seven years' imprisonment after due process of law;

"(c) Under Section 9 (2)/24 (1) of the Foreign Exchange Regulations Act (1947) for trying to smuggle out precious stones and foreign currency. He was sentenced on 6 October 1994 to three years' imprisonment after due process of law.

"... Moreover, Yangon Divisional (Northern District) Court found Dr. Khin Zaw Win guilty of an illegal act under Section 5 (2)/(4) of the Government Official Secret Act (1923) for smuggling out confidential data from the Ministry of Energy of the Government of the Union of Myanmar.

Accordingly, he is sentenced on 6 October 1994 to two years' imprisonment with labour.

" Daw San San Nwe

"... guilty of an illegal act and criminal offence under Section 5 (e) of the Emergency Provisions Act and Section 109 of the Code of Criminal Procedure for [her] collaboration with Dr. Khin Zaw Win in writing and distributing false news that could jeopardize the security of the State. Accordingly, they were sentenced on 6 October 1994 to seven years' imprisonment.

"Moreover, Daw San San Nwe was sentenced to three years' imprisonment under Section 17 (1) of the Unlawful Associations Act (1908) on 6 October 1994 by the same Court for contacting some members of the terrorist groups and providing funds for them."

U Khin Maung Swe

"... guilty of an illegal act and criminal offence under Section 5 (e) of the Emergency Provisions Act and Section 109 of the Code of Criminal Procedure for [his] collaboration with Dr. Khin Zaw Win in writing and distributing false news that could jeopardize the security of the State. Accordingly, they were sentenced on 6 October 1994 to seven years' imprisonment."

Dr. Htun Myat Aye

"... has not been detained. As he was aware of the movements of Dr. Khin Zaw Win and his colleagues, he was questioned and then released."

Daw San San Tin

"When legal action was taken against Dr. Khin Zaw Win and his colleagues, [she] was not included."

111. The Government of Myanmar also responded that U Khin Maung Swe, U Sein Hla Oo, Daw San San Nwe and her daughter "had the right of defence and the right to have legal defence counsel for their cases".

112. The Special Rapporteur continues to receive reports indicating that several persons who have reportedly been sentenced may not benefit from the minimum standards of judicial guarantees. Numerous persons are reportedly subjected to lengthy prison terms which constitute disproportional sentences in relation to the offences for which they have been found guilty. Information from reliable sources indicates that there are general problems in the matter of fair trial especially in the sense of free access to defence lawyers, sufficiency of time for careful examination of the cases, and proportionality between offences committed and punishments applied. For example, on 11 January 1994, the Special Court of Yangon West District sentenced to death four persons after they had been found guilty of murdering a student: the judgements were rendered within a few days of the arrest of those accused.

113. With respect to other specific cases, the Special Rapporteur draws attention to the report of the Working Group on Arbitrary Detention (E/CN.4/1995/31, paras. 7-8 and 13-14) and Decision No. 13/1994, adopted by the Working Group on 28 September 1994.

C. Torture and other cruel, inhuman or degrading treatment

114. Numerous allegations, often in considerable detail, have been received from various sources alleging that members of the Myanmar military, intelligence and security services and police continue to torture persons in detention or otherwise subject them to cruel, inhuman or degrading treatment and punishment. Such treatment seems to be routinely employed during the interrogation of persons who have been arbitrarily arrested or held on suspicion of real or perceived antigovernment activities. Allegations include subjection to severe beatings, shackling, near suffocation, burning, stabbing, rubbing of salt and chemicals in open wounds and psychological torture, including threats of death. Other reported methods of torture include sexual assault and rape, mostly among women serving as porters.

115. The Special Rapporteur received testimony from reliable sources, corroborated by photographs, indicating that detainees are very often chained and are forced to sleep on cold cement, and that many of them suffer from sickness and serious diseases. The same reliable testimony and photographic evidence indicate that cells are often overcrowded and that prisoners are provided with inadequate hygiene or medical care.

116. In addition to several reports received by the Special Rapporteur alleging widespread torture and other cruel, inhuman and degrading treatment in Myanmar, he has also interviewed persons claiming to be victims or to have witnessed such human rights violations.

117. With respect to specific cases, the Special Rapporteur draws attention to the report of the Special Rapporteur on Torture (E/CN.4/1995/34, paras. 492-500). In this connection, the Special Rapporteur is aware that the Government of Myanmar has responded to the allegations transmitted by the Special Rapporteur on Torture.

D. Freedom of movement

118. During his visit to Myanmar, the Special Rapporteur was pleased to note that several members of intergovernmental and international non-governmental organizations are permitted to travel

through the country to implement their programmes directly with the concerned population. Nevertheless, reliable sources informed the Special Rapporteur that forced relocation and internal displacement of persons occurs on a wide scale. People continue to be forcibly relocated, without compensation, to new towns and villages. For example, on 9 July 1994, some 80 persons are said to have been forced to leave Kyein-ta-li village in southern Rakhine State; they were forced to leave on very short notice and were not allowed to bring any property with them. In another example, about 1,500 persons were said to have been forced to leave their homes in Nga-let village in Min-pya township in northern Rakhine State on 13 July 1994; these persons are said to have been rounded up by the military and put on seven boats. In July 1994, in Rakhine State, a Muslim community composed of 250 households was allegedly forced to move from their native village of Ngla, in Minbya township, to Mang Daw township. In a third example, another Muslim community composed of 360 households was reportedly forced to move from their village of Kawalong, Myauk U township, to be relocated in Mang Daw on 4 October 1994.

119. Allegations have also been made that 30 Muslim heads of family were rounded up from villages around Pyapon township in the delta area of the Irrawaddy division and sent to Yangon, where they were detained at the police lock-up in Barr Street. The detained persons are all said to be holders of national identity cards and to be owners of the land that they have worked on for generations. Reports claim that these persons now face deportation or forcible relocation, without compensation, to Rakhine State.

120. Forced relocations and evictions have also been reported by reliable sources in connection with major development projects. According to several non-governmental sources, Myanmar authorities are forcing Muslims to dismantle their cemeteries and religious buildings at six months' notice, to make room for more profitable construction related to tourism. Such acts are claimed to have taken place in, for example, Yangon, Mandalay and Yan-bye township in southern Rakhine State. In Kyauk-ni-maw village tract, Yan-bye township, the local authorities have reportedly ordered six mosques to be dismantled. The reason said to have been given by the authorities for the order is that the trustees of the mosques could not produce any documentation concerning the legality of the buildings. The mosques are several hundred years old.

E. Freedom of expression

121. During his visit to Myanmar the Special Rapporteur was pleased to note that several members of the foreign press, including members of foreign radio and television companies, were allowed entry into Myanmar. Foreign newspapers were also available in some book stores in Yangon, and more than 80 Myanmar magazines, of social and cultural interest, are available to the public. Nevertheless, the Special Rapporteur was also informed that, within Myanmar, the written press, radio and television continue to be subject to governmental censorship, and that the distribution of written material was also subject to governmental restrictions and control. For example, all magazines must be read by a governmental body before their distribution.

122. According to an article entitled "Action taken against destructive elements" which was published in the 23 August 1994 edition of the State-controlled English-language newspaper *The New Light of Myanmar* (printed on p. 12), the receiving or passing of information or written material from and to foreigners appears to be illegal. By prosecuting persons for such exchanges of information, the Government of Myanmar effectively intimidates its citizens and discourages them from exercising their fundamental rights to freedom of expression.

123. The Special Rapporteur is especially concerned about the fact that during his visit to Myanmar he was unable to meet citizens who wished to contact him, because of their fear of subsequent repercussions. In this connection, the Special Rapporteur notes that one of the charges against Khin Zaw Win, who was arrested in July 1994, was that of having made arrangements to send fabricated news on Myanmar to the Special Rapporteur during his visit to the country in 1992. This allegation

was published on 23 August 1994 in the same article of The New Light of Myanmar referred to above, as follows:

"Dr. Khin Zaw Win and group met those who have opposite views on government and the Tatmadaw and made arrangements for sending fabricated news on Myanmar to Professor Yozo Yokota, representative of the United Nations Commission on Human Rights during his visit in December 1992."

The Special Rapporteur was informed during his visit to Myanmar that this particular charge was not considered as a basis for judgment by the court, but the fact that it was widely reported, including by the government newspaper, would have a strong psychological effect on people and cause them to be extremely reticent about contacting him.

F. Labour rights

124. The Special Rapporteur has been informed that workers in Myanmar do not enjoy basic labour rights including, in particular, freedom of association and the right to organize. There is hardly any trade union movement, and workers and trade unionists who criticize the Government would risk interrogation and arrest.

125. The Special Rapporteur received many complaints from several reliable sources that men, women and children from the age of 14 years are allegedly used for forced labour for the construction of railways, roads and bridges. Persons with past records are randomly rounded up by local police or the military in resettlement areas, and in downtown Yangon, along Insein Road and in the small coffee houses. In the countryside, village headmen are responsible for filling forced labour and porter quotas or providing large sums of money to the military instead.

126. The Special Rapporteur received testimonies describing minutely the duties of porters. Porters are required to carry heavy loads of ammunition, food and other supplies between army camps, generally over rugged mountains which are inaccessible by vehicle. They must often construct the camps for the military upon arrival. They are not paid for their work and are allowed only a minimum of food and rest.

127. The Special Rapporteur takes note of the fact that the matter has been raised before appropriate bodies of the International Labour Organisation (ILO). On 7 November 1994, ILO issued document GB.261/13/7 entitled "Report of the Committee set up to consider the representation made by the International Confederation of Free Trade Unions under article 24 of the ILO Constitution alleging non-observance by Myanmar of the Forced Labour Convention, 1930 (No. 29)". The Committee has concluded that "the exaction of labour and services, in particular portage service, under the Village Act and the Towns Act is contrary to the Forced Labour Convention, 1930 (No. 29), ratified by the Government of Myanmar in 1955".

G. Rights of the child

128. The Special Rapporteur is pleased to note that the Government of Myanmar formally withdrew the reservations made by Myanmar upon accession to the Convention on the Rights of the Child in July 1991 with respect to article 15 (regarding freedom of association) and article 37 (regarding the prohibition of torture and other cruel, inhuman or degrading treatment in regard, inter alia, to the treatment of children during interrogation). However, the Special Rapporteur is concerned that there is some evidence of children being forced to serve in the army as soldiers or as porters. This practice, which is reported to remain widespread, would involve a variety of human rights violations, including forced labour, cruel and degrading treatment (if not also torture) and threats to life.

129. Regarding allegations of violations of children's rights, the Special Rapporteur interviewed several witnesses during his visits to the refugee camps in Thailand. He met children of 16 and 17 years of age who claimed that they had been forced to serve in the Myanmar Army two years earlier. Such military service of children is contrary to article 38, paragraphs 2 and 3, of the Convention on

the Rights of the Child, to which Myanmar is a party.

H. Treatment of the Muslim population in Rakhine State

130. In early 1992, there was a mass influx of some 250,000 Muslim refugees into Bangladesh from Rakhine State in Myanmar. To address this problem, a joint statement was made by the Governments of Myanmar and Bangladesh, on 23 April 1992, concerning the voluntary repatriation of the refugees. Bangladesh requested the assistance of UNHCR to facilitate the repatriation and memoranda of understanding between UNHCR and the Governments of Bangladesh and Myanmar were signed on 12 May 1993 and 5 November 1993, respectively.

131. In this connection, the Special Rapporteur welcomed the willingness of the Government of Myanmar to cooperate with UNHCR in order to ensure the voluntary and safe return of the Muslim population who had fled to Bangladesh from Rakhine State. Between September 1992 and the end of September 1994, a total of 75,000 refugees had returned to Myanmar and, according to UNHCR, it is anticipated that an additional 45,000 refugees will have returned by the end of 1994. If the aforementioned anticipated return is accomplished as planned, the total number of returnees at the end of 1994 would be 120,000, or approximately half the number who fled.

132. The Special Rapporteur also welcomed the undertaking of the Government of Myanmar to allow the establishment in December 1993 in Rakhine State of a UNHCR permanent field office with international staff. This presence may dissipate the fear of many of the Muslim population of Rakhine State who remain in the camps on the Bangladeshi side of the border. Many of them are said to be fearful of possible ill-treatment by the Myanmar authorities upon return and, therefore, do not wish to come back without some kind of international monitoring.

133. In Myanmar, five reception centres (Taungpyo, Ngakhuya, Pyinphyu, Kanyinchaung and Magyichaung) and one transition centre (in Buthidaung) have been established. Upon arrival at the reception centres, returnee families are issued "family lists" serving as temporary identity documentation until they are provided with a returnee identity card.

134. UNHCR reports that, up to the present, all returnees have been able to move back into their former homes. Most returnees who had access to land prior to their departure for Bangladesh will be able to regain their land after the next harvest. In cases where the returnees are unable to claim their land back, the authorities have committed themselves to finding alternative solutions at the location of the returnees' former residences.

135. UNHCR is playing a key role in helping create conditions in Rakhine State conducive to the return of the refugees and to monitor their wellbeing. The Special Rapporteur is informed that the returnees are free to travel and will be entitled to the same rights as other residents of Myanmar. The governmental authorities are also obliged to inform UNHCR of cases of arrest or detention of returnees and to allow UNHCR officers access to any detained returnee.

I. The National Convention

136. On 9 January 1993, the Government convened a national convention to lay down the basic principles for the elaboration of a new and enduring constitution. Of the 702 delegates from 8 categories of people, 49 are selected by the 10 political parties remaining after the 1990 elections, 106 are elected representatives and the remainder of the delegates from the other 6 categories were chosen by SLORC. Before any real discussion could take place at the National Convention, a broad framework of basic objectives was provided by the Government: (a) non-disintegration of the Union; (b) non-disintegration of national solidarity; (c) consolidation and perpetuity of sovereignty; (d) emergence of a genuine multiparty democratic system; (e) development of eternal principles of justice, liberty and equality in the State; and (f) participation of the Tatmadaw in a leadership role in the national politics of the future.

137. The Special Rapporteur has been informed that each of the eight groups represented were to have a panel of five chairmen who would lead the discussions and that, in the political parties group,

only one chairman was from NLD the party that won a majority in the 1990 elections. In the elected representatives group, where 89 of the remaining 106 delegates were from NLD. No NLD representatives were selected as chairmen.

138. During his visit to the National Convention, the Special Rapporteur met with several delegates. He was informed that all the delegates to the National Convention are required to stay in the Convention compound. In the same dormitory, five delegates live together. There is one sergeant clerk in each dormitory serving the delegates. It is reported that these sergeant clerks may also observe the activities of the delegates.

139. Delegates are not totally free to meet with other delegates inside the compound. They are not entitled to leave the compound without authorization. When they leave the compound, delegates are not allowed to take out any written or printed materials. It was also reported to the Special Rapporteur that when the delegates return to their States to see their families they are sometimes harassed by the local authorities. The Special Rapporteur is concerned that such an atmosphere does not permit the delegates to be in touch with the populations they represent, or enable them to take into account their grievances, wishes and points of view and, thus, to represent them meaningfully during the debates which are taking place in the National Convention.

140. The Special Rapporteur was told that the delegates enjoy the freedoms of expression and discussion. However, they cannot distribute discussion papers among themselves: all papers have to be distributed to the chairmen of the groups. The chairmen scrutinize the contents and, if the statements are found to be contradictory with the agreed principles, the relevant parts are deleted. Only then will the papers be read at the group meetings. When the proposed statements are to be read before the plenary meeting, they have to be submitted again for scrutiny by the Work Committee.

141. The reply of the Government in response to a query by the Special Rapporteur with regard to progress made so far in the National Convention on the drafting of a new constitution, and the anticipated schedule for future meetings, is reproduced in the addendum to the interim report of the Special Rapporteur to the General Assembly (A/49/594/Add.1, pp. 13 to 15 of the English version).

J. The movement towards reconciliation with the insurgents

142. The Special Rapporteur has been informed that the Government of Myanmar extended an official invitation to the armed groups to return to the legal fold, to hold talks with the Government and to join hands with the Government in the ongoing national endeavour for the development of border areas and national races. During his meetings in Myanmar, the Government of Myanmar provided the Special Rapporteur with a list of the 13 ethnic and other armed groups which "had returned to the legal fold", i.e. have signed ceasefire agreements with the Government of Myanmar. The list is reproduced in annex II to the present report.

143. In connection with the "return to the legal fold" of various of the former insurgent groups, the Special Rapporteur notes a list supplied to him by the Government of Myanmar which names 77 persons who have been released from imprisonment subsequent to receiving sentences for a variety of politically related offences, including offences under section 17 (1) of the 1908 Unlawful Association Act. This list is reproduced in annex III to the present report.

144. In response to the Government's invitation to "return to the legal fold", it was reported in November 1994 that the leader of the Karen National Union (KNU), the largest armed insurgent group, was ready to discuss a ceasefire with the Government of Myanmar. It is still too early to make any meaningful assessment of developments in this respect. But, from the viewpoint of protection of human rights, such a move towards true national reconciliation should be welcomed because, as stated above, many cases of serious human rights violations are being committed in the context of military operations. For example, Kachine State, where an insurgency was previously taking place during which foreigners were prohibited to visit, has become opened for journalists and tourists as a result of the return of the Kachine Independence Organization (KIO) guerrilla group to the legal fold.

During a visit to Kachine State in November 1994, Lieutenant General Khin Nyunt was quoted as saying that peace is now prevailing in Kachine State.

III. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

145. The visit of the Special Rapporteur to the Union of Myanmar at the invitation of the Government was facilitated by the efforts, cooperation and courtesy extended to him by the officials of the Government, in particular Lieutenant General Khin Nyunt, Secretary One of SLORC, and U Ohn Gyaw, Minister for Foreign Affairs. Most of the requests of the Special Rapporteur to meet persons pertinent to his mandate were met, including meetings with the Attorney-General, Chief Justice, Minister of Information, some political leaders in detention and representatives of political parties. However, the Special Rapporteur was disappointed that he was not allowed to meet Daw Aung San Suu Kyi. He also regrets that the meetings with the representatives of political parties were held at a place and in an atmosphere not fully ensuring privacy. However, the Special Rapporteur commends the Government for arranging quite efficiently his visits to Mon State, Mandalay State and Mengwe State, Insein Prison, Mandalay Prison and other places and facilities which he had requested to visit.

146. The Special Rapporteur generally observed in Yangon and Mandalay that there were visible signs of relaxation of tension in the life of the people. There were many consumer goods in market places where many shoppers crowded. Streets and bridges have been constructed or improved. There were many cars on the streets. Indeed, in the centre of Yangon, traffic congestion and parking problems occurred at certain times of the day. However, the Special Rapporteur was informed that this development and construction is benefiting only a few persons. In fact, there were poor people in the cities and, in particular, in the countryside; these persons did not appear to be sharing in any new prosperity, and rather appeared to be suffering from inflationary pressures on basic necessities such as rice and medicines.

147. The Special Rapporteur welcomes the expanding cooperation between the Government of Myanmar and various United Nations organs and with international humanitarian non-governmental organizations.

148. The Special Rapporteur continues to be concerned about the serious restrictions imposed upon people in the enjoyment of civil and political rights. The people do not generally enjoy freedom of thought, opinion, expression, publication and peaceful assembly and association. They seem to be always fearful that anything they or their family members say or do, particularly in the area of politics, could put them at risk of arrest and interrogation by the police or military intelligence. Consequently, most people with whom the Special Rapporteur spoke casually avoided any conversation touching upon political subjects. Several people told him that many persons wished to tell the Special Rapporteur their stories, but were too afraid to come to see him.

149. The persons whose civil and political rights are most severely restricted are the leaders of political parties, particularly the NLD leaders, and delegates to the National Convention, again particularly those from NLD. Because of both visible and invisible pressures, they cannot assemble in a group, cannot freely discuss, and cannot publish or distribute printed materials. In this situation it is difficult to assume that, in the National Convention, open and free exchanges of views and opinions are taking place in order to produce a truly democratic constitution.

150. The Special Rapporteur is pleased to note that the Government of Myanmar has continued to release persons who have been detained for political activities. He also welcomes the Government's decision to allow persons other than members of her immediate family to visit Daw Aung San Suu Kyi, as well as the beginning of a dialogue between her and the Government. He would, however, express concern that there are still hundreds of such persons detained in Myanmar, most notably

Daw Aung San Suu Kyi. He also regrets that, in the summer of 1994, five persons were specifically arrested for engaging in political activities and were subsequently sentenced to long prison terms.

151. Government representatives have repeatedly explained to the Special Rapporteur that the Government is willing to transfer power to a civilian government, but that, in order to do so, there must be a strong constitution and that, in order to have a strong constitution, it is doing its best to complete the work of the National Convention. However, the Special Rapporteur cannot help but feel that, given the composition of the delegates (only one out of seven delegates was elected in the 1990 elections), the restrictions imposed upon the delegates (practically no freedom to assemble, to print and distribute leaflets or to make statements freely) and the general guidelines to be strictly followed (including the principle regarding the leading role of the Tatmadaw), the National Convention does not appear to constitute the necessary "steps towards the restoration of democracy, fully respecting the will of the people as expressed in the democratic elections held in 1990" (General Assembly resolution 47/144, para. 4).

152. The Special Rapporteur welcomes the fact that, subsequent to the signing on 5 November 1993 of the Memorandum of Understanding between the Union of Myanmar and UNHCR to facilitate and guarantee the voluntary and safe return of Myanmar residents from Bangladesh, and the subsequent opening of a UNHCR field office in Rakhine State to allow UNHCR international staff to monitor the repatriation of the refugees, tens of thousands of refugees have been successfully repatriated.

153. The Special Rapporteur further welcomes the undertaking of various training programmes for military officers and soldiers with the cooperation of ICRC and the Myanmar Red Cross Society in the area of international humanitarian law.

154. The Special Rapporteur is paying special attention to the recent successes of the government initiative to invite the armed insurgent groups to enter into talks with the Government and he notes, in particular, some initially positive response from the Karen National Union. He is hopeful that the process will move forward in the direction of achieving true reconciliation and peace throughout the country.

B. Recommendations

155. In the light of the foregoing conclusions, the Special Rapporteur submits the following recommendations for the consideration of the Government of Myanmar:

- (a) The Government of Myanmar should fulfil in good faith the obligations it has assumed under articles 55 and 56 of the Charter of the United Nations "to take joint and separate action in cooperation with the Organization for the achievement of ... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language and religion". In this respect, the Special Rapporteur notes that the Government of Myanmar is in an ideal position to encourage the delegates of the National Convention to include various human rights provisions in the new constitution using, as a reference, the provisions of the Universal Declaration of Human Rights, a copy of which should be circulated to each delegate in the Burmese language;
- (b) The Government of Myanmar should consider accession to: the International Covenants on Human Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the two Protocols additional to the Geneva Conventions of 1949;
- (c) Myanmar law should be brought into line with accepted international standards regarding protection of physical integrity, including the right to life, protection against disappearance, prohibition of torture and other cruel, inhuman or degrading treatment, providing humane conditions for all persons under detention and insurance of the minimum standards of judicial guarantees;
- (d) The Government of Myanmar should take steps to facilitate and guarantee enjoyment of the freedoms of opinion, expression and association, in particular by decriminalizing the expression of oppositional views, relinquishing government control over the media and literary and artistic communities, and permitting the formation of independently organized trade unions;

(e) All political leaders, including elected political representatives, students, workers, peasants and others arrested or detained under martial law after the 1988 and 1990 demonstrations or as a result of the National Convention, should be tried by a properly constituted and independent civilian court in an open and internationally accessible judicial process. If found guilty in such judicial proceedings, they should be given a just sentence; alternatively, they should be immediately released and the Government refrain from all acts of intimidation, threats or reprisals against them or their families. With respect to Daw Aung San Suu Kyi, the Government should release her immediately and unconditionally;

(f) The Government of Myanmar should take the necessary steps to bring the conduct of the military, including ordinary soldiers and officers, into line with accepted international human rights and humanitarian standards so that they do not arbitrarily kill, rape, confiscate property, force persons into acts of labour or portage, relocate them or otherwise treat persons without respect to their dignity as human beings. When the hiring of local villagers for portage and other works may be required for governmental purposes, it should be undertaken on a voluntary basis and adequate wages should be paid. The nature of the work should be reasonable and in accordance with established international labour standards. When the relocation of villages is considered necessary for military operations or for development projects, proper consultation with the villagers should take place and appropriate compensation -should be paid for those relocations which may be determined necessary for reasons of the public good;

(g) The Government of Myanmar should take all steps to refrain from recruiting any person who has not attained the age of 15 years into their armed forces, in accordance with article 38.3 of the Convention on the Rights of the Child;

(h) All military and law enforcement personnel, including prison guards, should be thoroughly informed and trained as to their responsibilities, in full accordance with the standards set out in international human rights instruments and humanitarian law. Such standards should be incorporated into Myanmar law and legislation, including the new constitution to be drafted. The training programme undertaken with the cooperation of ICRC is a good start in this direction and should be continued;

(i) Given the magnitude of the abuses, official condemnation should be made by the Government of all acts by authorities involving human rights violations. Such acts, including all acts of intimidation, threat or reprisal, should not benefit from the present system of almost complete denial by, and impunity under, the Government;

(j) The Government of Myanmar should consider the revision of the 1982 Citizenship Law to abolish its burdensome requirements for citizenship. The law should not apply its categories of second class citizenship in a manner which has discriminatory effects on racial or ethnic minorities, particularly the Rakhine Muslim population. It should be brought into line with the principles embodied in the Convention on the Reduction of Statelessness of 30 August 1961;

(k) The Government of Myanmar is encouraged to continue its cooperation with UNHCR in facilitating and ensuring the voluntary and safe return of Rakhine Muslims from Bangladesh;

(l) The Government of Myanmar is also encouraged to continue its cooperation with international non-governmental organizations in facilitating and ensuring the free access of their international staff to ordinary persons in the townships and villages in order to establish contacts and provide assistance to persons who are suffering from a shortage or lack of food, safe water, medicines, medical care and proper education.

Annex 1

RESPONSE OF THE GOVERNMENT OF MYANMAR TO ALLEGATIONS OF EXTRAJUDICIAL EXECUTION WHILE IN CUSTODY, AS RAISED BY THE SPECIAL RAPPORTEUR DURING HIS MEETING WITH COLONEL KYAW WIN OF THE DIRECTORATE OF DEFENCE SERVICE INTELLIGENCE ON 10 NOVEMBER 1994

(Document given to the Special Rapporteur by the Myanmar authorities during his visit to Myanmar)

Name (age) Brief case history Remarks

1. Ko Zaw Win Tun: No one by that name was detained or imprisoned.
2. U Aye Lwin: No one by that name was detained or imprisoned.
3. Ko Soe Htay: No one by that name was detained or imprisoned.
4. Ko Nay Win Aung: No one by that name was detained or imprisoned.
5. Ko Aung Moe: No one by that name was detained or imprisoned.
6. U Sein Win (alias U Win Zaw): No one by that name was detained or imprisoned.
7. U Than Win (49 years): Action was not taken against him. He is a representative-elect of the National League for Democracy for Tha Baung 2 Constituency. He is now living in Pathein.
8. U Kyaw Win: Sentenced to 5 years' imprisonment under section 5 (j) of the 1950 Emergency Provisions Act on 20 January 1992 at Myaungmya Prison. He was released on 9 January 1993 and is now living in Pa Let village in Nyaung Don township.
9. U Tha Tun: Sentenced to 5 years' imprisonment on 1 January 1991 under section 5 (j) of the 1950 Emergency Provisions Act at Myaungmya Prison. He was released from prison on 25 November 1992 and is now living in Phoe Nar Ko village, Laputta township.
10. David Hla Myint (35 years): A representative-elect of the National League for Democracy for Ngapudaw 2 Constituency. Sentenced to 6 months' imprisonment on 26 January 1991 under section 6 of the State Flag Law for showing disrespect for the State flag. He was released on 26 June 1991 and is now living in Pathein.
11. Ko Kyaw Soe (21 years): Sentenced to 8 years' imprisonment on 7 June 1991 under section 17 (2) of the 1908 Unlawful Association Act for having been involved in the destruction of the electric transformer at Bamaw. He is still serving his sentence in Mandalay Prison.
12. Hamin: Sentenced to 12 years' imprisonment on 7 June 1991 under section 17 (2) of the 1908 Unlawful Association Act for having been involved in the destruction of the electric transformer at Bamaw. He is still serving his sentence in Mandalay Prison.
13. U Aye Ko (37 years): Sentenced to 6 years' imprisonment under section 5 (j) of the 1950 Emergency Provisions Act on 5 February 1991. He is still serving his prison term at Mandalay Prison.
14. Man Daweit (55 years): Sentenced to 8 years' imprisonment on 27 November 1989 under section 17 (2) of the 1908 Unlawful Association Act for seeking assistance from the KNU insurgents. He was hospitalized on 29 June 1992 at Yangon General Hospital for lung cancer and died on 12 July 1992 from the disease.
15. Mohamed Ilyas (alias Maung Nyo): Detained for having laid explosive mines near the Golf Club at Maung Daw. He was hospitalized at Mungdaw Hospital for severe pains in the stomach. He died on 23 June 1992 due to severe gastritis.
16. Khin Maung Myint (64 years): Sentenced to 10 years' imprisonment on 6 November 1989 under section 5 (j) of the 1950 Emergency Act and section 17 of the 1908 Unlawful Association Act for involvement in the underground movement of the Burma Communist Party. He was hospitalized on 12 August 1991 for tuberculosis and taken to Yangon General Hospital for further treatment. He died on 16 February 1993.
17. Kyaw Myo Thant: Sentenced to 1 year's imprisonment under section 505 (b) of the Penal Code on 7 November 1989 for distributing illegal leaflets. He died on 20 May 1990 because of liver cancer at Maubin General Hospital.

18. Soe Win (72 years): Sentenced to 20 years' imprisonment on 6 November 1989 under section 5 (j) of the 1950 Emergency Act and section 17 of the 1908 Unlawful Association Act for involvement in the underground movement of the Burma Communist Party. He was transferred from the Prison Hospital to Insein General Hospital for severe jaundice, and died on 3 May 1991 at the hospital.
19. Nyo Win (58 years): Action was taken against him on 18 July 1989 under section 19 (a) of the Unlawful Association Act for circulating disinformation and distributing illegal leaflets. He was hospitalized at the Prison Hospital for blood-poisoning and severe jaundice on 1 March 1991 and transferred to Insein General Hospital. He died from the disease on 8 March 1991.
20. Khin Maung (alias Bo Set Yaung): Sentenced on 2 November 1989 to 5 years' imprisonment under section 5 (j) of the 1950 Emergency Act and section 17 of the 1908 Unlawful Association Act for involvement in the underground movement of the Burma Communist Party. He died at Insein Prison Hospital on 7 March 1990 from heart disease.
21. Thaw Ka, (62 years): Sentenced to 20 years' imprisonment on 5 November 1989 under section 5 (a) and (b) of the 1950 Emergency Provisions Act for organizing and exhorting the Tatmadaw personnel from the Navy to dissociate from the combined Armed Forces. He was hospitalized for heart disease on 7 June 1991 and transferred to Yangon General Hospital on 8 June 1991. He died from heart disease on 11 June 1991 at the hospital.
22. Tin Maung Win (51 years): Action was taken against him on 21 November 1990 under sections 121 (1) and 124 of the Penal Code for his involvement in attempting to form a parallel government. He was hospitalized 10 January 1991 for leukaemia and died from the disease on 18 January 1991.
23. Zaw Tika, (60 years): Sentenced to 3 years' imprisonment on 8 February under section 5 (j) of the 1950 Emergency Act and under section 295 of the Penal Code for involvement in a strike organized by the monks. He was hospitalized in the Prison Hospital on 1 September 1992 because of tuberculosis and died of the disease on 18 November 1992 at the Insein Prison Hospital.
24. Maung Ko: A member of the National League for Democracy HQs. Detained for his involvement in attempting to form a parallel government. He committed suicide on 9 November 1990.

Annex II

NATIONAL ARMED GROUPS WHICH HAVE RETURNED TO THE LEGAL FOLD
(Document given to the Special Rapporteur by the Myanmar authorities during his mission to Myanmar)

Name| Place| Leader| Date

Kokang National Group | Lauk kai | U Yan Moe Lyan | 31 March 1989

Wa National Group | Pang Sang | U Kyauk Ni Hlaing and U Bauk Yu Chang | 9 May 1989

Shan State Army (SSA) | Hseng Kiao | U Sai Naung | 24 June 1989

Shan/Ahka National Group | Mong La | U Sai Lin | 30 June 1989

New Democratic Army (Kachin) (NDA) | Pang Wa | U Sakhon Taint Yein | 15 December 1989

Kachin Defence Army (KDA) | Kaung Kha | U Ma Htu Naw | 1 November 1991

Pa-O National Organization (PNO) | Kyauk Ta Loe | U Aung Kham Hti | 18 February 1991

Palaung State Liberation Party (PSLP) | Nam Hsam | U Aik Mong | 21 April 1991

Kayan National Guard (KNG) | Mong Pai | U Kabrial Byan | 27 February 1992

Kachin Independence Organization (KIO) | Liaison Post | U Zaw Mai | 24 February 1992

Kayinni National People's Liberation Front (KNPLF) | Hoya/Biya | U Htun Kyaw | 9 May 1994

Kayan New Land Party (KNLP) | Polaung | U Than Soe Naing | 26 July 1994

Shan National People's Liberation Organization (SNPLO) | Naung Htaw | U Tarka Le | 10 September 1994

Annex III

CHART SHOWING PARTICULARS OF THOSE AGAINST WHOM ACTION HAS BEEN TAKEN FOR HAVING CONTACT WITH KNU INSURGENTS AND WHO HAVE BEEN RELEASED BY THE MYANMAR AUTHORITIES DURING 1994

(Document given to the Special Rapporteur by the Myanmar authorities during his mission to Myanmar)

KNU - Kayan National Unity Party

MNLD - Mon National League for Democracy

UND - Union National Democracy Party

Name | Party assignment/occupation | Sentence/legal basis | Prison/date of release

1. U.R.P. Thaung (Son of U Ni Si Taung) KNU (disbanded), Central Executive Committee member (Than Daung 2) 5 years, 30 May 1991, section 5 (j) of the Emergency Provisions Act for selling secret information and the fraudulent act of selling fabricated false reports to foreign embassies. Insein Prison 21 June 1994
2. Nai Ngwe Thein (Son of U Tha Tun Aung) MNLD (disbanded), Vice-Chairman 7 years, 4 November 1992, section 5 (j) of the 1950 Emergency Provisions Act; and 7 years' imprisonment under section 17 of the Printers and Publishers Registration Act; 7 years, section 28 of Printers and Publishers Registration Act. Mawlamyaing Prison 22 August 1994
3. Nai Tun Thein (Son of U Aung Dun) MNLD (disbanded) Chairman (Thanbyu 2)
4. Maung Maung (Son of U Ko Lay) UND (disbanded) Central Executive Committee Member 1 year, 25 February 1993, section 17/20 of the Printers and Publishers Registration Act for printing illegally books concerning the 6 basic principles of the National Convention; 6 months, 27 April 1993 under Section 468 of the Penal Code for failing to pay the debt owed to Daw Ahmar Kyi. Insein Prison 14 December 1993
5. Saw Cha Lay (alias Saw Kyaw Thein) (Son of U Saw Han) Fisherman 3 years, 8 June 1992, section 5 (j) of the Emergency Provision Act for having contact with KNU insurgents. Patheingyi Prison 8 January 1994
6. Saw Lay Gyi (alias Saw Shwe Pe) (Son of U Tha Hto) Dependent
7. Saw Jean (Son of U Saw Lay Gyi, alias Saw Shwe Pe) Peasant
8. Thabye (alias Pauk Taw) (Son of U Pauk Kyaw) Peasant 3 years, 12 November 1991, section 17 (1) of the 1908 Unlawful Association Act for having contact with KNU insurgents. Maubing Prison 8 January 1994
9. Auspon (Son of U Saw Thein Kyaw) Student (sentenced 28 December 1991)
10. Myint Aung Lay (Son of U Wai Hlaing) Peasant
11. Hla Tun (alias Tha Tu) (Son of U Sein Pale) Fisherman 3 years, 11 December 1991, section 17 (1) of the 1908 Unlawful Association Act for having contact with KNU insurgents.
12. Maung San (Son of U Sein Hlaing) Peasant (sentenced 12 December 1991)
13. Ma Ne Win Myint (Daughter of U Gar Midi) Peasant (sentenced 30 December 1991)
14. Nan Tannie Soe (17 years) Peasant
15. Ma Naw Mu Tu (30 years) (Daughter of U Shwe Kyu) Primary school teacher (sentenced 9 January 1992)
16. Naw Cristina (34 years) (Daughter of U Aung) Principal of primary school
17. Nant Naung Sein (Daughter of U Mya Maung) Peasant (sentenced 27 January 1992)
18. Ma Chaw Bo (Daughter of U Tha Paw) Peasant (sentenced 31 January 1992)
19. Ma Thu (Daughter of U Tha Oo) Peasant
20. Ma Kyi Win (Daughter of U Aung Shwe) Peasant 3 years, 14 February 1992, section 17 (1) of the 1908 Unlawful Association Act for having contact with KNU insurgents.
21. Shwe Soe (Son of U Kyaw Hlaing) Peasant (sentenced 10 April 1992)

22. San Aye (Son of U Ba Kyi) Peasant
23. Aung Maung (Son of U Khway) Peasant
24. Shwe Man (Son of U Tun Myaing) Peasant
25. Toke Kyi (Son of U Shwe Phee) Peasant
26. Thein Win (Son of U Than Kaung) Peasant
27. Kyaw Aye (Son of U Aung Yay) Peasant
28. Kywet Ni (Son of U Tun Phyu) Peasant
29. Pyone Cho (Son of U Toe Si) Peasant
30. Mya Thein (Son of U Shwe Yone) Peasant
31. Ohn Shwe (Son of U Thu Taw) Peasant 3 years, 10 April 1991, section 17 (1) of the 1908 Unlawful Association Act for having contact with KNU insurgents. Maubin Prison 8 January 1994
32. Nant Sein Pwa (alias Phu Salu) Peasant
33. Tha Sein (Son of U Kyar Khin) Peasant (sentenced 9 April 1992)
34. Nant La Pan Peasant (sentenced 27 April 1992)
35. Nant Aye Aye (Daughter of U Man Lan) Peasant
36. Ma Melmon (Daughter of U Saw) Primary School Teacher (sentenced 31 January 1992)
37. Htu Htu Ee (Son of U Takhu Taw) Peasant 13 years, 28 November 1991, section 17 (1) of the 1908 Unlawful Association Act and 123 of the Penal Code for having contact with KNU insurgents. Insein Prison 26 April 1994
38. Saw Than Myaing (alias Po Dwe Hla) (Son of U Po Than) Peasant (sentenced 29 November 1991)
39. Saw Ye Lu Htu (alias Po Htu) (Son of U Tun Kyi) Peasant (sentenced 31 December 1991)
40. Saw Tin Tun (Son of U Aye Maung) Peasant (sentenced 30 October 1991)
41. Saw Kaw Htu (Son of U Aung Htay) Peasant 20 years, 30 October 1991, section 17 (1) and 19 (a) of the 1908 Unlawful Association Act and 122 of the Penal Code for having contact with KNU insurgents. Insein Prison 26 April 1994
42. U Thaug (Son of U Tin Pe) Peasant
43. U Thein Aung (Son of U Charlie) Peasant 20 years, 30 October 1991, section 17 (1), 19 (a) and 2 (1) (a) of the 1908 Unlawful Association Act for having contact with KNU insurgents. Insein Prison 26 April 1994
44. Po Htay (alias Htaw Htu Shar) (Son of U Po Pye) Peasant 5 years, 25 November 1991, section 17 (2) of the 1908 Unlawful Association Act for having contact with KNU insurgents. Insein Prison 26 April 1994
45. Saw Kale Htu (alias Aye Gyi) (Son of U Saw Htu) Peasant Myaungmya Prison 22 April 1994
46. Po Taw (alias El-Kaw Oo) (Son of U Wai Po) Peasant
47. Po Kya Phyu (Son of U Kyaukhe) Peasant
48. Chit Thein (alias Po Thein) (Son of U War Kle) Peasant
49. Shin Hmway Hla (alias Gadoe) (Son of U Yaw Han) Peasant
50. Myo Myint Lay (alias Thet Pyinn) (Son of U Aye Thein) Peasant 5 years, 25 November 1991, section 17 (2) of the 1908 Unlawful Association Act for having contact with KNU insurgents. Myaungmya Prison 22 April 1994
51. Myo Myint Htun (alias Chit Koko) (Son of U Aye Thein) Peasant
52. Waw Flee Thaw (alias Oak-Aul) (Son of U Saw Roh Tha) Peasant
53. Saw Kale Htu (Son of U San Shwe) Peasant
54. Gaung Pyar (alias Aung Win Shwe) (Son of U Po No No) Peasant
55. Po Kin (alias Hla Win) (Son of U Than Sein) Peasant
56. Ta Ma La Wah (Son of U La Pye) Peasant (sentenced 27 November 1991)
57. Saw Say He (Son of U Ei Faw) Peasant (sentenced 25 November 1991)
58. Mu Le (Son of U Klar Pu) Peasant (sentenced 3 June 1992)

59. Lwe Htu (Son of U Klar Pu) Peasant
60. Saw Ta Khu (Son of U Lu Lay) Peasant 5 years, 23 June 1992, section 17 (2) of the 1908 Unlawful Association Act for having contact with KNU insurgents. Myaungmya Prison 22 April 1994
61. Saw Hmway Tha (Son of U Lu Lay) Peasant 3 years, 23 June 1992, section 17 (2) of the 1908 Unlawful Association Act for having contact with KNU insurgents. Myaungmya Prison 22 April 1994
62. Saw Har Ray (Son of U Adu) Peasant 3 years, 5 October 1992, section 17 (1) of the 1908 Unlawful Association Act for having contact with KNU insurgents. Myaungmya Prison 22 April 1994
63. Saw Pe Khu (alias Pine Aye) (Son of U Tun Pe) Peasant (sentenced 21 June 1992)
64. Maung Gyo (alias Shwe Aye) (Son of U Lu Lay) Peasant (sentenced 23 June 1992)
65. Saw Shie Plaw (Son of Htu Saw) Peasant (sentenced 5 October 1992)
66. Saw Say Lay (Son of U Char Lay) Peasant
67. Saw Khay Let (Son of Saw Htu) Peasant
68. Saw El Mu Khu (Son of U Saw Roh) Peasant
69. Saw Htu Htu (Son of U Phre-Say) Peasant
70. Saw Phar Gay (Son of U Man Ko) Peasant
71. Saw Kar Yu (Son of U Ngwe Gaine) Peasant 3 years, 5 October 1992, section 17 (1) of the 1908 Unlawful Association Act for having contact with KNU insurgents. Myaungmya Prison 22 April 1994
72. Saw Lar Phaw (Son of U Kyee Phyu) Peasant
73. Saw Shie Tha (Son of U Seik Sin) Peasant
74. Set Htee Man (Son of U Pu Lay) Peasant (sentenced 11 November 1992)
75. Kyar Htun (Son of U Aung Tin) Peasant
76. Saw Yi Phine Se (alias Ba Lay) (Son of U Saw Nelson) Peasant 20 years, 12 November 1991, section 17 (1) and 19 (a) of the 1908 Unlawful Association Act and section 123 of the Penal Code. Myaungmya Prison 22 April 1994
77. Saw Phar Lar Kho (Son of U Saw Hla Kyaw) Peasant 10 years, 29 August 1994, section 17 (1) and 19 (a) of the 1908 Unlawful Association Act for having contact with KNU insurgents. Insein Prison 13 October 1994
78. U Shwe Boke (son of U Kar Lein) Peasant 3 years, 10 April 1992, section 17 (1) of the 1908 Unlawful Associations Act for having contact with KNU insurgents. Ma U Bin Prison 8 January 1994

Report to the Commission on Human Rights, March 1994

UNITED NATIONS

Economic and Social Council

Distr. GENERAL

E/CN.4/1994/57

16 February 1994

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Fiftieth session

Agenda item 12

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS
IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND
OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Myanmar, prepared by Mr. Yozo Yokota, Special
Rapporteur, in accordance with Commission resolution 1993/73

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I. INTRODUCTION

A. Mandate

1. The mandate of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar has been described in each of the Special Rapporteur's previous reports to the General Assembly (A/47/651, paras. 1-5 and A/48/578, paras. 1-6) and to the Commission on

Human Rights (E/CN.4/1993/37, paras. 1-6). It may be noted here that the mandate, as initially articulated in Commission resolution 1992/58 of 3 March 1992 (approved by Economic and Social Council decision 1992/235 of 20 July 1992) and subsequently extended by Commission resolution 1993/73 of 10 March 1993 (approved by Economic and Social Council decision 1993/278 of 28 July 1993), required the Special Rapporteur "to establish or to continue direct contacts with the Government and the people of Myanmar, including political leaders deprived of their liberty, their families and their lawyers" and "to report to the General Assembly at its forty-eighth session and to the Commission at its fiftieth session" (resolution 1993/73, para. 16). The object of the direct contacts and reporting by the Special Rapporteur is "with a view to examining the situation of human rights in Myanmar and following any progress made towards the transfer of power to a civilian government and the drafting of a new constitution, the lifting of restrictions on personal freedoms and the restoration of human rights in Myanmar" (Commission resolution 1992/58, para. 3). In order to facilitate the fulfilment of the mandate of the Special Rapporteur, the Government of Myanmar was urged to extend "its full and unreserved cooperation to the Commission and the Special Rapporteur and, to this end, to ensure that the Special Rapporteur has effectively free access to any person in Myanmar whom he deems appropriate in the performance of his mandate" (Commission resolution 1993/73, para. 17).

2. The substantive issues addressed by the Commission on Human Rights in resolution 1993/73 include the following concerns: that the electoral process initiated in Myanmar by the general elections of 27 May 1990 has yet to reach its conclusion and that, therefore, the will of the people is not the basis of the authority of government in Myanmar as required by the Universal Declaration of Human Rights; "that many political leaders, in particular elected representatives, remain deprived of their liberty and that Daw Aung San Suu Kyi, Nobel Peace Prize laureate, is still under house arrest"; that serious violations of a variety of fundamental civil rights continue; that refugee flows are creating problems in neighbouring countries; and that there is an "absence of guarantees for the physical integrity and well-being of returnees".

3. The preliminary report of the Special Rapporteur was submitted to the Secretary-General of the United Nations for dissemination to all States Members of the United Nations at the forty-eighth session of the General Assembly in November 1993 (A/48/578, annex). This comprehensive report is submitted to the Commission on Human Rights at its fiftieth session for consideration by the Commission.

B. Historical background

4. In 1948, the Union of Myanmar (then called Burma) gained independence from British colonial rule. From 1948 until 1962, the country was governed by a parliamentary democracy based on the Constitution of 2 September 1947. It provided for a federal system of government with separate executive, legislative and judicial branches. The States under the Union were considered autonomous. According to article 201 of the Constitution of 1947, ethnic minorities had, in theory, the right to secede from the Union, but, under article 202, this right was not to be exercised until 10 years from the date of entry into force of the Constitution. In March 1948, an armed insurgency against the then Government of Burma was begun by the Communist Party of Burma. From 1948 through 1961, various minority ethnic groups joined the armed insurgency.

5. In March 1962, General Ne Win took power in a coup d'état. He installed a one-party (Burma Socialist Programme Party) rule under military control. He embarked upon a programme known as the "Burmese Way to Socialism". In 1974, a new Constitution was drafted under which one-party rule continued.

6. Towards 1988, nationwide demonstrations began in reaction to the suppression of all civil and political rights since the overthrow of the constitutional government in 1962 and to the economic failure as a consequence of the policy of the Burmese Way to Socialism.

7. From March to June 1988, students, workers and monks demonstrated for more freedom and democracy, but the army used harsh measures to crush the demonstrations. Hundreds of civilians were arrested and many suffered severe injuries or died from ill-treatment in detention. Many persons were summarily or arbitrarily executed. On 21 June 1988, the Government imposed a ban on all public gatherings.

8. On 23 July 1988, General Ne Win resigned as party leader and promised economic reform and the holding of a referendum to end one-party rule and institute a multi-party system. However, demonstrations continued and the army and riot police attacked the demonstrators. It was reported that approximately 3,000 persons were killed in August 1988 alone. On 18 September 1988, the military took power and the State Law and Order Restoration Council (SLORC) was set up under the chairmanship of the Chief of Staff, Senior General Saw Maung. The National Assembly (Pyithu Hluttaw), the Council of State and other governmental bodies were dissolved. Free elections were promised by the SLORC but Daw Aung San Suu Kyi, daughter of General U Aung San (the national hero of independence who was assassinated in 1947) and General Secretary of the National League for Democracy (NLD), was banned from campaigning on the grounds that she kept unlawful association with insurgent organizations. On 20 July 1989, Daw Aung San Suu Kyi was detained by government forces. She has been under house arrest without trial since then and, in 1991, she was awarded the Nobel Prize for Peace. Many others, including most of the important opposition political leaders, were also detained.

9. On 27 May 1990, general elections were held in which the main opposition party (NLD) won 81 per cent of the seats (392 seats out of 485 in total) and 60 per cent of the votes. However, the official announcement of the results of the elections was postponed by the SLORC in order to allow the Election Commission set up by the SLORC to scrutinize the expense accounts of all elected representatives.

10. Beginning in early 1992, a mass exodus of Myanmar Muslims from Rakhine State into Bangladesh was reported. At least 250,000 such persons have sought refuge for fear of persecution. On 28 April 1992, the Governments of Myanmar and Bangladesh signed an agreement for the voluntary and safe return of the refugees. By October 1993, approximately 40,000 refugees had returned to Myanmar under this arrangement.

11. In April 1992, General Than Shwe became Chairman of the SLORC after General Saw Maung had resigned from the post for reasons of health. Since this change of leadership, a number of new policies have been announced and implemented including: the release of many political leaders in detention (including the Former Prime Minister U Nu, but not Daw Aung San Suu Kyi); the holding of a National Convention for drafting the principles and guidelines for a new constitution; the granting of permission to the family of Daw Aung San Suu Kyi to visit her; the opening of universities and other institutions of higher education; the lifting of the curfew order and martial law; and the cessation of military tribunals of civilian cases.

12. On 9 January 1993, the National Convention was convened. The participants were composed of 702 delegates from eight categories as follows: (a) representatives from political parties including NLD (49); (b) representatives elected in the 1990 elections (107); (c) representatives of national racial groups (215); (d) representatives of peasants (93); (e) representatives of workers (48); (f) representatives of intelligentsia and technocrats (41); (g) representatives of state service personnel (92); and (h) other invited persons (57). The meeting of the National Convention has been adjourned several times for reasons not quite clear to outside observers.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Introduction

13. In carrying out his mandate, the Special Rapporteur has continued to seek information from all relevant sources. During the past year, information in the form of letters and reports has been received on a regular basis from a wide variety of individuals and non-governmental organizations as well as from the Government of Myanmar. In November 1993, the Special Rapporteur visited Myanmar, conducted interviews with high-level government officials as well representatives of various United Nations specialized agencies and bodies including the office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Development Programme (UNDP), representatives of various non-governmental organizations, and the people of Myanmar both inside and outside of the country as he paid visits to places relevant to his mandate.

B. The visit to Myanmar

1. Introduction

14. In September 1993, the Special Rapporteur addressed a letter to the Government of Myanmar requesting a visit to the country from 9 to 16 November 1993. In the letter, the Special Rapporteur also requested the honour of audiences with high governmental officials, meetings in circumstances providing full confidentiality with leaders of political parties, including those in detention or under restriction, and in particular with Daw Aung San Suu Kyi. The Special Rapporteur further requested full and free access to all individuals, representatives of non-governmental and inter-governmental organizations, whom he may have deemed necessary to the carrying out of his mandate or who would have expressed the will to meet with him. Visits to prisons and other centres of detention, with confidential contact with those detained, were also requested. The Special Rapporteur also requested full access to other areas of the country, in particular Rakhine State, for the purpose of carrying out unrestricted and confidential visits with the recent repatriates and returnees. By letters dated 15 September and 8 October 1993, the Government replied that the Special Rapporteur would be welcome in Myanmar.

15. The Special Rapporteur undertook a visit to Myanmar from 9 to 16 November 1993. Prior to the visit, the Special Rapporteur had been in frequent contact with the Permanent Representative of Myanmar to the United Nations Office at Geneva and with the Minister for Foreign Affairs who cooperated fully and facilitated the visit. The Special Rapporteur wishes to report that during his visit to Myanmar all of the Special Rapporteur's specific requests for meetings with high government officials were met. Similarly, the visit to Rakhine State was facilitated with appropriate briefings, meetings and visits within the areas of concern. In general, the Special Rapporteur enjoyed relative freedom in his movements and freedom in his access to private persons and others of interest, with some notable exceptions which shall be addressed below. It is further noted that the Special Rapporteur was promptly furnished with all the documentary information he requested before, during and after his visit. Consequently, the Special Rapporteur would like to record his deep appreciation to the Government of Myanmar for its cooperation in facilitating his visit to the country and otherwise cooperating in responding to his requests for information and explanation.

16. With respect to his meetings with governmental representatives, the Special Rapporteur met in Yangon with the following persons: General Khin Nyunt, Secretary One of the State Law and Order Restoration Council (SLORC); U Ohn Gyaw, Minister for Foreign Affairs; Brigadier General Myo Thant, Minister of Information; U Tha Tun, the Attorney-General; and U Aung Toe, Chief Justice of the Supreme Court. The Special Rapporteur also met in Rakhine State the Commander of the Western Command of the Rakhine SLORC.

17. In the course of his visit to Myanmar, the Special Rapporteur paid visits to, in chronological order, the following governmental institutions and facilities: Dagon University in the Dagon New Township; Yangon General Hospital; First Military Hospital in Yangon; administrative offices of the Ministry of Home Affairs, Immigration and Manpower Department in Rakhine State and facilities of three reception camps along the Myanmar-Bangladesh frontier; Insein prison; and Yangon University campus. The Special Rapporteur also visited, in chronological order, and met with representatives of, the following non-governmental organizations: the Myanmar Red Cross Society; the Myanmar Maternal and Child Welfare Association; the Jivita Dana Sangha Hospital for Monks and Nuns; the Tiger Parahita School for the Development of National Races (i.e. orphaned boys from throughout the country); and the Myanmar Medical Association. On 14 November 1993, the Special Rapporteur also met with representatives of the following political parties which are participating in the National Convention drafting the new constitution of the Union of Myanmar: the National League for Democracy (NLD); the Union Kayah League; and the National Unity Party (NUP).

18. While the information and views obtained in the course of his visits and meetings will be reflected below under relevant subject headings, the Special Rapporteur draws attention here to the salient aspects of his meetings with the five governmental representatives mentioned above.

2. The meeting with Secretary One

19. On the morning of 10 November 1993, the Special Rapporteur enjoyed a frank, open and lengthy exchange of views with General Khin Nyunt which touched upon most issues of concern for respect of human rights in Myanmar. On the matter of the general political organization of the State, General Khin Nyunt denied that Myanmar is run simply by a "military government". He explained that the SLORC, which he characterized as "essentially a military government but not so rigid", is managing a process of national reconciliation where a variety of insurgent groups are now being brought back into the legal framework of discussions and during which a National Convention is engaged in the process that would lead to the drafting of a new, strong constitution for the country. To counter anarchy and maintain security for the people, General Khin Nyunt stated that some harsh acts had been necessary in the first year of the SLORC, but that such acts had been few since then. In managing the process of national reconciliation and restoring law and order, General Khin Nyunt described a variety of social and economic development initiatives which had been taken by the Government in order to improve the lives of the people and help "build nationalism", i.e. the general sentiment of loving the country and building and protecting the nation. In this process, General Khin Nyunt personally paid visits to hundreds of townships and thousands of village tracks in order to hear the voices of the grass-roots of the population. Once the new constitution has been drafted and adopted, General Khin Nyunt assured the Special Rapporteur that a civilian government shall take power. With regard to the time-frame for the transfer of power to a civilian government, General Khin Nyunt stated that it was not yet the time to specify when a new constitution would be drafted and a new civilian government would be formed under such a constitution. However, he strongly stressed that (a) there will be a strong Constitution and (b) there will be a civilian government. He explained that, before achieving those goals, two basic conditions will have to be met: (a) political and social stability must be maintained, and (b) the "Union" as a multi-ethnic State must be secured so as to avoid a disastrous dissolution of the State. Thus, General Khin Nyunt continued, all insurgent groups had to be brought back into "the legal fold" before the objectives could be achieved. Concerning the Special Rapporteur's specific request to visit Daw Aung San Suu Kyi, General Khin Nyunt stated that it was "still too early", but that it might be "perhaps possible in the future" as he suggested the possibility of inviting the Special Rapporteur back to Yangon for this purpose "on short notice". When asked if the Government intends to release her on 20 July 1994, General Khin Nyunt answered that it was still too early to say.

3. The meeting with the Minister for Foreign Affairs

20. On the afternoon of 10 November 1993, the Special Rapporteur met with U Ohn Gyaw, Minister for Foreign Affairs, whereby the Special Rapporteur sought clarification on the status of the process of repatriation of the persons who had fled from Rakhine State to Bangladesh a year before and also the national process of democratization relating to the 1990 elections and the ongoing National Convention. The Minister explained that an agreement had been reached with the United Nations High Commissioner for Refugees (UNHCR) in an effort to ensure the "voluntary and safe return" of the persons who had left; it was the responsibility of the country of refuge to assure the voluntary nature of repatriation, while it was the responsibility of Myanmar to assure the safety of the refugees upon return. Both Myanmar and Bangladesh were pleased with this accord and the participation of UNHCR, but there remains the question of reconciling a significant discrepancy in the numbers of affected persons: the Government of Myanmar had cleared some 95,000 persons for return (later clarified as 123,934 upon the Special Rapporteur's meeting with relevant authorities in Rakhine State), while the Government of Bangladesh claimed that there were still 230,000 residents of Myanmar to return from Bangladesh. On the matter of the process of democratization, Minister U Ohn Gyaw explained that the "winners" of the 27 May 1990 elections had been announced in the newspapers, but that, in the absence of a constitution, there were no positions for those elected persons to take up. Consequently, there had been no "final announcement" or formal election notice (in the sense of publication in the Official Gazette). The Minister stressed that the National Convention, composed of personalities representing eight strata of society including many "winners" of the 1990 elections, was preparing constitutional principles and guidelines which would eventually be placed before a constituent assembly composed of the elected persons from the 1990 elections.

4. The meetings with the Attorney-General and the Chief Justice

21. On the morning of 11 November 1993, the Special Rapporteur met with Attorney-General U Tha Tun after having earlier met with Chief Justice Aung Toe. His discussion with the Chief Justice had addressed the recent trials of political leaders, the National Convention (which the Chief Justice is chairing), and some issues of legislative reform (for which the Chief Justice is not responsible but of which he has some knowledge as a member of the Law Revision Commission formed by the Government). As such, the discussion with Attorney-General U Tha Tun revolved around new legislation, such as the Child Protection Law, which fully incorporates the United Nations Convention on the Rights of the Child, and reform of existing Myanmar legislation for which the Attorney-General has some responsibility both in his Governmental Office and as Chairman of the Law Revision Commission. It is to be noted here that, in response to the Special Rapporteur's inquiries and requests, the following complete lists were subsequently supplied to the Special Rapporteur: (a) the 99 Laws enacted by the SLORC between 18 August 1988 and 12 November 1993; (b) the 186 Laws repealed by the SLORC; and (c) the 93 Laws under review. It is also to be noted that the Law Revision Commission, over which the Attorney-General presides, is officially known in SLORC Notification No. 33/91 of 17 July 1991 as the "Laws Scrutiny Central Body".

5. The meeting with the Minister of Information

22. On the afternoon of 15 November 1993, the Special Rapporteur met with Brigadier General Myo Thant, Minister of Information, together with members of the Information Committee over which the Minister presides. The subject of discussion focused on the democratization process and, in particular, the National Convention. At the beginning, the Minister recounted the process from its very start, explaining how the Preparatory Committee for the National Convention was constituted, specifying the composition of delegations to the National Convention, and highlighting the achievements of each meeting of the National Convention since it began on 7 January 1993 through to its recent adjournment (the National Convention was to reconvene in plenary on 18 January 1994).

On the subject of legal processes against political leaders, the case of Dr. Aung Khin Sint was briefly discussed in so far as the offence involved related to circulation of a note in the context of the National Convention. On the subject of the Government of Myanmar's laws relating to the 135 national races of the country, the Minister of Information explained that this figure and the specific classifications arose simply from the results of the 1983 census where individuals had identified themselves as belonging to one of 135 different groups; 35 such groups were said to have less than 10,000 members, while only 5 groups had more than 1 million members. The Minister provided further basic information on the following subjects: (a) the nature of the newly constituted Union Solidarity and Development Association; (b) the present composition of the Government; (c) the present costs and availability of basic commodities; and (d) the remaining number of political prisoners. It should be noted that, in relation to the deliberations on a future constitution, the Minister accepted the Special Rapporteur's suggestion that a copy of the Universal Declaration of Human Rights, in the Burmese language, be provided to every National Convention Delegate. By letter dated 7 January 1994, the Special Rapporteur transmitted an authentic copy of the Universal Declaration of Human Rights in the English language, together with an unofficial translation in the Burmese language, to the Minister of Information in the hope that copies of the Declaration would be circulated to all National Convention Delegates upon the reconvening of the Convention on 18 January 1994.

23. In addition to meetings with high-level government officials, the Special Rapporteur visited a number of places relevant to his mandate. The impressions and views of the Special Rapporteur on those visits are briefly described below.

6. The visit to Insein prison

24. On the afternoon of 12 November 1993, the Special Rapporteur visited Insein prison. The prison warden informed the Special Rapporteur that there were 4,061 prison inmates of whom 942 were women (the prison had a capacity of 5,000). No prisoners were awaiting death because all death sentences had been commuted by an order of November 1992. The Special Rapporteur was first guided to a small building where four women inmates were kept in separate cells of approximately 100 square feet having one 4-square-foot window high on one side of a wall. In another building, about 150 women inmates were grouped together in a large hall dressed in white cotton and sat cross-legged in silent rows with their heads bowed. There were female guards, well trained and disciplined, watching the women's section of the prison. Later, the Special Rapporteur passed through another row of cells where male inmates were kept in separate rooms about the same size as the women's cells. The physical health conditions of the inmates appeared to be normal. The Special Rapporteur also viewed the hospital building which could accommodate up to 50 patients. The doctor serving there informed the Special Rapporteur that, while less serious illnesses could be treated there, the most serious cases would be sent to Yangon Hospital; such cases would number about 50 to 100 a year.

25. Towards the end of his visit to Insein prison, the Special Rapporteur was allowed to meet with two political leaders detained there: U Tin U, who had a distinguished military career and had been in command of the military and was subsequently Minister of Defence; and Dr. Aung Khin Sint, an NLD member elected in the 1990 elections and a delegate to the National Convention. The meetings took place in front of the prison warden and other staff of the prison accompanied by a group of photographers.

26. U Tin U greeted the Special Rapporteur in front of a small building where he was being kept. The building was a separate one-storey house with an entrance, sleeping section and a toilet and kitchen facilities behind. At the outset of the meeting, U Tin U proclaimed that he was a "political prisoner" despite the claim of the authorities that he was an "ordinary criminal". He stated that he had suffered five months of effective house arrest before being brought before a military court on

numerous charges. He said that he had been charged, in particular, with: (a) inciting the entire population for democracy and human rights; (b) corresponding with parliamentarians of the European Communities, Japan and the United States of America; and (c) meeting with military personnel and others in groups. Government witnesses presented testimony at his trial, but he was denied the right to cross-examine them. After hearing the witnesses, the Court proceeded to sentence him to three years' imprisonment; he assumes that it was preconceived. He had already served three years in prison and had, in fact, already served another year. Instead of being released, he is now serving an additional seven years to which he was sentenced by a second military court for the exact same charges. He pleaded *res judicata*, but the judge did not seem to understand what he was saying, and found him guilty again and sentenced him to a second (more severe) term of imprisonment to be served consecutively to the first. U Tin U declared; "I love the army, but I love the people more than the army". He stated that, after the 1990 elections, many people had been detained for a long time without trials as "ordinary criminals". He sought their release and remedies. So, he came to this fate. U Tin U indicated that his treatment was good (he appeared to be physically and mentally healthy). The doctor takes good care of him although a shortage of medicines is a problem. His wife comes to see him every two weeks. He has access to all the religious books and the New Light of Myanmar, but he receives no other information and no other entertainment.

27. Following the meeting with U Tin U, the Special Rapporteur was taken to another building, adjacent to the house where U Tin U was kept, with a few cells, one of which held Dr. Aung Khin Sint. When the Special Rapporteur walked into the cell, together with the prison warden and his staff and accompanying photographers, Dr. Aung Khin Sint stood in the centre of the room which was approximately 16 square metres with a small window on the opposite side of the entrance. Dr. Aung Khin Sint addressed the Special Rapporteur in the Burmese language, as he clearly indicated he had been advised to do. He said that he had done his medical training in England and obviously spoke English well. At the outset, he paraphrased what he called an English proverb: "When one flies over a cuckoo's nest, one meets with problems and difficulties". Dr. Aung Khin Sint stated that the Special Rapporteur should know that those he meets would face problems and would be likely to be sentenced to 10 years' imprisonment. He said that he had once flown over a cuckoo's nest and he did not want to do the same thing again. Therefore, he must be careful how to answer the questions raised by the Special Rapporteur. If he answered "wrong", his 20-year prison sentence would become 40 years. He further stated that, as for the reasons of his imprisonment, they were clearly stated as according to existing laws: such information could be obtained from the Government. He said he had been tried in a special court, i.e. not an ordinary court. It was his own choice that he did not hire a lawyer because he wanted to defend himself. He had received his sentence recently and was intending to appeal through the proper channels. Dr. Aung Khin Sint informed the Special Rapporteur that he was treated well in the prison and had even received a new tooth in his first week there. In concluding, he repeated that he did not want to be in prison for 40 years, and so he preferred to say no more.

28. Following the meetings with the political leaders in prison, the Special Rapporteur returned to the reception room where he requested and was shown the prison records. Specifically, three registry books were brought: one, as a general example, from several years back, and then the two books wherein U Tin U and Dr. Aung Khin Sint were registered. The books were found and brought with relative ease, and all were in order, i.e. all necessary entries had been made including bases of imprisonment, dates, etc. The entry of U Tin U stated, *inter alia*, that he had been admitted on 22 December 1989 at 16.20 p.m. and that he had been sentenced for breaching the 1950 Emergency Law, sections 5 (a), (b), (c) and (g), and also Law 114. It was also recorded that he had been sentenced to three years plus seven years' imprisonment and that he had appealed. Dr. Aung Khin Sint's entry stated, *inter alia*, that he entered the prison on 27 October 1993 and had been sentenced on 15 October 1993 to a total of 20 years as follows: (a) 7 years for violation of section 5 (j) of the

1950 Emergency Law; (b) 11 years (7 years plus 4 years) for 2 offences of sections 6/17 and 20 of the Publications and Printing Law; and (c) 2 years for violation of section 5 (1) (4) of the Official Secrets Act.

7. Visits to hospitals

29. On the morning of 12 November 1993, the Special Rapporteur visited the First Hospital in the Hlaing Thaya New Township and the Yangon General Hospital in Yangon. On the afternoon of the same day, he visited the First Military Hospital in Yangon. On the morning of 15 November 1993, the Special Rapporteur visited the Jivita Dana Sangha Hospital for Monks and Nuns in Yangon. The buildings and facilities of the hospitals looked clean and adequate. The doctors and nurses were competent, well trained, courteous and dedicated to their work. The Special Rapporteur was told at Yangon General Hospital, the largest and most sophisticated of the four, that they needed more advanced equipment for diagnosis and surgery. The Special Rapporteur requested to see the storerooms of medical supplies at each hospital. They all seemed to have a full complement of medical supplies which were said to be replenished regularly. The Special Rapporteur observed, however, that some medical supplies at the First Hospital in Hlaing Thaya New Township, the smallest and least sophisticated of the four, had just been freshly delivered in boxes. While the Special Rapporteur was not able to find any concrete evidence to prove the allegation that people suffer from a shortage of medicine because medical supplies were given to the military first and some were sold on the black market at high prices not easily affordable to ordinary citizens, he learned from interviews with ordinary people on the street that they cannot get enough medicine even at a large hospital.

30. At the First Military Hospital, which mainly serves the military personnel and their families (although it was explained that about 20 per cent of the patients were non-military people), the Special Rapporteur was told that it was just about to start a training programme with the help of the International Committee of the Red Cross (ICRC) on the subject of war medicine and treatment. They use the "Rules for Behaviour in Combat" booklet in their education. Through this training, doctors will pay more attention to cases of untoward injuries, such as injuries suffered in fighting and possibly alleged injuries suffered from torture and the like. The military doctors do visit in the prisons, too. There were said to be occasional fights between prisoners and sometimes with guards, and the doctors try to note the cases. But the Special Rapporteur was told that it was not easy to discern how injuries were actually sustained. Aside from the ICRC training programme conducted in Myanmar, the Government has sent the military's Chief Instructor and the head of its Judge-Advocate-General's office to the courses given by the International Institute of Humanitarian Law at San Remo, Italy, on humanitarian law to be followed by two more weeks of training at the ICRC headquarters in Geneva. In terms of their own training programmes, it was explained that humanitarian law was taught in the Defence Services Academy and two other military colleges.

8. Visits to the Myanmar Red Cross Society and the Myanmar Medical Association

31. On the afternoon of 11 November 1993, the Special Rapporteur visited the Myanmar Red Cross Society at their offices and met with its representatives led by Dr. Tin U. The subject of discussion went directly to the problem of AIDS. In response to the inquiry of the Special Rapporteur, it was explained that there are fewer than 1,000 cases of AIDS in Myanmar and between 4,000 and 5,000 cases of HIV+. However, the numbers are on the increase and the Society is responding to the problem through a large programme of public health education. With respect to the specific problem of the Myanmarese girls who had returned from Thailand diagnosed HIV+, Dr. Tin U himself had gone to the Thai border to inspect the situation. He said that the girls who had returned from Thailand were living together and were being "rehabilitated" through learning cooking and sewing and other skills in the facility operated under the Department of Social Welfare. Of the

total of 139 such girls, 43 had tested HIV+. The reason for the high ratio of HIV+ among the returnees was explained that they were sent back to Myanmar because they were suspected of having been infected. On the subject of the Geneva Conventions, the Myanmar Red Cross Society was cooperating with the ICRC in a dissemination project. Such cooperation was expected to continue. In the next days, the ICRC Military Coordinator was to be lecturing to officers of the army.

32. On the morning of 16 November 1993, the Special Rapporteur met with the representatives of the Myanmar Medical Association. The Special Rapporteur was informed that a Food and Drugs Control Act had recently been passed and under this law several projects were under way to address the problem of shortage of medical supplies. Consequently, there was said to be "no shortage of essential drugs".

9. Visits to university campuses

33. On the morning of 10 November 1993, the Special Rapporteur visited Dagon University which had been recently opened in the Dagon New Township. There were a few newly constructed buildings for offices, classrooms, auditoria and general stores. There were evident plans to construct more buildings with the intention of making a large university accommodating more than 10,000 students in the future. The day of the Special Rapporteur's visit coincided with registration day at the university and there was a crowd of young students in the registration office waiting for the admission registration process to be completed. The Special Rapporteur asked about 10 young men and women to gather with him in an empty room to have a private conversation. All of them, looking bright and honest, said that they were interested in mathematics or natural sciences and were disinterested in politics. In his discussions with the Rector and other staff of the university, the Special Rapporteur learned that the content and textbooks of the lectures in all subjects taught at universities in Myanmar are centrally controlled and that it was not possible for individual professors or instructors to develop their own courses using materials or textbooks of their own choice. The Special Rapporteur stated that such practices were contrary to what he knew of "academic freedom" and would severely handicap the university's capacity to encourage learning and research through free thinking, free discussion and free expression of ideas.

34. On the afternoon of 15 November 1993, the Special Rapporteur briefly visited the campus of Yangon University. The university gates were officially closed because the university was in recess, so the Special Rapporteur was told, and there were practically no students or staff visible on the large campus composed of many mostly very old buildings for classrooms, offices, faculty residences and student dormitories surrounded by green trees. Some pedestrians were visible casually walking through the campus. Apart from the lack of visible student life, the campus appeared normal.

10. Visit to Rakhine State

35. On 13 and 14 November 1993, the Special Rapporteur visited Rakhine State under the kind and efficient arrangements of the Government of Myanmar and the military. He observed the operations at two reception camps near the border with Bangladesh. His visit coincided with the return of some 500 persons who had fled to Bangladesh. There were three Bangladesh officials who accompanied the returnees and assisted in the identification processes conducted by the Myanmar officials. Officials from both countries were seen to be handling the matter quite professionally and efficiently. However, the returned refugees waiting for identification or for provision of food or other daily necessities appeared uncertain of their fate. The Special Rapporteur interviewed three male returnees privately, but through interpreters provided by the local authorities which was found necessary because the witnesses did not understand the Burmese language. They were chosen by the Special Rapporteur randomly from among 10 or so returnees preselected by the local authorities. They all said that the reason they had gone to Bangladesh was because of a shortage of food and an unavailability of employment. They stated that they had decided to come back because they had been

told that the Myanmar and Bangladesh Governments had signed an agreement and that they had to come back. Two of the three returnees interviewed reported that they had returned to their former houses which required some repair; the third said that he had had to go to his father's house because his own house had been destroyed by a rain storm.

36. On the morning of 14 November 1993, the Special Rapporteur met with Major-General Win Myint, Commander of the Western Command of Rakhine SLORC. He told the Special Rapporteur that the problem of the Muslim population in Rakhine State was complex and that its history dated back to the British colonial era when the British had brought labourers from Bengal, which was then also under British rule, to the more fertile land of what is now known as Rakhine State. Many of these labourers stayed even after the area became part of what is today Myanmar. There are now approximately 600,000 Muslim residents in Rakhine State the total population of which is approximately 2,300,000. Myanmar people were said to have treated the Muslim population kindly and today the Government is trying to assist the development of the area by constructing schools, hospitals, roads and bridges. However, many of the Muslims were said not to love the country or to want to work. The difficulty of economic life was said to be the main reason for their move to Bangladesh. It was said that they had thought that they would get enough food, clothing and shelter in the UNHCR camps in Bangladesh without hard work. There was also said to be the problem of insurgent Muslim groups in Bangladesh who obstruct the process of repatriation.

11. The meetings with leaders of political parties

37. On the afternoon of 14 November 1993, the Special Rapporteur met with representatives of three political parties participating in the National Convention, i.e. the Union Kayene League, the National League for Democracy (NLD) and the National Unity Party (NUP). In spite of the strong request by the Special Rapporteur to meet with them in private at his office in the United Nations compound in Yangon, the meetings were arranged to take place at a Government Guest House (36 Inya Road). The location and atmosphere were evidently not conducive to a free and unencumbered exchange of views.

38. The Special Rapporteur first met with the two representatives from the Union Kayene League: Chairman U Mahn Tay Aung Than and Vice-Chairman U Saw Than Aung. The representatives stated that the group had been formed in 1948 (reorganized in 1988) and that five delegates from the Union Kayene League freely attended the meetings held in the context of the National Convention. The League's membership was said to be approximately 5,000. The 27 Central Committee members all stood for election in the 1990 elections, but all failed to be elected. They stressed that they were natives and citizens of Myanmar, which they referred to as their "motherland". They stated: "We must do our best for our motherland". The motto of the Union Kayene League was said to be "Peace and Prosperity". They claimed to seek love and peace between all national races without hatred. In this vein, the representatives insisted that the country needs reconciliation "because some in the past have said unscrupulous things: we need law and order to make national solidarity". They said that they preferred the 1947 Constitution because it provided for more democracy. The representatives said that, when the National Convention is meeting, they could get together in groups and circulate their materials to their people. However, they added that "the world is not as wide as before; whatever we do, they know".

39. Then, the Special Rapporteur met with the two representatives of the NLD: Chairman U Aung Shwe and Vice-Chairman U Lwin. They explained that there were 92 delegates from the NLD participating in the National Convention. In the Convention, 15 points which would eventually form 15 chapters in the new constitution had been agreed upon by May 1993. On 6 May 1993, the Work Committee for the National Convention told the delegates that they would next discuss the draft chapter by chapter, beginning with the first chapter. However, on 6 June 1993, the delegates were told to state their views on all the chapters. The NLD was not prepared to do so; they were only

prepared to make a detailed statement on the first chapter (entitled "Basic Principles"). Most other parties were prepared to make comments on all the chapters. The Shan NLD representatives spoke in detail on the first chapter, but said very little on the other chapters. On 16 November 1993, the Work Committee announced that the National Convention had concluded all the discussions on all the chapters and that the Convention would go into recess until 18 January 1994. This was contrary to what was understood by the NLD. The NLD considers that the Convention completed deliberation only on the first chapter and, therefore, they were not certain what would happen when the Convention was to reconvene in January 1994. The representatives informed the Special Rapporteur that the delegates to the National Convention could discuss matters in relative freedom in the Kyaikkasan Grounds (the camp where all the delegates stay during the meetings of the Convention), but, of course, there is always someone around when they meet and discuss matters. When the NLD delegates wish to meet and discuss matters at their office, they have to seek permission from the Government which is not easy to obtain in the case of the NLD (other parties seem to get such permission more easily). Also, the NLD was not permitted to publish any documents while other political parties seem to manage to publish their documents and newsletters.

40. The Special Rapporteur met with two representatives of the National Unity Party (NUP), which was formed out of the former Burma Socialist Programme Party (BSBP), and claimed a membership of about 1 million: U Khin Maung Cyi, an Executive Committee member, and U Han Shwe, the Secretary of the Political Department. They said that the party had eight delegates in the National Convention (five for the party and three from the elected representatives). The Special Rapporteur was informed that the NUP knew that they were expected to make statements on all 15 chapters of the new constitution and they did so in June 1993. The Special Rapporteur was further informed that the NUP was permitted to produce booklets and to distribute to its members.

C. The visit to camps in Thailand

41. Following his visit to Myanmar, the Special Rapporteur travelled to the frontier of Myanmar on the Thai side in order to meet with persons from Myanmar living in camps which skirt the Myanmar-Thai border. The visit to Thailand was conducted between 16 and 20 November 1993. The two camps visited were driving distance from the Thai city of Mae Sot. It is believed that there are approximately 60,000 persons who have fled Myanmar and are living in similar camps in the border area.

III. ALLEGATIONS

A. Arbitrary arrest and detention

42. The Special Rapporteur welcomes the fact that more than 2,000 persons detained under the emergency regulations have been released since April 1992. Allegations have nevertheless been received that under the prevailing SLORC orders and other emergency decrees many persons have been arrested for criticizing the SLORC and the army (Tatmadaw) or for openly criticizing the process of the National Convention. Reports indicate that up to 60 persons may have been detained since July 1993 for engaging in political activity although many of them have now been released.

43. By a letter dated 30 September 1993, the Special Rapporteur requested the Government of Myanmar to provide information regarding the following persons allegedly arrested: (a) U Aung Myint, Daw Khin Mar Aye and Htay Myint (alias Khin Soe) who were allegedly arrested in December 1992 for printing and distributing leaflets criticizing the National Convention; (b) Dr. Aung Khin Sint and U Than Min who were allegedly arrested in August 1993 for being "engaged in unscrupulous activities with intent to undermine the National Convention"; (c) Ma Thi Da, Nay Thin Myint, Bo Lay, Thet Oo, Tin Htune, Khin Maung, Kyaw Than, Kyi Myint and Than Min who were allegedly arrested in August 1993 in connection with the National Convention.

44. By a joint letter of 12 October 1993, the Special Rapporteur and the Chairman of the Working Group on Arbitrary Detention requested the Government of Myanmar to provide information concerning the legal situation of the following persons who were allegedly arrested on or about 3 September 1993 and detained at Insein prison on charges, in particular, of printing material without a permit, distributing illegally printed matter and committing acts against State security: Ma Thi Da, U Khin Maung, U Kyi Myint, U Kyaw Than, U Lwin Oo, U Win Kyi, Ne Thin Myint, Bo Lay, Thet Oo, Ne Win, U Thin Thun, U Han Sien, Myu Win and Than Myin (some names overlapping with those listed in the foregoing paragraph).

45. In a note verbale dated 17 October 1993, the Government of Myanmar provided the Special Rapporteur with the following response to the above inquiries:

"1. Legal Action was taken against U Aung Myint, aged 57, Daw Khin Mar Aye, aged 53, and Htay Myint (alias) Khin Soe, aged 37, for distribution of seditious leaflets which could be detrimental to the security of the Union and maintenance of public law and order in accordance with section 5 (i) of the 1950 Emergency Provisions Act.

"2. Legal Action was taken against the following persons:

- (a) Dr. Aung Khin Sint
- (b) U Than Min
- (c) Ma Thi Da
- (d) Nay Tin Myint
- (e) Bo Lay
- (f) Thet Oo
- (g) Tin Htun
- (h) Khin Maung
- (i) Kyaw Than
- (j) Kyi Myint
- (k) Than Myint

for infringing the existing laws. Each person has been charged and is being prosecuted in the Yangon Division Law Court presided over by two Divisional Judges.

"3. In the Union of Myanmar, arrest or detention of a person is made in accordance with the provisions contained in the Criminal Procedure Code enacted in 1898. The person concerned is formally charged and defended by a Legal Counsel, and a fair trial is conducted by a competent court. He has the right to appeal. The details concerning arrest or detention and trial of cases are appended herewith.

"4. The following are the detailed charges against the persons mentioned in the summary of allegations received:

Name of defendant Charges

(Charges against 11 persons - (a) to (k) - are:

Unlawful Association Act 17 (1) - distribution and dissemination during 1993 in Yangon Division of literature and leaflets issued by terrorist groups.

1950 Emergency Provisions Act 5 (j) Action which could be detrimental to the security of the Union and order: distribution and dissemination of literature and leaflets.

Section 17/20 of Registration of Printers and Publishers Law Infringement of this law for illegal action mentioned above.

- (a) Khin Maung (alias) Nyi Nyi Unlawful Association Act 17 (1)
- (b) Than Min (alias) Tin Tun Aung
- (c) Thet Oo
- (d) Ko Lay (alias) Aung Naing Oo
- (f) Lwin Oo
- (g) Kyaw Than

- (h) Ma Thida
 - (i) Han Sein
 - (j) Kyi Myint
 - (k) Tin Tun (alias) Rashid
-

- (a) Dr. Aung Khin Sint
 - (b) U Than Min (alias) Tin Tun Aung
- 1950 Emergency Provisions Act 5 (j)

Both were found to have instigated the delegates attending the National Convention by surreptitious means to cause disruption and disorder among the delegates. Both of them distributed leaflets in May 1993 fraudulently under the name of 'monks and laity'.

Section 17/20 of Registration of Printers and Publishers Law

The infringement of this Law for illegal action mentioned above, including letters of threat to the delegates.

- (a) Dr. Aung Khin Sint

The Burma Official Secrets Act, section 5 (1) (4)

He infringed the above Law by making use of an official document in committing the abovementioned illegal acts."

46. With respect to Criminal Procedure Code of 1898 referred to by the Government of Myanmar in paragraph 3 of its letter quoted above, it has recently been brought to the attention of the Special Rapporteur that the licences of 10 lawyers were revoked by order of the High Court on 30 July 1993 as a consequence of convictions by military tribunals for various offences including offences of the 1950 State Protection Act, section 5 (j). The background of this order and its implications for the administration of justice in Myanmar are not yet clear to the Special Rapporteur.

47. With respect to the charges and judicial procedures in the case of Dr. Aung Khin Sint, the Special Rapporteur has been provided with copies of the judgements delivered by the North Kayain District, Yangon Division, Court on 15 October 1993. The judgements were separately given for charges under: (a) the 1950 Emergency Provisions Act, 5 (j); (b) Section 17/20 of the Registration of Printers and Publishers Law; and (c) The Burma Official Secrets Act, section 5 (j) (4). However, each judgement refers to both Dr. Aung Khin Sint and U Than Min. Moreover, and as concerns the factual basis of the accusations leading to the judgements, the content of an allegedly threatening letter distributed by Dr. Aung Khin Sint was not provided in the judgement.

B. Torture and other cruel, inhuman or degrading treatment

48. Extensive allegations have been received that torture and other cruel, inhuman or degrading treatment have continued to be used by the Myanmar Army, police and intelligence services personnel. Such practices are said to have been used routinely in the interrogation of persons and in the treatment of porters, forced labourers and members of ethnic minorities.

49. The serious cases of torture and other cruel, inhuman or degrading treatment continue to occur in the context of military operations, forced portering and labour and forced relocation. They typically take the following forms: (a) forcing persons to carry heavy loads (in most cases, about 50 kg) of weapons, ammunition, food and other supplies for the army in mountainous areas and in harsh weather conditions; (b) beating, drowning and stabbing in cases of disobedience or attempts to escape; and (c) raping and other sexual assaults. The Special Rapporteur is particularly concerned about some recent reports alleging the taking of women and children for purposes of portering, where men are not available, and of subjecting them to the kinds of treatment described above.

50. In addition to the extensive reports received by the Special Rapporteur alleging widespread torture and other cruel, inhuman and degrading treatment in Myanmar, he has also interviewed

persons claiming to be victims of such human rights violations. On some specific cases, the Special Rapporteur draws attention to the report of the Special Rapporteur on torture (E/CN.4/1994/31, paras. 399-403); in this connection, the Special Rapporteur is also aware that the Government of Myanmar has recently responded in detail to the allegations transmitted by the Special Rapporteur on torture.

C. Disappearances

51. The Special Rapporteur has received allegations stating that during the mass demonstrations of 1988 and December 1991, hundreds of persons, including students, monks, workers, writers, professors and others, were arrested or shot to death and that the whereabouts of many of these persons have never been established. It is believed that many remain in unacknowledged detention and that others have been buried in mass graves reported to be located in an army base near the airport and in the Hlaing Thaya New Township. It has also been reported that many of the persons detained recently for their activities in connection with the National Convention have been held incommunicado for at least a period of time after the detention. Many cases of disappearance have been reported in the context of military operations and forced portering, labouring or relocation. One report received by the Special Rapporteur stated that "the victims were simply taken away by SLORC troops and 'disappeared'".

52. A specific response of the Government of Myanmar to the allegation of disappearances is found in the note verbale dated 17 October 1993 sent by the Government to the Special Rapporteur. As reproduced by the Special Rapporteur in his interim report to the General Assembly (A/48/578, para. 12), the Government stated, in particular, the following in paragraphs 5 to 7 of its reply:

"5. Allegations stating that during the mass demonstrations of 1988 and December 1991, hundreds of persons including students, monks, workers, writers, professors and others were arrested or shot to death and that the whereabouts of many of these have never been established; that many remain in unacknowledged detention and that others have been buried in mass graves reported to be located in an army base near the airport and in the new Hlaingthaya Township are totally false and unfounded.

"6. Under the existing laws, organizations empowered to arrest any person who has committed an offence maintain a register of persons arrested by them in accordance with the law, and reports have to be submitted to the relevant authorities concerning such arrests.

"7. Under the existing laws of Myanmar, no one can be arrested and detained if it is not in accordance with the law. It is provided in section 61 of the Code of Criminal Procedure and no police officer shall detain in custody a person arrested, for a period exceeding 24 hours. Where it is necessary to detain such an accused for more than 24 hours, a special order of a Magistrate has to be obtained under section 167 of the Code of Criminal Procedure. If an arrest which is not in accordance with the law is made, the person making the arrest is liable to be punished under sections 341 to 348 of the Penal Code."

D. Extrajudicial, summary or arbitrary executions

53. The Special Rapporteur welcomes the decision of the Government of Myanmar, according to SLORC Order No. 12/92, to commute all death sentences passed by civil or military courts or tribunals between 18 September 1988 and 31 December 1992 to transportation for life (life imprisonment). However, the Special Rapporteur is particularly concerned about the reports from various reliable sources that there are still many cases of arbitrary killings of civilians by soldiers. For instance, the Special Rapporteur was informed that, as recently as September and October 1993, 18 villagers were murdered in Kyauk Kyi Township, Pegu Division, by members of Infantry Regiment Nos. 73 and 351. The victims were generally charged as "KNU (Karen National Union) sympathizers", but none of them were in fact involved in anti-government activity. According to this

report, those 18 victims were known cases and it is believed that many other villagers, who had been taken by the army and whose whereabouts remain unknown, were also murdered.

54. Other cases of reported extrajudicial, summary or arbitrary executions were described in paragraphs 20 to 23 of the interim report of the Special Rapporteur to the forty-eighth session of the General Assembly (A/48/578) of 16 November 1993. In response to the request of the Special Rapporteur to receive information describing any investigations into these allegations undertaken by the Government, the Government of Myanmar replied, by a note verbale dated 17 October 1993, as follows (and as previously reported by the Special Rapporteur in paragraph 12 of his interim report referred to above):

"All allegations stated under this heading are totally false and unfounded. While undertaking our three main causes, which are non-disintegration of the union, unity and solidarity of the national races and perpetuity of sovereignty, the Tatmadaw has never, at any time committed such atrocities nor will it ever do so in future. There have been numerous cases running into thousands where the Tatmadaw, even in skirmishes with the insurgents, have treated captured persons very well and then handed them over to the police for prosecution for the offences committed. Atrocities such as demanding rice, livestock or money from villagers, rape of rural women, forced conscription and mass execution of villagers are being committed only by the insurgents time and again. It is believed that these allegations are based upon false information given by the insurgents, persons communicating with insurgents and persons who are endeavouring to bring down the government of the State Law and Order Restoration Council."

55. Although the Special Rapporteur is aware that sometimes reports of arbitrary killings tend to be exaggerated or distorted, that there are cases of good treatment of villagers and captured insurgents by the Tatmadaw soldiers and that the insurgents also commit serious violations of human rights now and then, the Special Rapporteur cannot deny, in view of so many reports confirmed by him as reliable, the fact that atrocities are being committed consistently and on a wide scale by the soldiers of the Myanmar Army against innocent villagers (particularly those belonging to ethnic minorities) in the form of extrajudicial execution, forced labour, rape, forced relocation and confiscation of property. In private conversations held with the Special Rapporteur, some high ranking officers of the army acknowledged the existence of such atrocities, but added that these were committed only rarely by some bad soldiers.

E. Treatment of the Muslim population in Rakhine State

56. In accordance with the agreement reached between Myanmar and Bangladesh on 28 April 1992, repatriation of the Myanmar residents having fled to Bangladesh began on 22 September 1992. In order to facilitate a systematic and orderly repatriation, five reception camps were established on the Myanmar side of the border on 15 May 1992. Of the five camps, only three are in fact being used. The Special Rapporteur visited two such camps in the course of his visit to Rakhine State on 13 and 14 November 1993. According to the figures supplied by the Government, a total of 9,209 households and 41,098 persons (20,103 males and 20,995 females) have been repatriated since 22 September 1992 and 12 October 1993. However, a substantial number of Muslim population from Rakhine State still remain in the camps on the Bangladesh side of the border. Many of them are said to be fearful of possible ill-treatment by the Myanmar authorities upon return and, therefore, do not wish to come back without some kind of international monitoring.

57. In this connection, the Special Rapporteur welcomes the willingness of the Government of Myanmar to cooperate with UNHCR, through elaboration of a Memorandum of Understanding with UNHCR signed on 5 November 1993, in order to ensure the voluntary and safe return of the Muslim population who had fled to Bangladesh from Rakhine State. The Special Rapporteur was informed that preparations for UNHCR involvement in the repatriation process is making steady progress and

some UNHCR staff would soon be sent to Myanmar. A fund-raising operation for this purpose is under way and there have already been several positive responses from potential donors.

F. Labour rights

58. The Special Rapporteur has been informed that workers in Myanmar do not enjoy basic labour rights including, in particular, freedom of association and the right to organize. There is hardly any trade union movement, and workers and trade unionists who criticize the Government would risk interrogation and arrest. The Special Rapporteur takes note of the fact that the matter has been raised before appropriate bodies of the International Labour Organisation (ILO). It is hoped that the work of the ILO would result in progress in the area of labour rights in Myanmar. It should also be pointed out that the new constitution to be drafted would have clear provisions for basic labour rights in accordance with international standards.

G. Rights of the child

59. The Special Rapporteur is pleased to note that, by a letter dated 15 October 1993 from U Ohn Gyaw, Minister for Foreign Affairs of Myanmar, to Dr. Boutros Boutros-Ghali, Secretary-General of the United Nations, the Government formally withdrew the reservations made by Myanmar upon accession to the Convention on the Rights of the Child in July 1991 with respect to article 15 (regarding freedom of association) and article 37 (regarding the prohibition of torture, cruel, inhuman or degrading treatment in regard, inter alia, to the treatment of children during interrogation). However, the Special Rapporteur is disturbed to learn from the testimony of witnesses that there exist many cases of children being forced to serve the army as porters. This practice, which is reported to remain widespread, would involve a variety of human rights violations, including forced labour, cruel and degrading treatment (if not also torture), and threats to life.

H. The National Convention

60. On 9 January 1993, the Government convened a National Convention to lay down the basic principles for the elaboration of a new and enduring constitution. Of the 702 delegates from 8 categories of people, 49 are selected by the 10 political parties remaining after the 1990 elections, 106 are elected representatives and the remainder of the delegates from the other six categories were chosen by the SLORC. Before any real discussion could take place at the National Convention, a broad framework of basic objectives was given by the Government as follows: (a) non-disintegration of the Union; (b) non-disintegration of national solidarity; (c) consolidation and perpetuity of sovereignty; (d) emergence of a genuine multi-party democratic system; (e) development of eternal principles of justice, liberty and equality in the State; and (f) participation of Tatmadaw in a leadership role in the national politics of the future.

61. The Special Rapporteur has been informed that each of the eight groups represented were to have a panel of five chairmen who would lead the discussions and that, in the political parties group, only one chairman was from the NLD - the party that won a majority in the 1990 elections. In the elected representatives group, where 89 of the remaining 106 delegates were from the NLD, no NLD representatives were selected as chairmen.

62. In response to the query by the Special Rapporteur with regard to the allegation that, since the beginning of the National Convention, numerous participants have been disqualified or arrested for allegedly contravening the guidelines and, in particular, for having questioned the leadership role foreseen for the Tatmadaw, the Government replied, in paragraph 34 of its note verbale of 17 October 1993, and as reproduced by the Special Rapporteur in his interim report to the General Assembly (A/48/578, para. 12), as follows:

"The sweeping allegations that numerous participants were disqualified or arrested for various reasons are totally false. Out of all the delegates attending the National Convention, action was taken against the following five delegates:

"(a) The names of U Aung Htoo and Dr. Aung Khin Sint of the National League for Democracy were struck from the list of delegates representing the National League for Democracy. This action was carried out at the request of the National League for Democracy itself;

"(b) Legal action was taken against U Maung, who represented one of the national racial groups, for infringement of existing laws;

"(c) A representative from Pekhon constituency was disqualified as he became involved in and joined a terrorist group;

"(d) The name of U Maung Ngwe of the Union Paoh National Organization was struck from the list of delegates as he passed away on 25 April 1993."

I. The movement toward reconciliation with insurgents

63. The Special Rapporteur has been informed that Secretary One, General Khin Nyunt, during his visit to Kayah State on 17 and 18 November 1993, spoke on the Government's efforts to restore peace and tranquillity and to promote social and economic development in the country. In doing so he extended an official invitation to the armed groups to return to the legal fold, to hold talks with the Government and to join hands with the Government in the ongoing national endeavours for the development of border areas and national races. It has been reported that in response to this invitation the Karen National Union (KNU), the largest armed insurgent group, has decided to enter into talks with the Government of Myanmar. It is still too early to make any meaningful assessment of developments in this respect, but, from the viewpoint of protection of human rights, such a move towards true national reconciliation should be welcomed because, as stated above, many cases of serious human rights violations are being committed in the context of military operations.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

64. The visit of the Special Rapporteur to the Union of Myanmar at the invitation of the Government was facilitated by the efforts, cooperation and courtesy extended to him by the officials of the Government, in particular General Khin Nyunt, Secretary One of the SLORC, and U Ohn Gyaw, Minister for Foreign Affairs. Most of the requests of the Special Rapporteur to meet with persons pertinent to his mandate were met, including meetings with the Attorney-General, Chief Justice, Minister of Information, some political leaders in detention and representatives of political parties. However, the Special Rapporteur was disappointed that he was not allowed to meet with Daw Aung San Suu Kyi. He also regrets that the meetings with the representatives of political parties were held at a place and in an atmosphere not fully ensuring privacy. The Special Rapporteur, however, would wish to commend the Government for arranging quite efficiently his visits to Rakhine State, Insein prison and other places and facilities that he requested to visit.

65. The Special Rapporteur generally observed in Yangon and Sitway (the capital of Rakhine State) that there were visible signs of relaxation of tension in the life of the people. There were many consumer goods in market-places where many shoppers crowded. Streets and bridges have been constructed or improved. There were many cars on the streets. In fact, in the centre of Yangon, there were traffic congestions and parking problems at certain times of the day. However, the Special Rapporteur was informed that there were many poorer people in the cities and, in particular, in the countryside; these persons did not share in the prosperous life, and rather suffered from inflationary pressures on basic necessities such as rice and medicines.

66. The Special Rapporteur continues to be concerned about the serious restrictions imposed upon people in the enjoyment of civil and political rights. The people do not generally enjoy

freedoms of thought, opinion, expression, publication and peaceful assembly and association. They seem to be always fearful that whatever they or their family members say or do, particularly in the area of politics, would risk arrest and interrogation by the police or military intelligence.

Consequently, most people with whom the Special Rapporteur casually spoke avoided any conversation touching upon political subjects. Several people told him that there were many persons wishing to tell the Special Rapporteur their stories, but were too afraid to come to see him.

67. The persons whose civil and political rights are most severely restricted are the leaders of political parties, particularly the NLD leaders, and delegates to the National Convention, again those from the NLD. Because of both visible and invisible pressures, they cannot assemble in a group, cannot freely discuss, and cannot publish or distribute printed materials. In this situation it is difficult to assume that, in the National Convention, open and free exchanges of views and opinions are taking place in order to produce a truly multi-party democratic constitution.

68. The Special Rapporteur is pleased to note that a little over 2,000 persons who had been imprisoned for political activities have been released since April 1992. He would, however, express concern that there are still hundreds of such persons detained, most notably Daw Aung San Suu Kyi. He also regrets that, since the summer of 1993, up to 60 persons have been arrested for engaging in political activities. While some of them have been released, still others are detained and some have been sentenced to long prison terms.

69. Government representatives have repeatedly explained to the Special Rapporteur that the Government is willing to transfer power to a civilian government, but that, in order to do so, they have to have a strong constitution and that, in order to have a strong constitution, they are doing their best to complete the work of the National Convention. However, the Special Rapporteur cannot help but feel that, given the composition of the delegates (only one out of seven delegates was elected in the 1990 elections), given the restrictions imposed upon the delegates (practically no freedoms to assemble, to print and distribute leaflets or to make statements freely), and given the general guidelines to be strictly followed (including the principle regarding the leading role of Tatmadaw), the National Convention does not appear to constitute the necessary "steps towards the restoration to democracy, fully respecting the will of the people as expressed in the democratic elections held in 1990" (General Assembly resolution 47/144, para. 4).

70. The Special Rapporteur welcomes the initiative of the Government of Myanmar to withdraw the two reservations relating to articles 15 and 37 of the Convention on the Rights of the Child.

71. The Special Rapporteur also welcomes the signing on 5 November 1993 of a Memorandum of Understanding between the Union of Myanmar and the United Nations High Commissioner for Refugees to facilitate and guarantee the voluntary and safe return of Myanmar residents from Bangladesh.

72. The Special Rapporteur further welcomes the undertaking of various training programmes for military officers and soldiers with the cooperation of the International Committee of the Red Cross and the Myanmar Red Cross Society in the area of international humanitarian law.

73. The Special Rapporteur is paying special attention to the recent successes of the Government initiative to invite the armed insurgent groups to enter into talks with the Government and he notes in particular some initially positive response from the Karen National Union. He is hopeful that the process will move forward in the direction of obtaining true reconciliation and peace throughout the country.

B. Recommendations

74. In the light of the foregoing conclusions, the Special Rapporteur submits the following recommendations for the consideration of the Government of Myanmar:

(a) The Government of Myanmar should fulfil in good faith the obligations it has assumed under Articles 55 and 56 of the Charter of the United Nations "to take joint and separate action in

cooperation with the Organization for the achievement of ... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language and religion". In this respect, the Special Rapporteur would wish to note that the Government of Myanmar is in an ideal position because it could encourage the delegates to the National Convention to include various human rights provisions in the new constitution using, as a reference, the provisions of the Universal Declaration of Human Rights, copies of which the Minister of Information has agreed to circulate among the delegates;

(b) The Government of Myanmar should consider accession to the International Covenants on Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the two Protocols Additional to the Geneva Conventions of 1949;

(c) Myanmar law should be brought into line with accepted international standards regarding protection of physical integrity rights, including the right to life, protection against disappearance, prohibition of torture and cruel, inhuman or degrading treatment, providing humane conditions for all persons under detention and ensuring the minimum standards of judicial guarantees. Freedoms of thought, assembly and expression, including a free press and media, should be fully guaranteed;

(d) All political leaders, including elected political representatives, students, workers, peasants and others arrested or detained under martial law after the 1988 and 1990 demonstrations or as a result of the National Convention, should be tried by a properly constituted and independent civilian court in an open and internationally accessible judicial process. If found guilty in such judicial proceedings, they should be given a just sentence or, alternatively, they should be immediately released with the Government accepting responsibility to refrain from all acts of intimidation, threat or reprisal against them or their families. With respect to Daw Aung San Suu Kyi, the Government should release her immediately. In any event, she should not be kept under house arrest after 20 July 1994 when, according to the Government's own interpretation of Myanmar law, there will be no legal basis to continue to keep her under house arrest;

(e) The Government of Myanmar should take the necessary steps to bring the acts of soldiers, including privates and officers, in line with accepted international human rights and humanitarian standards so that they will not commit arbitrary killings, rapes and confiscations of property, or force persons into acts of labour, portering, relocation or otherwise treat persons without respect for their dignity as human beings. When the hiring of local villagers for portering and other works may be required for governmental purposes, it should be obtained on a voluntary basis and adequate wages should be paid. The nature of work should be reasonable and in accordance with established international labour standards. When relocation of villages is considered necessary for military operations or for development projects, proper consultation with the villagers should take place and appropriate compensation should be paid for those relocations which may be determined necessary for reasons of the public good;

(f) Military and law enforcement personnel, including prison guards, should be thoroughly informed and trained as to their responsibilities for all persons in full accord with the standards as set out in international human rights instruments and humanitarian law. Such standards should be incorporated into Myanmar law and legislation, including the new constitution to be drafted. The training programme undertaken recently with the cooperation of the ICRC is a good start in this direction and should be continued;

(g) Given the magnitude of the abuses, official condemnation should be made by the Government of all acts by authorities involving human rights violations. Such acts, including all acts of intimidation, threat or reprisal, should not benefit from the present system of complete denial by, and impunity under, the Government;

(h) The Government of Myanmar should consider the revision of the 1982 Citizenship Law to abolish its burdensome requirements for citizenship. The law should not apply its categories of second-class citizenship in a manner which has discriminatory effects on racial or ethnic minorities,

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Introduction

1. On 3 March 1992, at its forty-eighth session, the Commission on Human Rights adopted resolution 1992/58, entitled "Situation of human rights in Myanmar". In that resolution, the Commission noted that, in accordance with the Charter, the United Nations promotes and encourages respect for human rights and fundamental freedoms for all, and that the Universal Declaration of Human Rights states that "the will of the people shall be the basis of the authority of government". It also noted with particular concern in that regard that the electoral process initiated in Myanmar by the general elections of 27 May 1990 had not yet reached its conclusion; that no apparent progress had been made in giving effect to the political will of the people of Myanmar, as expressed in the elections; and that the final results of the elections had not even been officially released; also noted that many political leaders, in particular elected representatives, remained deprived of their liberty and that Daw Aung San Suu Kyi was still under house arrest; and noted with concern the seriousness of the situation of human rights in Myanmar, the existence of important restrictions on the exercise of fundamental freedoms and the imposition of oppressive measures directed, in particular, at minority groups and the continuing exodus of Myanmar refugees to neighbouring countries, including Myanmar Muslim refugees to Bangladesh.
2. By paragraph 3 of resolution 1992/58, the Commission on Human Rights decided to nominate a special rapporteur to establish direct contacts with the Government and with the people of Myanmar with a view to examining the situation of human rights in Myanmar and to report to the General Assembly at its forty-seventh session and to the Commission on Human Rights at its forty-ninth session.
3. After consultation with the Bureau, the Chairman of the Commission appointed, on 10 June 1992, Dr. Yozo Yokota (Japan) as Special Rapporteur on the situation of human rights in Myanmar, pending approval of Commission resolution 1992/58 by the Economic and Social Council.
4. At its substantive session of 1992, the Economic and Social Council adopted decision 1992/235 of 20 July 1992, approving Commission resolution 1992/58.
5. The preliminary report of the Special Rapporteur was submitted to the Secretary-General of the United Nations for dissemination to all States Members of the United Nations at the forty-seventh session of the General Assembly in November 1992 (A/47/651, annex).
6. This comprehensive report is submitted to the Commission on Human Rights at its forty-ninth session for consideration by the Commission.

I. BACKGROUND

A. General

7. The situation of human rights in Myanmar was first considered by the Commission on Human Rights at its forty-sixth session, in 1990, under the procedure established by Economic and Social Council resolution 1503, after having been considered by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities at its fortieth and forty-first sessions, in 1988 and 1989, respectively. In 1991, the Commission continued its consideration of the situation in Myanmar under the procedure established in resolution 1503.
8. As mentioned above, the Commission decided at its forty-eighth session to appoint a special rapporteur to examine the situation of human rights in Myanmar and to report to the next sessions of

the General Assembly and the Commission on Human Rights. The Commission also charged the Special Rapporteur with the expressed tasks of following any progress made towards the transfer of power to a civilian government and the drafting of a new constitution, the lifting of restrictions on personal freedoms and the restoration of human rights in Myanmar.

B. Chronology of events pertinent to the situation

9. In 1948 the Union of Myanmar (then called Burma) gained its independence from British colonial rule. From 1948 until 1962, the country was governed by a parliamentary democracy based on the Constitution of 2 September 1947.

10. The Constitution was drafted by consensus among the Bamar ("ethnic Burmans" who comprise approximately two thirds of the population) and most of the ethnic minorities including the Shan, Rakhine (Arakan), Kayin (Karen), Mon, Kachin, Chin, Karenni and Pa-o. It provided for a federal system of government with separate executive, legislative and judicial branches. The states, while belonging to the Union, were considered autonomous.

11. According to Article 201 of the Constitution, ethnic minorities had, in theory, the right to secede from the Union, but, under Article 202, this right was not to be exercised until ten years from the date of entry into force of the Constitution.

12. In March 1948, an armed insurgency against the then Government of Burma was begun by the Communist Party of Burma. From 1948 through 1961, various minority ethnic groups joined the armed insurgency.

13. In March 1962, General Ne Win took power in a coup d'état. He installed a one-party (Burma Socialist Programme Party) military regime with military tribunals and courts and operated without a constitution. He embarked upon a programme known as the "Burmese Way to Socialism".

14. On 28 March 1964, the Law to Protect National Unity was promulgated, banning all political parties except the Burma Socialist Programme Party.

15. In 1974 a new Constitution was drafted. However, one-party rule continued.

16. By 1988, widespread dissent and demonstrations began in reaction to two factors, firstly, the suppression of all civil and political rights since the 1962 overthrow of the constitutional Government; and secondly, the economic failure caused by the Burmese Way to Socialism.

17. The economy was in crisis. In September 1987, the major currency notes had been demonetized and approximately 70 per cent of all currency in circulation had been rendered valueless. There were also severe shortages of domestic goods and the country, once one of the world's major rice producers and exporters, lost its capacity to maintain its international market.

18. From March until June 1988, students and workers demonstrated, and were attacked by the military. Hundreds of civilians were arrested, many were severely injured or died from ill-treatment in detention and many persons were summarily or arbitrarily executed. On 21 June 1988 the Government imposed a ban on all public gatherings.

19. On 23 July 1988, General Ne Win resigned as party leader, promising economic reform and the holding of a referendum to end one-party rule and institute a multi-party system.

20. Demonstrations continued and the army and riot police continued the crackdown on demonstrators. It is reported that between 8 August, when a nationwide strike was held, and 12 August approximately 3,000 persons were killed. All educational institutions were closed.

21. On 18 September 1988, the military took power. The State Law and Order Restoration Council (SLORC) was set up under the chairmanship of the Chief of Staff, Senior General Saw Maung.

22. The National Assembly (Pyithu Hluttaw), the Council of State and other governmental bodies were dissolved. Senior General Saw Maung became Prime Minister, Minister of Foreign Affairs and Minister of Defence.

23. Free elections were promised by SLORC. In response, three main opposition parties were established: the National League for Democracy (NLD); the National Unity Party (NUP,

reconstituted from the Burmese Socialist Programme Party) and the League for Democracy (LDP).

24. On 23 September 1988, Senior General Saw Maung, as Chairman of SLORC, made a statement to the effect that three conditions for the holding of elections would have to be met:

"1. Maintenance of law and order.

"2. Providing smooth and secure transportation.

"3. The State Law and Order Restoration Council will strive for better conditions of food, clothing and shelter of the people and render necessary assistance to the private sector and the cooperatives to do so."

25. In 1988, Daw Aung San Suu Kyi, daughter of U Aung San (the national hero of independence) and General Secretary of the National League for Democracy, was banned from campaigning on the grounds that she maintained unlawful association with insurgent organizations.

26. On 20 July 1989, Daw Aung San Suu Kyi was detained by Government forces. Numerous others, including most of the important opposition political leaders to SLORC, were also arbitrarily detained, and many of them remain so to date.

27. In May 1990, general elections were held. The opposition (NLD) was reliably reported to have won the elections overwhelmingly.

28. SLORC set up an Election Commission to scrutinize the results of the elections and all expense accounts of all elected representatives (SLORC has stated it does not want to rush the Commission), the winners of the elections will be announced and certificates to the winners will be issued.

29. A Constitutional Convention to decide the terms of the drafting of the constitution has been announced by SLORC with the participation of all parties. According to SLORC order No. 11/92 of 24 April 1992 and citing SLORC order No. 1/90 of 27 July 1990 (contained in Government of Myanmar Press Release No. 82, dated 26 June 1992) and according to SLORC order No. 9/92 dated 28 May 1992, SLORC, through its Steering Committee, was given responsibility for the preparation of the Coordinating Meeting for the Convening of the National Convention. Leaders of lawfully existing political parties were to attend in numbers designated by the Steering Committee. The nomination list of those representatives were to be sent to the Steering Committee 11 days prior to the meeting. The Steering Committee was given responsibility for inviting those elected individual representatives "standing lawfully" on the day the Order (28 May 1992) was issued. The Steering Committee was deemed responsible for: determining the programmes related to the holding of the meeting; the topics to be discussed; determining the procedures; determining as necessary the daily and travel allowances of representatives attending the meeting; submitting the report on the meeting to SLORC within one month of the meeting; and carrying out all administrative functions.

30. The National Convention was convened for one-and-a-half days in January 1993 and was then postponed until 1 February when it was reconvened.

31. Beginning in early 1992, a mass exodus of Myanmar Muslims from Northern Rakhine state into Bangladesh was reported. At least 250,000 such persons are reliably reported to have sought refuge for fear of persecution. On 28 April 1992, the Governments of Myanmar and Bangladesh signed an agreement for the safe, voluntary return of the refugees. The repatriation programme was suspended and has now been resumed. At present many refugees appear unwilling to return to Myanmar without adequate international monitoring. According to sources, as of January 1993, approximately 17,000 refugees have returned to Myanmar; however the voluntary character of the return has been questioned and is of great concern to the international community.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

32. At the invitation of the Government of Myanmar, conveyed by a letter of the Minister for Foreign Affairs dated 27 August 1992, and accepted by the Special Rapporteur on 17 September 1992, the Special Rapporteur undertook a visit to that country from 7 to 14 December 1992. Prior to

the visit, the Special Rapporteur had been in frequent contact with the Permanent Representative of Myanmar to the United Nations at Geneva and with the Minister for Foreign Affairs who cooperated fully and facilitated the visit which was originally scheduled for October but was, however, postponed until December for technical reasons.

33. The Special Rapporteur visited Myanmar from 7 to 14 December 1992. During this visit he was received by the Secretary I of SLORC, the Minister for Foreign Affairs, the Deputy Minister for Foreign Affairs, the Chief Justice, the Attorney General, the Minister for Development of Border Areas and National Races, the Information Committee and other high-level authorities of the Government. He also met with the Myanmar Red Cross Society. He visited some sites relevant to his mandate including Insein Prison, Rakhine state, the Dagon, Shwe Pyi Thar and Hlaing Thaya New Townships.

Meetings with the Minister for Foreign Affairs

34. The Minister for Foreign Affairs, U Ohn Gyaw received the Special Rapporteur on 8 and 14 December 1992. During these meetings he discussed a number of different issues relevant to the mandate of the Special Rapporteur. He stressed that, in regard to the National Convention and the drafting of the constitution, over eight different groups would be allowed to participate, representing all segments of society. He said that only the elected representatives were considered competent to draft the constitution, but that they required a mandate to do so. The National Convention would provide that mandate.

35. In regard to turning over the Government to the elected representatives, the Foreign Minister said that from the beginning, there had been a misconception. The mechanism for the transfer of power requires a basis for the transfer. There must be a constitution to determine who, for how long, under what circumstances. All of this had been laid out in SLORC Order No. 1/90. He further stated that the idea that power would be transferred within a certain period, so that the elected representatives could draft their own constitution, had been misunderstood by the international community. This was why Myanmar had "disassociated itself" from Commission resolution 1992/58 on the situation of human rights in Myanmar. The international community was interfering in the internal concerns and sovereignty of Myanmar. In any case, Myanmar was a country with many different ethnic groups and the Government must maintain the integrity of the State.

36. The Convention would be a step towards democracy and the Government wanted to be doubly sure and not make a mistake and go back to the situation of 1988 (to the democracy movement demonstrations). The Foreign Minister said that the United Nations or another country may tell Myanmar to go ahead, but that they could not risk losing a century by making a mistake. He stated that the constitutional process was not held before the elections because of caution regarding the 1988 events. He stated that there were some insurgents who would like to move in from the outlying areas and the Government had a responsibility to maintain normal law and order.

37. Mr. Ohn Gyaw stated that there would not be any international observation of the process because "it is a matter of internal affairs not for too many cooks".

38. In regard to the 1982 Citizenship Act, he said that there were citizens, associate citizens and foreigners. The second group is the offspring of those who were citizens of Myanmar and intermarried with foreigners. For example, he cited that his son was a citizen, while he was not. Under the new law, his son would be granted all the rights of citizens, such as the ability to own land and benefit from all business rights which he had not been allowed to enjoy. He said that 98 per cent of the people benefitting from this new act were of Bengali descent and would thus be able to hold land, but he was not sure associate citizens would be allowed to hold or own land. He stated that persons who could not produce an identity card would have a problem.

39. Concerning the utilization of the Office of the United Nations High Commissioner for Refugees (UNHCR) to facilitate the repatriation of Myanmar Muslims to Rakhine state, he said that Myanmar

had not asked for one penny from the international community or UNHCR for the repatriations. The Government was paying for all of the aid. He further stated that the idea that these persons' goods, lands, and houses had been taken away is false. Myanmar is taking care of the problems and is able to cope with the flows. Nor does Myanmar need the aid of the International Committee of the Red Cross.

40. He stated that some subversive campaigns in Bangladesh, kept persons from coming back. These insurgents are causing trouble to the Bangladesh Government and they are trying to convince people not to repatriate. There are some persons from the Middle East who are promising jobs and other things, but most of these people realize they must repatriate. He said that when the regular immigration process resumes, the Government will send back to Bangladesh those who did not get immigration cards.

41. He said however, that "it is a rubbish thing that people have left Myanmar. These people who are in the refugee camps in Bangladesh are perhaps from Dhaka, but not one single person has left Burma."

42. The Foreign Minister stated that the allegations received as to human rights violations regarding forced portering by the military were completely false. This, he stated was the weakness of the United Nations. It was being manipulated by the insurgents.

Meeting with Secretary I of SLORC, General Khin Nyunt

43. General Khin Nyunt received the Special Rapporteur by stating that his Government had accepted the Special Rapporteur more on a personal basis than on an institutional one.

44. He stated that there were many accusations of human rights violations in Myanmar, but that the Special Rapporteur should understand that Myanmar has a population of 43 million. The Government, he said, was giving priority to the economic well-being of these people. This should not be hampered by a small group of illegal persons. In fact, before the arrival of the Special Rapporteur, there were rumours that some anti-government groups might "stage up" to give a distorted image of the country. They had heard that a person would dress like a monk and lie down in front of the Special Rapporteur's car. But, in fact, during the short period of four years since the SLORC had assumed power, the Government of Myanmar was doing its best to improve the life and welfare of all the people in that country. In the case of Myanmar, whatever the Government does, it is criticized. All countries should respect human rights without distinction and Myanmar had done its best in that direction.

45. In this regard, General Khin Nyunt said that the three new townships seen by the Special Rapporteur were projects which has endeavoured to improve the life, welfare and economic and social rights of the people. Hlaing Thaya was a place where the poorest people of Yangon had moved. They used to be the illegal dwellers of temples and cemeteries. In this township, the Government had tried to improve the living conditions of the residents by establishing schools, hospitals and other facilities. People were given land free of charge. In Dagon New township, there are also some more well-to-do people. There are markets and schools and a university would be established soon.

46. He cited the border areas' construction projects of roads and bridges. He said that local inhabitants were voluntarily cooperating in these development projects. Accusations of forced labour were distorted. Such accusations, he said, "are disseminated by the terrorist people and groups".

47. He said in regard to persons who did not make contact with the Special Rapporteur, that there may have been some who did not wish to see the Special Rapporteur. It was not because the Government prevented them from doing so, but because they are engaged in illegal activities. Those who break the law will do the same after their release. He said that some released prisoners were having relations with the minute terrorist groups. There are also some people from political parties who may break the law. They were free to engage in business or other legal activities, but not illegal

activities. In any country, law and order must be maintained. Those who break the law must be punished.

48. He said that the slanderous stories about torture and ill-treatment were not true. There may be some prison wardens who treat prisoners badly. They are disciplined in accordance with the law. He said that the Special Rapporteur had been allowed to see more than he had seen the previous year at Insein Prison. The reason why he was not shown more this year, was that there was concern that some prisoners might have caused harm or presented danger to the visitors.

49. He said that during the Special Rapporteur's visit to Rakhine state he saw a lot and could see that the stories coming out were not true. He said that the Special Rapporteur had observed the Mayor's (foot) marathon. The people were enjoying that event enthusiastically. It was not something that a Government could arrange. The event was the third one and had been planned way in advance and not to coincide with the visit. At the end of the month, there would be the traditional boat regatta which many people would attend.

50. He stated that regarding actions by military personnel, Myanmar has a green book which explains rules and regulations to be followed by the members of the armed forces including those concerning punishment in case of violations. Such violations will be tried by a court martial. In the case of serious offenses such as murder or rape, the case may be transferred to an ordinary court to assure impartiality. These rules and regulations are strictly applied and there is no way that a member of the armed forces would violate the human rights of the ordinary people.

51. He said that the green book was distributed from generals down to the lowest soldiers. The Government does not deny that in the heat of fighting, these regulations may be violated, but the media exaggerates. As soon as such an incident is known, immediate action is taken.

52. He said that his Government knew that one of the two ladies accompanying the Special Rapporteur (the person referred to was the qualified interpreter for the Special Rapporteur) participated in an anti-government demonstration in front of the Embassy of Myanmar in London on 27 May 1991. He said he would show the Special Rapporteur two pictures to prove this. In spite of knowing this, the Government accepted the Special Rapporteur because they thought they should pay respect to him. He said that even after the Special Rapporteur came to Myanmar, her orientation was to organize meetings between the Special Rapporteur and anti-government groups. He stated that he said this not to complain, but simply to call the Special Rapporteur's attention to the fact.

53. He ended the meeting by stating that the Government was attempting to develop the country politically, economically and socially, and that although there were problems, they would overcome them. They could not destroy or disintegrate the country. They would carry on action in accordance with the law against any activity aimed at disunity and destruction of the country.

54. Politicians were quite free to go about their business and to travel freely in the country with the permission of the Government. However, they could not be allowed to disturb the peace and tranquillity or bring about disorder. In order to understand the human rights situation in the country, the situation had to be seen in the total framework as explained by him. The Government is not repressing the people tightly.

Visit to the three new townships

55. The Special Rapporteur was taken on 11 December 1992 to the three new townships, Dagon, Shwe Pyi Thar and Hlaing Thaya. Dagon Township lies about 45 minutes outside of Yangon on the banks of the Nayoma Creek and can be reached by crossing a small bridge on the road which connects it to Yangon. At Dagon New Township, the Special Rapporteur was shown the site of the new university which is to replace Yangon University. The professors from Yangon University will be transferred to the new university. Yangon University will then be used as a post-graduate University. In the first phase the University will accept 5,000 students in August of 1993 and eventually will accommodate up to 80,000 students in a self-contained community with its own

water system, hospital, transportation and residential facilities. The education will be partly subsidized by the State.

56. The Government informed the Special Rapporteur that people from Yangon and other areas voluntarily moved to Dagon for a better life. There, they were afforded a plot of land for a nominal fee and were allowed to construct their own homes. There is a hospital, a new water system, elementary and secondary schools, businesses and other means of livelihood for the inhabitants and low-cost transportation to Yangon.

57. Shwe Pyi Thar is a new township populated by some people who, according to the Government, moved voluntarily, and others who were forced to move because they were living illegally in the city as squatters or homeless persons. For 5,000 kyats they may buy a plot of land 20 feet by 60 feet and may build their own home. Most of the inhabitants are day labourers who earn between 30 to 75 kyats per day and the Government gives some subsidies for the purchase of the land.

58. Here too, there is a hospital, markets, schools and other facilities for the self-containment of the community. The Special Rapporteur was taken for a tour of the approximately 20 to 25 bed hospital where the Special Rapporteur was told that people were being treated for dysentery, tuberculosis and other respiratory diseases, natural and problematic pregnancies and some nutritionally related diseases. The Special Rapporteur was also shown a new youth sports facility with a demonstration by the children of all the activities.

59. Hlaing Thaya is the largest of the new townships with 150,000 inhabitants. It may be reached by ferry boat. The Special Rapporteur was shown the sections first developed and inhabited before 1988. The inhabitants are mostly formerly homeless persons who had been living illegally in cemeteries in Yangon. The Government told the Special Rapporteur that the persons were not forcibly moved, but that once they were told that they were living illegally, they chose to move to Hlaing Thaya. There is a Yangon City Development Committee, which oversees its development and a Director of the Human Settlement Housing Development. There is a committee for the development of plots of land 20 feet by 40 feet, which generally cost 1,500 kyats, but if the family cannot afford this, the Government subsidizes the land. The families build their own homes.

60. Most of the inhabitants were said to be jobless but the Government is trying to find jobs for them. There is social welfare and schooling. There is a 25 bed hospital, which the Special Rapporteur was unable to see due to lack of time. On the way back to Yangon, the Special Rapporteur was shown a modern highway and overpass construction site which had been recently built.

Visit to Insein Prison

61. At Insein Prison the Special Rapporteur was given an extensive tour of the grounds, on which new vegetables and flowers had been planted. He was shown the workshop buildings, the tower, prisoners taking their afternoon bath, the hospital, which appeared to house prisoners instead of sick persons, and a small kitchen with freshly prepared pots of food. The facilities had been freshly painted.

62. The Special Rapporteur was not allowed to see any of the detainees he had requested to meet. These prisoners were detained under SLORC Order 1/88 prohibiting the assembly of five or more persons or under the 1950 Emergency Provisions Act. Several of them belonged to political parties, some were students and one was a monk. In the case of the monk, U Zaw Tika, the Special Rapporteur received allegations while in Myanmar, that he had died from torture received while in custody at Insein Prison. The authorities told the Special Rapporteur that such a person, as far as they knew, did not exist. The authorities stated that when a monk is arrested, he is defrocked and given a lay name, and suggested that this could be the reason why they were unaware of any such person. According to the prison authorities, five of the detainees the Special Rapporteur requested to see were in good health. These are: U Tin Oo, U Kyi Maung, Zagana, Min Lo Naing and Tin Tun. Five

others were reported as "not known to the authorities". They are: U Win Tin, U Khun Sai, U Tun Shwin, Myint Sein and U Shwe Tin.

63. The Special Rapporteur had made a request in writing on the first day of his stay in Myanmar as to the detainees he wished to see and asked for free access to those and other detainees at Insein Prison.

64. After repeated requests made orally, the Special Rapporteur was told that the higher authorities do not interfere with the running of the prison and that the request should be made to the prison authorities. At the time of the prison visit, the prison authorities stated that they were unable to comply with the Special Rapporteur's request to see the detainees because they required authorization from higher authorities. Subsequent to the prison visit, it was explained to the Special Rapporteur that the reason he was not allowed to see the detainees is because the Government was concerned "that some prisoners may give harm or danger to visitors".

Visit to Rakhine state

65. The Special Rapporteur made a one-and-a-half day trip to Rakhine state where he was able to speak with a number of Myanmar Muslim village leaders and to ask them about religious and ethnic tolerance. The villagers were assembled by the Government and Government authorities were seated with the Special Rapporteur during the encounter. Some other villagers were also asked questions by the Special Rapporteur as he passed by with the Government officials.

66. Other persons in Yangon whom the Special Rapporteur had formally requested to see and many persons with whom he either wished to make contact or who had expressed a wish to see him, were not allowed to receive or speak to the Special Rapporteur. Almost all of these persons were visited by the military intelligence. The Special Rapporteur was told that "... persons are free to engage in business or other legal activities but not in illegal activities. There may be some who do not wish to come to see you. It is not because the Government is preventing (them) from seeing you but because they are engaged in illegal activities."

67. In regard to this situation, the Special Rapporteur transmitted on the last day of his visit, 14 December 1992, the following letter to the Government:

"Excellency,

"I have the honour to refer to your letter of 27 August 1992 in which your Government stated that it looked forward to welcoming me to Myanmar as an expression of continuing cooperation with the United Nations.

"As you are aware, by operative paragraph 3 of Commission on Human Rights resolution 1992/58 on the situation of human rights in Myanmar, the Commission decided to nominate a special rapporteur for the purpose of, inter alia, establishing direct contacts with the Government of Myanmar and with the people of Myanmar, including political leaders deprived of their liberty ... I wish to bring to the attention of your Government my concern that, in addition to being prohibited from establishing direct contact with any of the political leaders deprived of their liberty, direct contact with many of the people of Myanmar useful to my mandate, was made impossible.

"It has come to my attention that during the course of my visit, several persons wishing to make direct contact with the Special Rapporteur or persons whom the Special Rapporteur requested to contact, were reportedly visited by members of the intelligence services and told not to establish or receive contact with the Special Rapporteur and the accompanying United Nations staff members. Under Commission on Human Rights resolution 1992/59 regarding reprisals directed at groups or individuals cooperating with the United Nations' bodies, it is stated that threats or intimidation against witnesses or persons wishing to cooperate with the United Nations are prohibited. This resolution further states that Governments should take all steps necessary to protect the lives and physical integrity of these persons.

"I urge the Government of Myanmar to take the necessary steps to comply with the above cited resolution.

"Accept Excellency, the assurances of my highest consideration."

68. By letter dated 23 December 1992, the Minister for Foreign Affairs of Myanmar responded to the Special Rapporteur's letter:

"Dear Professor Yokota,

"I refer to your letter dated 14 December 1992 and I wish to convey that I am quite dismayed at the tone and the substantive thrust of the various points you raised.

"As you are aware, we in Myanmar are consistently sincere in our wish to have a continuing cooperation with the United Nations. But this cooperation cannot be a channel to override the fundamental principles of national sovereignty and non-interference in the internal affairs of Nation States, as enshrined in the Charter of the United Nations.

"To be specific, you mentioned your mandate as 'establishing direct contacts with ... including political leaders deprived of their liberty...'. As explained many times previously, I reiterate that there are no political prisoners in this country, but only some politicians who are under detention for breaking the established laws of this nation.

"You also mentioned that 'persons whom the Special Rapporteur has requested to contact were reportedly visited by members of the intelligence service and told not to establish or receive contact with the Special Rapporteur ...'. In this regard, I do regret that you have put in your official letter one side of the story which you were kind enough to qualify by 'reportedly'.

"Even if such an unfounded allegation has taken place, being 'told not to' cannot conceivably be construed as 'threats or intimidation'.

"I avail myself of this opportunity to convey to you our sincere and continuing wish to cooperate with the United Nations in the belief that it is an important element of our systematic endeavour towards establishing the democratic system in an atmosphere of peace, tranquillity, prosperity and orderly processes rather than under anarchy, disintegration of the nation, and tragic and senseless destructive acts,.

"This democratic system we aim to establish will be on foundations that are within the parameters of our history, traditions and culture."

Please accept, Professor, the renewed assurances of my high consideration.

Yours Sincerely, Ohn Gyaw

III. ALLEGATIONS

A. Right to Life

1. Death Penalty

69. The death sentence is permitted under Myanmar law; nevertheless, no death sentence has been carried out since 1988. In July 1989, SLORC Order No. 1/89 established military tribunals and SLORC Order No. 2/89 established the procedures for adjudication through military tribunals of persons contravening any SLORC Order. Under these provisions, military tribunals were competent to hand down penalties of no less than three years' imprisonment, life imprisonment or the death penalty.

70. On 6 September 1992, by SLORC Order No. 12/92, military tribunals were revoked and on 1 January 1993, by SLORC Order No. 1/93, all death sentences passed by civil or military courts or tribunals between 18 September 1988 and 31 December 1992 were commuted to transportation for life (life imprisonment).

2. Summary or arbitrary executions in the context of armed conflict

71. On 5 October 1992, the Myanmar Minister for Foreign Affairs, U Ohn Gyaw, addressed the United Nations General Assembly stating that in April 1992, the SLORC had suspended "all offensive operations in Kaying state and other parts of the country to consolidate national solidarity and unity". (See statement by His Excellency U Ohn Gyaw, Minister for Foreign Affairs and Chairman of the Delegation of the Union of Myanmar, in the general debate of the General Assembly at its forty-seventh session, p. 10).

72. According to other information provided by non-governmental sources to the Special Rapporteur, many of the violations described below that had occurred before the cease-fire reportedly continued to occur. Although the direct military attacks did cease during the rainy season, they are alleged to have begun again. In addition, many of the violations reported did not take place as a result of the direct military "offensives". The Special Rapporteur was told that in areas within or near conflict zones in the Kayin, Kachin and Karenni states, many persons had been summarily executed for being suspected of insurgency by the army. In other cases, civilians suspected of giving aid to insurgents, either materially or by providing food or shelter were executed.

73. One woman from Kayin state told the Special Rapporteur that the military had recently entered her village because they suspected the villagers were lending support to the insurgents. She stated that as she and some other villagers were attempting to escape into the jungle, the military shot dead the two persons behind her.

74. The Special Rapporteur was informed that if the military suspected that villagers were insurgents or were providing aid to insurgents, that entire village was often given orders to relocate by the Township Level Law and Order Restoration Council (LORC). In a number of cases reported to the Special Rapporteur, civilians were executed when they either refused to relocate upon orders or when they attempted to escape to avoid relocation.

75. One 18-year-old woman from Pruso Town told the Special Rapporteur that her 20-year-old husband had been shot dead in front of her for having disobeyed orders to relocate. The woman told the Special Rapporteur that the military had come to her village with location orders. She, her husband and two other persons had fled nearby to work on another parcel of land. The military continued the relocation operation in the area and when they arrived one week later at the location where the woman and her husband had fled, they did not speak or give any warning before shooting. The woman's father-in-law later came out of hiding to fetch some water and was shot dead by the military.

76. The Special Rapporteur was shown a relocation order dated 6 March 1992 (Pruso LORC 385) from Pruso Township, Kayah state. Fifty-seven villages were listed as being required to move. The Order stated that those who did not move by 20 March 1992 would be considered "banditinsurgents" and "would be eliminated".

3. Death as a consequence of rape

77. Information received from over 30 interviews with Myanmar Muslim women from Rakhine state and other women from areas of armed conflict indicated that a large number of rapes by entire groups of Myanmar military had been taking place. Many women provided testimony that women in villages relocated by the army were rounded up and taken to military barracks where they were continually raped. In other circumstances, women have allegedly been taken by the military when the husband, or other male in the family, had fled at the approach of the army. Often, the "pretty" or young ones were raped immediately in front of family members and then taken away. Women who had returned to their villages stated that some of the women among them had died as a result of the continual rapes. Two female health workers interviewed by the Special Rapporteur reported that in their clinic, women with rape wounds had been admitted and had later died from bleeding or subsequent infection. It was reported to the Special Rapporteur that on 9 March 1992, members of

SLORC Regiment 254 raped and killed nine women (Tomg Du Kai, Lamung Tu, Marau Htu, Jingphaw Lu, Mi Htoi Roi, Hpau Roi, Shi Hpau La Hkawn, Shi Hpau Rim Roi) near Yonan stream, Bhamo township in Kachin state.

78. Due to time constraints and the difficulty in obtaining data on this delicate subject, the Special Rapporteur wishes to point out that his findings are not complete and that the true extent of the problem could not be ascertained during this initial visit.

4. Death of forced porters

79. According to testimony received by the Special Rapporteur, thousands of persons have been killed since 1988 by the military throughout Myanmar while providing forced portering for the military. Amongst the most affected groups seem to be the Myanmar Muslims of Rakhine state, the Karen, Shan and the Mon.

80. Dozens of persons from different states interviewed by the Special Rapporteur provided testimony. Witnesses from several areas told the Special Rapporteur that although some persons were able to bribe their way out of portering, most could not afford to. From the number of persons interviewed who gave corroborating evidence, there is strong evidence suggesting a systematic pattern of summary or arbitrary execution of forced porters.

81. One person told the Special Rapporteur that hundreds of young boys from Kalor and Palong had been taken between February 1989 and March 1990 as forced porters. He stated that most of them were taken when they went to fetch water at the reservoir near the military barracks where seven different regiments were posted including Regiment 114. He witnessed one truckload of about 80 boys being taken from Shan state to Kayah state. He reportedly witnessed boys being put on the front line carrying military equipment and huge rice bags. When they were caught in crossfire, many of the boys were killed. This same witness told the Special Rapporteur that the convicts (Gurkas) were even more at risk as porters since they were tied together so that they could not escape. In another incident, a young porter was seen being beaten to death by the military for talking back.

82. In a further reported case in Kayah state, porters were allegedly used as mine-sweepers. Two young boys had been taken as porters when they could not pay the 5,000 Kyats demanded as a bribe. They were forced to act as mine-sweepers. When a soldier ventured forth and stepped on a mine, one of the boys was told to carry him, but the soldier died. The porter was then reportedly severely beaten by the other soldiers. He managed to escape, but died a few days later in a hospital in Kalor.

83. The Special Rapporteur was told by dozens of refugees, all Myanmar Muslims from Rakhine state in the Jumapara Transit and Gumdum refugee camps in Bangladesh, that men were routinely taken from the villages for forced portering. Witnesses said that many of the men had been killed while attempting to flee. Numerous women told the Special Rapporteur that their husbands had been taken away for portering and had not been seen again. Furthermore, only a few of these women were able to verify if their husbands were in fact dead or alive.

84. One Karen witness told the Special Rapporteur that during the time he was forced to be a porter, he saw many others killed when they were unable to carry the heavy loads. In one such case, a porter fell and was unable to get up. A sergeant kicked and hit him with a rifle butt until he died. In another case, a man of Indian descent fainted. The same sergeant who had killed the above-mentioned porter, kicked him and then drowned him in a stream.

5. Death during forced labour other than portering

85. According to the testimony of persons taken to provide labour in the construction of railroads (Aung Ban-Loikaw railroad), roads or clearing jungle areas for the military, hundreds of persons were killed by the military when, as with porters, they were unable to carry loads and to continue the hard labour. The labour projects reportedly included two major railway projects, other border development projects of the Government, particularly along the Thai-Myanmar border, and labour

for the military particularly in the areas of conflict in the Karen, Karenni, Shan, and Mon areas.

86. It was reported however that the labourers died most frequently as a result of constant beatings, unsanitary conditions, lack of food and lack of medical treatment, once they became sick or wounded and unable to continue work. Witnesses also provided information that some friends or relatives who returned from the work in the border development projects died afterwards as a result of the wounds and diseases contracted during their labour.

6. Death as a result of the prohibition of freedom of political participation, expression and assembly

87. Thousands of persons were reportedly summarily executed during the mass demonstrations for democracy in 1988 and during the student strike in December 1990. A number of persons who had participated in the demonstrations told the Special Rapporteur that the demonstrators were unarmed and had been attacked by the military. Students, professionals, workers and thousands of poor people including organized beggars were shot or beaten to death while demonstrating. One man in Yangon saw the military transporting bodies in trucks during the following days.

88. One person from the new township, Hlain Thaya, who had been in close proximity to the bodies of the students killed in the 1990 strike, told the Special Rapporteur that the military brought many bodies to Hlain Thaya for mass burial. In one truckload, most of the bodies had bullet wounds, but that in another, the heads and faces of most of the students had been beaten and crushed.

7. Death in custody

89. The Special Rapporteur was given extensive testimony as to the pattern of the deaths in custody, however, the number of persons actually reported to have died while in custody are limited to those who were well-known or persons who were related to or known by those who were able to make contact with the Special Rapporteur. According to evidence received, the true number of deaths are far greater.

90. In the cases received by the Special Rapporteur in which violations of the right to life occurred while in detention and in which charges were filed, these detentions were primarily carried out under SLORC orders, the 1950 Emergency Provisions Act, particularly 5(J) article 17 (1) of the 1908 Unlawful Association Act and article 122 (1) of the Penal Code regarding punishment for high treason. The Special Rapporteur received information that some violations of the right to life of leaders of political activities reportedly occurred after these persons were arrested under laws pertaining to common criminality.

91. Deaths in custody were most frequently reported to have been a result of torture or the result of torture aggravated by the conditions of detention. Detainees are reportedly provided with insufficient, often spoiled food. The vegetables grown within the prisons are allegedly cultivated with human fertilizer further provoking the spread of disease. The prisoners are kept in unsanitary conditions in small cells, forced to sleep on cold cement floors and denied blankets and clothing.

92. It was reported that a doctor made rounds once a week, but that he rarely stopped at any of the cells. In some cases, the Special Rapporteur was told that those who complained of a medical problem were beaten. Medical treatment, if provided, was insufficient in quality and quantity of both medication as well as medical supervision.

93. It was reported that when families tried to provide food, clothing or medicine to detainees, they were either confiscated by the authorities or thrown away.

94. The following provides a list of some political leaders and elected representatives, students and monks who are known to have died while in the custody of the Myanmar authorities:

(a) Maung Thawka, aka U Ba Thaw, 65 years old (NLD CC member) was arrested on 23 July 1989 and sentenced in October 1989 to 20 years' hard labour under Sections 5(A) and 5(B) of the Emergency Provisions Act. He was suffering from severe spondylitis, a spinal disease and was severely beaten during the September 1990 hunger strike in Insein Prison so that his right side was paralysed. He died on 9 June 1991.

(b) U Maung Ko, (NLD CC Member), 52 years old, was arrested on 23 October 1990 and died in jail on 9 November 1990 - while the High Commission for Refugees, Mrs. Ogata was on mission in Myanmar. He was not sentenced. He had been a close friend of ASSK, and died from torture.

(c) U Tim Maung Win, 50 years old, (NLD MP for Kayan Township Constituency-2), was arrested on 23 October 1990 and sentenced to 5 years' imprisonment, though it is not clear under which law. He died on 18 January 1991, allegedly from leukaemia, though his family and his family doctor insist that he was not known to have leukaemia before his arrest. He was believed to have died from torture.

(d) U Nyo Win, 60 years old, Secretary of the People's Progressive Party, which was denounced by the SLORC as a communist organization. He was arrested in July 1989 and died as a result of torture on 15 March 1991. He was sent to the hospital in Ygn three days before he died and is reported to have asked after Tin Maung Win (mentioned above -indicating that they had been tortured together. No reason for death was given. It is not known if he had been sentenced).

(e) Bo Set Yaung, aka U Khin Maung, over 80 years old. His wife and eldest daughter were also arrested. Both are still in jail on charges of being in contact with the Communist Party (BCP). He had poor health and was denied medical treatment. He died in solitary confinement in February 1990. It is not known whether he was sentenced.

(f) Kyaw Myo Thant, 25, arrested July 1989, died in May 1990. He was sentenced under SLORC Order 8/88.

(g) U Oo Tha Tun, 32 arrested on 7 May 1990 under 5(j) of the Emergency Provisions Act. Member of the Arakan League for Democracy. Died in July 1991. Cause unknown, also unknown whether he was given medical treatment.

(h) Soe Htay, 19 years old, was arrested on 12 April 1991 and died on 16 April 1991, reportedly as a result of torture. He was an active NLD member. He had not been sentenced.

(i) Mohamed Ilyas, over 65 years of age, a political leader from Arakan state. He was arrested on 16 June 1992 and died in hospital on 19 June. According to testimony received by the Special Rapporteur, he had been severely tortured.

(j) U Zawtikka, sayadaw of Shwe Phone Pyint monastery who died in custody in December 1992. He had been treated in a hospital for cancer but was returned to jail where he died. Sentence and arrest date unknown.

(k) U Soe Win, arrested in 1988, from Mandalay, and died in custody, the date cannot be confirmed.

8. Death of HIV-positive female prostitutes

95. According to information made available, a group of women from Myanmar were either forced (sold) into prostitution or lured into prostitution in Thailand by men promising jobs with high pay. The women contracted HIV/AIDS and were repatriated from Thailand to Burma. After this, according to some sources, the women were killed with cyanide capsules by Myanmar authorities. Another source indicated that the women "disappeared" after being returned to Myanmar. One source told the Special Rapporteur it was likely the women had been killed, although perhaps not by cyanide. Another explanation given was that they returned to their families; while another source indicated that they could never return to their villages and families, but that perhaps some of them went into hiding in other villages where they would not be known. The composite of evidence suggests they may have been killed upon their return to Myanmar but the information gathered by the Special Rapporteur was insufficient to come to a firm conclusion as to the fate of these women.

96. Persons providing information to the Special Rapporteur alleged that the following is only one such case known. Over a dozen rescued Myanmar prostitutes, ages 14 to 20, were seen by the Special Rapporteur, but it was not known how many of them were HIV-positive (estimates of infection of prostitutes in Thailand vary between 60 to 90 per cent).

B. Torture, cruel, inhuman or degrading punishment

1. Treatment of persons during armed conflict

97. The Special Rapporteur received some allegations regarding the ill-treatment by the Myanmar military of insurgent prisoners of war (POWs), however, the Special Rapporteur was not able to assess these allegations because he did not have access to any sites of POW detention or to relevant witnesses, nor was he made aware of any released POWs who may have been able to provide firsthand testimony.

98. In regard to war-time violations, a high-level Government source stated that at the lower level, in the heat of fighting, the rules and regulations in the military manual prohibiting physical integrity rights may be violated, but, the media exaggerates, and as soon as the Government is made aware of such an incident, it takes immediate action.

99. The Special Rapporteur also received some allegations of physical ill-treatment of POWs detained by insurgent groups but due to a lack of access to witnesses, he was also unable to assess these reports.

100. Allegations were received of torture of persons suspected of being insurgents. One 30-year-old Karen man told the Special Rapporteur that he had been seen picking pumpkins in a field and was carrying some back to town when he was detained by some soldiers. He was taken to the officer-in charge who was told by the soldiers that he had been carrying mines. He reported he was then tied up and taken to a location where porters had been rounded-up, and was kept bound while the porters were made to carry heavy loads. He was then told to inform on the insurgents. When he denied knowing anything, he allegedly was beaten and kicked and forced to dig, what he was told, was his own grave. Other forms of torture reportedly used during interrogation were rolling a metal pole up and down his shins, burning him with cigarettes on the feet and hands and covering his head with a cloth pulled tight to the brink of suffocation. After two and a half days, he escaped.

2. Forced portering

101. The Special Rapporteur received information from more than 30 persons regarding the occurrence of torture in the context of portering. The areas reportedly most affected were the Shan, Kayah, Mon, Kayin and Rakhine states. The porters told the Special Rapporteur that they were forced to carry munitions and other military equipment, sacks of rice and various provisions weighing 45 kilograms or more, often through mountainous terrain. They told the Special Rapporteur that the load cut into their shoulders, backs and legs and that when they were too weak or wounded to continue, or simply fell behind, they were beaten with rifle butts, bamboo or metal rods and kicked by the soldiers.

102. One man from Shan state told the Special Rapporteur that he had witnessed about 80 boys being taken away in an army truck from Kalaw town for portering. They were reportedly taken when they went to the reservoir to get water near the army camp and were transported to another military camp about 95 miles away. One of the boys, who was tortured but escaped from this group, told the Special Rapporteur that they were continuously beaten and that he saw many other porters succumb as a result of the beatings and the heavy loads. The Special Rapporteur has been informed that this witness has since died as a result of ill-treatment.

103. One man from Rakhine state showed the Special Rapporteur extensive scars on his back and shoulders allegedly received from the heavy loads and from beatings. He told the Special Rapporteur that he had escaped across the border and was afraid of being sent back to Myanmar.

104. The Special Rapporteur was informed that the harsh climatic conditions exacerbated the effects of the ill-treatment received by the porters. The mountain temperatures could be very cold at night but in some regions it was extremely hot during the day when they carried their loads, and thus a large proportion of the porters reportedly suffered from malaria, tuberculosis and other respiratory

diseases, dysentery, parasitic infestations and infections of their open wounds. The Special Rapporteur was told that there was no medical care for those who were ill and as a result many died on the side of the road. The Special Rapporteur was also told that the porters were continually cursed and were insulted with racial or ethnic slurs.

3. Conditions under detention

105. Students, persons involved in politics, writers, professionals and relatives of suspect persons told the Special Rapporteur that they had been submitted to torture by the Myanmar authorities. The Special Rapporteur was told that most of the torture occurred during the initial interrogation period. The military intelligence units allegedly carried out most of the torture and the units named as having meted out the harshest treatment were the MI 7, and then the MI 6, 11 and 12. The harshest prisons were reportedly Insein, Thayawaddy and Thayet. The latter two, plus Mandalay Prison, which are located far from Yangon, were reportedly where prisoners who were not fit to be seen as a result of torture, would be sent, in order to avoid family visits.

106. Many different torture techniques were reportedly used, including severe beatings with metal rods and chains covered with rubber; the "iron road" which consisted of a metal rod being rubbed up and down the shins; being burned with cigarettes; made to maintain certain positions such as the "motorcycle" for hours; near suffocation or drownings; water torture; sleep deprivation; being made to dig "ones own grave"; and being forced to watch other detainees being tortured. One man told the Special Rapporteur that whilst under detention in an army camp, he was forced to watch women being raped by army personnel.

107. The Special Rapporteur was told by one student from Yangon that he was arrested in 1990 for his part in the demonstrations. He was allegedly interrogated by the MI 6 for a month during which time he withstood beatings, the "iron road", cigarette burnings on the face and hands, the rubber covered chain and near drowning. Afterwards he was taken to Insein Prison where he was kept in a special block (thi thant) away from the common criminals. He told the Special Rapporteur that the detainees in this block were beaten daily. Other students from this same block told the Special Rapporteur about "beating parties" to which one of the prison authorities would invite his friends.

108. Another person told the Special Rapporteur that he was sent to a special compound in Insein Prison called the "soldiers' dog kennel". In order to get through the passageway with a low roof, one was forced to crawl on hands and knees over bits of broken brick. The back part of the compound had large dogs posted all around it who poked their heads through gaps in the mesh fence. This person was taken to the hospital (the main ward A) after the hunger strikes which took place in 1990. There he was allegedly beaten with the rubber-covered chain.

109. Another person from Shan state told the Special Rapporteur that he was put in a cell into which water was constantly dripped regardless of where he would position himself, which resulted in concomitant sleep-deprivation.

110. Some women informed the Special Rapporteur that they were generally treated less harshly than the men with the exception of the MI 7 which allegedly dealt with them as they did with the men. The Special Rapporteur was told that generally the interrogations were carried out by men with a woman present. They reported beatings, sleep deprivation, threats to their families and hearing other women being beaten. One young woman who was half Karen and half Rakhine was allegedly severely beaten by the MI 7 before she was brought to Insein Prison.

111. Women from the Rakhine state were allegedly brought to army barracks and kept there for raping. The Special Rapporteur received information that some women being forced to relocate were raped in front of their families and one man told the Special Rapporteur he was forced to watch a woman being raped.

112. One person told the Special Rapporteur that in one military prison near Kalaw, a Muslim boy of 17 was ordered to clean out the pigsty, but being Muslim, he refused. He was then brought in front

of the other detainees and beaten. The prisoners were forced to watch as the boy's head was repeatedly dunked into a bucket of filth containing live insects. The boy was then allegedly taken away and never seen again.

113. The most difficult aspect of the prison conditions was reportedly the extreme deprivation of water for all purposes. The Special Rapporteur was told many times that detainees were forced to sleep on cold cement and that practically all of them suffered resultant paralysis of their limbs as well as respiratory infections. The food was allegedly insufficient and of poor quality, and sometimes spoiled. The cells were small and there was no provision for adequate hygiene. As a result, almost all detainees also reportedly suffered from dysentery.

114. The Special Rapporteur was told that the doctor came around once a week, but usually did not stop at the cells and never entered them to check persons complaining of a disorder. Patients in hospitals were allegedly rarely given any medication and what they were given was rarely adequate.

C. Disappearances

115. The Special Rapporteur was told that many of the cases of persons in prison had actually begun as disappearances. Many persons reported that their families did not know where they had been taken, and as family visits were only allowed after sentencing, many were held incommunicado detention for months. Some families had learned from other released prisoners or through sympathetic prison guards where their relative was being held, but they could not go to the prison to see them. None of the cases received by the Special Rapporteur of transferred prisoners were reported to their families, particularly as transfers allegedly often took place after torture. Some persons who were detained after the 1988 demonstrations and who were not well known reportedly remain disappeared.

116. It came to the Special Rapporteur's attention that after the 1988 and 1990 demonstrations, many persons disappeared. Numerous persons told the Special Rapporteur that they assumed that their relatives had been killed, but that the authorities denied any allegations and have never made any statements or taken any action to clarify the fate of these persons or to return the bodies for identification and proper burial. It was alleged several times that many bodies of persons killed by the military during the demonstrations were taken for mass burial in a military intelligence compound near the airport (Yae Kyi Aing) and to the new township, Hlaing Thaya. The Special Rapporteur was requested to encourage investigations into these alleged mass graves to clarify the fates of the disappeared persons.

D. Arbitrary and prolonged detention

117. The Nobel-prize winner, Daw Aung San Suu Kyi is the only person being held under prolonged house detention without trial, under the 1975 State Protection Act. She has been detained since May 1989. It has been reported that her health has suffered and that she recently undertook a hunger strike. Recent reports stated that she would probably be tried after the National Convention and after the new Constitution was drafted under the laws of the new Constitution. The Special Rapporteur was not allowed to see her. High level-authorities told the Special Rapporteur that this was because the law and order needs of the other 43 million inhabitants of Myanmar could not be prejudiced by one person considered important by outside countries or organizations.

118. Other persons in fact have not been arbitrarily detained in the sense that they have been charged with contravention of one of the martial or other emergency laws. In a few cases, persons involved in politics were charged with the commission of a common crime. The Special Rapporteur was told, however, that persons were kept for long periods before being presented before a military tribunal and sentenced.

119. The Special Rapporteur was told that detainees taken before military tribunals were told to plead guilty in order to reduce their sentences. Most told the Special Rapporteur they had refused.

The military tribunals were reportedly set up with one "judge" who did not ask for witnesses, evidence or other testimony. The detainees were allegedly not allowed any counsel or other defence and were never told when they would be brought before a tribunal. Most often, after reading the charges against the person, the judge reportedly read out the sentence. Several persons were reportedly not sentenced until days before their release. The majority of persons who provided testimony to the Special Rapporteur were released under SLORC Order 92/11 in April of 1992. A total of over 1,700 persons are known to have been released under this order. Since December of 1992, reports indicate that arrests and detentions have continued. Among the approximately 30 persons known to have been detained are the following 4 persons: Thein Htun, Moe Kyaw Oo, Naing Ko Ko, Yi Yi Myint (female).

E. Freedom of expression

120. During his visit the Special Rapporteur was pleased to note that several members of the foreign press, including members of a foreign television camera crew were allowed entry into Myanmar. These persons were allowed free access to many public areas and public events such as a foot marathon in Yangon, but were not allowed access to detainees inside prisons, or to border regions, including Rakhine state.

121. Nevertheless, the Special Rapporteur was informed that within Myanmar the written press, radio and television continued to be subject to governmental censorship, and that the distribution of written material was also subject to governmental limitations and control.

122. The Government also told the Special Rapporteur that the foreign press would not be allowed at the National Convention or to be present at the drafting of the Constitution.

123. In July 1989, reportedly hundreds of NLD members distributed leaflets. Many were allegedly detained, but the Special Rapporteur was told that it was not known why, of those detained, six young boys (all eight-year olds) were singled out for sentencing.

124. Persons who were detained were allegedly not able to publish at all after they were released. One actor was allegedly unable to appear in movies after his release.

125. One writer told the Special Rapporteur that all writers were obliged to fill in questionnaires regarding their political beliefs. Those who refused or answered "wrongly" were subsequently restricted from publishing and many were detained.

126. The Special Rapporteur was informed by persons released from prison in 1992 that during their detention they were not allowed any written material, including the State-run newspaper, or material with which to write or non-political literature; they were reportedly also denied access to radios.

127. Contact with foreigners is legally prohibited including receiving or passing information or written material.

F. Situation of Myanmar Muslims of Rakhine state

128. The Special Rapporteur was informed by Governments, specialized agencies and nongovernmental

organizations working in academic settings that Myanmar Muslims of Rakhine state (or Arakan state) comprise approximately 40 per cent of the 3 million inhabitants. He was told that Muslim persons began their migration into Myanmar in the twelfth and thirteenth centuries. A second wave of migration took place in the seventeenth century and a third in the early nineteenth century. This last movement took place while Myanmar, (then Burma) was a colony under British rule. Bangladesh at that time, was part of India and Burma was ruled by greater Indian governance rather than by the authorities in Britain. Movement of persons across what would later become national borders between Bangladesh and India or India and Myanmar was then unimpeded and natural. By the time Burma became an independent Union in 1948, there was a consolidated Burmese Muslim population of Indian/Bangladeshi ethnic origin.

129. Non-governmental sources told the Special Rapporteur that the movement of this group has been restricted since independence. The restrictions on movement prevented them in part from making the initial application for citizenship in 1948, as well as for any category of citizenship since. Because of the restrictions on movement, even identification or residency cards were often unavailable to these Muslim Rakhine.

130. All of the Myanmar Muslims from Rakhine state interviewed by the Special Rapporteur were born in Myanmar. Most said that their parents had been born in Myanmar, but they were not sure about their grandparents' birthplaces. Some of the persons interviewed spoke Burmese. Most spoke a certain Bengali dialect similar to the Chittagonian dialect which is spoken in the Bangladesh region bordering Rakhine state. The dialects are not identical however, and all of the persons interviewed spoke the dialect specific to Myanmar and not Bangladesh. The Special Rapporteur was informed that despite the fact that the language is indicative of historical residency in Myanmar by the Muslim Rakhine, their language is no longer officially recognized by the authorities as one of the "languages of Myanmar". The new nationality law requires that citizens be able to speak one of the officially recognized languages. Under this law, the Rakhine are thus excluded for qualification as citizens.

131. Nevertheless, contradictory information regarding citizenship status was compiled in that most of the persons interviewed said that they had been allowed to vote in the 1990 general elections, a right understood to be reserved for citizens.

132. The Special Rapporteur was told that when Burma became an independent Union, attempts were made to expel some of the Rakhine Muslim population, and the first flow of refugees took place. A large exodus took place in 1978 when a census was carried out and again in 1991 which marked the present mass exodus to Bangladesh.

133. Since that time, it is alleged, the resettlement policies to places other than sites of origin, have disrupted family integrity and curtailed access of this group to land adequate for making a living. The most recent Muslim Rakhine refugee flow, primarily to Bangladesh, began in 1988. At the time of the Special Rapporteur's visit to Bangladesh, there were approximately 250,000 Myanmar refugees in Bangladesh.

134. The Special Rapporteur had occasion to carry out numerous interviews with these refugees in three different refugee camps; nevertheless, due to time limitations, a complete analysis of the demographics was not possible. The Special Rapporteur, however, was able to ascertain that most of the refugee population comes from four Myanmar sub-districts, Buthidaung, Maungdaw, Rathedaung and Akyab all within Rakhine (Arakan) state. Over 95 per cent of the refugees are Muslim, however some Hindu Rakhine are also among this refugee population.

135. According to the information received and carefully reviewed by the Special Rapporteur, in addition to the non-respect for the family unit and lack of land resources due to arbitrary resettlement, the Muslim Rakhine are one of many ethnic minorities in Myanmar who have not been adequately granted civil, political, social, economic and cultural rights commensurate with those people considered "Burmese". Although the Special Rapporteur received information that some places of worship had been destroyed or debased, the composite of evidence carefully reviewed by the Special Rapporteur indicate that the systematic repression of the Rakhine Muslims and other minorities is based upon ethnic and racial intolerance rather than religious intolerance. They, like other ethnic minorities, along the Thai-Myanmar border, have been at high risk of being internally displaced by the army and taken for use as forced porters or forced labourers. These practices carried out by the Myanmar authorities, and most frequently the army, have given rise to the alleged grave violations of the physical integrity rights.

136. The Special Rapporteur received large amounts of direct testimony as well as other well-documented evidence indicating that the forced relocation and forced portering has led to a systematic pattern of torture (including rape) cruel, inhuman and degrading treatment, disappearance of arbitrary execution of Muslim and other Rakhine ethnic minorities by the Myanmar authorities.

137. Almost all of the persons interviewed by the Special Rapporteur indicated their fear of returning to Myanmar without international monitoring not only of their actual return, but of the situation once they have returned. They consistently told the Special Rapporteur that they believed the practice of abduction for forced portering continues, and that as a result, they again may be tortured and perhaps would be killed. The fear of repeated rape during forced relocation or as a result of military reprisals for not finding men for portering, was also cited by most of the women interviewed as a reason for resisting repatriation to Myanmar.

138. The Government stated in its Press Release Number 87 of 14 December 1992, that Myanmar has a "tradition of labour". The press release refers particularly to accusations regarding the plight of the "Bangladeshi people in Myanmar's Rakhine state". Previous information received from the Government by the Special Rapporteur referred to this group of persons as Myanmar Muslims of Northern Arakan state (see Permanent Mission of the Union of Myanmar Press Release No. 83, page 2 regarding religious freedom and tolerance). Press Release No. 87 states that the achievements for all-around rehabilitation in the very short period of reconstruction, are mainly due to the volunteer contribution of labour by all nationalities of Myanmar. It states that "slave labour" has never been experienced in Myanmar and that the voluntary contribution of labour has always been a "noble deed". It continues that. "(O)ur religion (Buddhism) taught us that these deeds are the noblest of all and merit attained from them will surely lead to a longer life leading to the attainment of Nibbana, which is the liberation of both mind and body from all forms of attachment ... If some people think that contributing labour is the same as 'slave labour' that has been forced upon the people, then we must say that they have a lot to learn about our traditions, our culture and way of life here."

IV. LEGAL FRAMEWORK

139. This chapter sets out the sources of law applicable to the situation of human rights in Myanmar. In this regard, the Special Rapporteur took note of conventional obligations incumbent upon Myanmar and obligations derived from international customary law as well as the applicable domestic law particularly the Myanmar Penal Code and Code of Criminal Procedure.

A. International law

Charter of the United Nations

140. The obligation of States to respect the fundamental rights of all persons is embodied in the Charter of the United Nations.

141. Article 55 of the Charter states that the United Nations shall promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. Article 56 of the Charter states that all Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes. Article 2, paragraph 2 states that all Members ... shall fulfil in good faith the obligations assumed by them in accordance with the Charter.

142. Thus, as a Member State, Myanmar is granted the rights of membership under the Charter and has an obligation to cooperate with the United Nations and other Member States in taking progressive measures and joint and separate action in cooperation with the Organization to promote the observance of the human rights as elaborated in the Universal Declaration of Human Rights within the territory of the State of Myanmar.

143. Further specificity to the obligations under the Charter has been provided by, inter alia, the United Nations Declaration on the Elimination of all Forms of Racial Discrimination (proclaimed by General Assembly resolution 1904 (XVIII) of 20 November 1963); the Declaration on the Elimination of Discrimination against Women (proclaimed by Assembly resolution 2263 (XXII) of 7

November 1967), the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (proclaimed by Assembly resolution 36/55 of 25 November 1981); the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted by Assembly resolution 3452 (XXX) of 9 December 1975); the Declaration of the Rights of the Child (proclaimed by Assembly resolution 1386 (XIV) of November 1959); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict (proclaimed by Assembly resolution 3318 (XXIX) of 14 December 1974).

Conventional obligations

144. In addition to its obligations under the Charter of the United Nations, other obligations by Myanmar include those arising under the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, the Slavery Convention of 1926 (as amended by its Protocol of 7 December 1953), and the Convention on the Rights of the Child of 1989.

145. In regard to the Convention on the Rights of the Child, Myanmar deposited, at the time of ratification, a number of understandings and reservations pertaining to fundamental principles, inter alia:

(a) Article 37 on torture, cruel, inhuman or degrading treatment or punishment

"The Union of Myanmar accepts in principle the provisions of article 37 as they are in consonance with its laws, rules, regulations, procedures and practice as well as with its traditional, cultural and religious values. However, having regard to the exigencies of the situation obtaining in the country at present, the Union of Myanmar states as follows:

"Nothing contained in article 37 shall prevent, or be construed as preventing, the Government of the Union of Myanmar from assuming or exercising, in conformity with the laws for the time being in force in the country and the procedures established thereunder, such powers as are required by the exigencies of the situation for the preservation and strengthening of the rule of law, the maintenance of public order (*ordre public*), and, in particular, the protection of the supreme national interest, namely, the non-disintegration of the Union, the non-disintegration of national solidarity and the perpetuation of national sovereignty, which constitute the paramount national causes of the Union of Myanmar.

"Such powers shall include the powers of arrest, detention, imprisonment, exclusion, interrogation, inquiry and investigation."

(b) Article 15 on freedom of association and freedom of peaceful assembly

"The Union of Myanmar interprets the expression 'the law' in article 15, paragraph 2, to mean the laws, as well as the decrees and executive orders having the force of law, which are for the time being in force in the Union of Myanmar.

"The Union of Myanmar understands that such restrictions on freedom of association and freedom of peaceful assembly imposed in conformity with the said laws, decrees and executive orders as are required by the exigencies of the situation obtaining in the Union of Myanmar are permissible under article 15, paragraph 2.

"The Union of Myanmar interprets the expression 'national sovereignty' in the same paragraph as encompassing the supreme national interest, namely, the non-disintegration of the Union, the non-disintegration of national solidarity and the perpetuation of national sovereignty, which constitute the paramount national causes of the Union of Myanmar."

Universal Declaration of Human Rights

146. By resolution 217 A (III) of 10 December 1948, the General Assembly adopted and proclaimed the Universal Declaration of Human Rights "as a common standard of achievement for all peoples and all nations... by progressive measures, national and international, to secure their universal and

effective recognition and observance ...". The Declaration sets out that "Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms". Article 2 of the Declaration further establishes that everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind ...

147. The Universal Declaration of Human Rights is an expression of international concern for human rights and for international cooperation of all States with the United Nations bodies charged with monitoring the "effective recognition and observance" of human rights. In addition, however, the Universal Declaration has now gained customary acceptance in regard to the fundamental principles for the recognition and protection of human rights embodied in the Declaration.

148. Article 3 of the Universal Declaration provides that everyone has the right to life, liberty and security of person. Article 5 stipulates that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 15, paragraph 1, sets out that everyone has the right to a nationality and paragraph 2 states that no one shall be arbitrarily deprived of his nationality ...

149. Article 29, paragraph 2, of the Declaration states that in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

150. As to the rights and freedoms expressed in articles 3 and 5 of the Declaration, nevertheless, there can be no derogation. They pertain to the nucleus of rights universally considered *jus cogens* which may not be limited, curtailed or infringed upon for any reason of national emergency, national security, sovereignty, national unity, public order, health or morality. Article 15 of the Declaration, regarding the right to nationality and the prohibition against arbitrarily creating stateless persons, is gaining customary acceptance as a non-derogable principle.

151. Article 6 of the Declaration states that everyone has the right to recognition everywhere as a person before the law. Article 18 sets out that everyone has the right to freedom of thought, conscience and religion ... Under article 9, no one shall be subjected to arbitrary arrest, detention or exile.

152. Article 19 states that everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to see, receive and impart information and ideas through any media and regardless of frontiers. Article 20 provides that everyone has the right to freedom of peaceful assembly and association and that no one may be compelled to belong to an association.

153. With regard to the administration of justice, article 7 states that all are equal before the law and are entitled without discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of the Declaration and against any incitement to such discrimination.

154. Article 8 states that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

155. Under article 10, everyone is entitled in full equity to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

156. Article 11, paragraph 1 sets out the presumption of innocence and paragraph 2 the proscription on ex-post-facto imposition of the law or of its penalties.

157. These rights and protections are incorporated in the major international and regional human rights instruments. Although Myanmar has not become a party to these international human rights instruments, these principles are also customary in nature although they may be subject to the limitations as allowed by certain states of emergency (see para. 150 above). It is however, understood, as a general principle of law, that derogations by States from their obligations to ensure

fundamental rights and protections to persons within their territory are limited to the time of the public emergency which threatens the life of the nation and subject to the limitations on the state of emergency as prescribed by national constitutions. The derogation must be in proportion to the exigencies of the situation and must not be inconsistent with other obligations undertaken in international law. The derogation may not be applied in a discriminatory manner solely on the basis of race, colour, sex, religion or social origin.

Article 3 common to the Geneva Conventions of 1949 and Customary Law

158. On 24 August 1992, the Union of Myanmar acceded to the four Geneva Conventions of 1949 for the protection of war victims. The treaty obligations undertaken by ratification are not retroactive in nature and may not be applied to actions that allegedly occurred prior to ratification. Treaty obligations binding on Myanmar since ratification, as regards conflicts of an internal nature, derive from common article 3 of the Geneva Conventions.

159. In addition to its treaty obligations, Myanmar was, before ratification of the Geneva Conventions, and continues to be, obliged to respect the relevant rules of international customary law, particularly those concerning the "elementary considerations of humanity" in times of armed conflict as well as in times of peace as expressed by the principles in common article 3.

160. As regards obligations in internal armed conflict, the International Conference on Human Rights held in Tehran in 1968 requested the United Nations Secretary-General, "after consultation with the International Committee of the Red Cross, to draw the attention of States Members of the United Nations to the existing rules of international law on the subject and to urge them to observe that in all armed conflicts, the inhabitants and belligerents are protected in accordance with 'the principles of the law of nations derived from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience'". This clause, known as the Martens Clause, was included in the preamble to The Hague Conventions of 1899 and 1907 concerning the Laws and Customs of War on Land and was then incorporated into the four Geneva Conventions of 1949 (art. 63 of the first, art. 62 of the second, art. 142 of the third and art. 158 of the fourth Geneva Convention).

161. Three customary principles of human rights protection are incorporated in the Martens Clause: (a) that the right of parties to choose the means and methods of warfare, i.e., the right of parties to a conflict to inflict injury on the enemy, is not unlimited; (b) that a distinction must be made between persons participating in military operations and those belonging to the civilian population so that the latter are spared to the extent possible; and (c) that it is prohibited to launch attacks against the civilian population as such.

162. The Martens Clause has acquired a customary character and thus applies independently of participation in the treaties containing it. It is of a non-derogable nature and applies whether or not a state of war has been declared or the state of war is recognized by a party to the conflict. In 1949, the International Court of Justice, in the Corfu Channel case, recognized the customary nature of these humanitarian requirements. It ruled that "elementary considerations of humanity ..." belong to the general and well-recognized principles which have to be observed in peacetime as well as in times of armed conflict (The Corfu Channel Case, Merits, I.C.J. Reports 1949, p. 22).

163. The International Court of Justice expanded upon this doctrine in the Barcelona Traction case of 1970, when it stated that "there are obligations of a State towards the international community as a whole" (case concerning the Barcelona Traction, Light and Power Company Limited, second phase, Judgment of 5 February 1970, I.C.J. Reports 1970, para. 33). It went on to state that these obligations may arise "... also from the principles and rules concerning the basic human rights of the human person" some of which "have entered into the body of general law".

164. As concerns the application of these principles in situations of peace, the International Court of Justice elaborated upon the Corfu doctrine in 1986 in the Nicaragua v. U.S.A. case when it held that

"certain general and well-recognized principles, namely: elementary considerations of humanity, (are) even more exacting in peace than in war" (Nicaragua v. U.S.A., Merits, I.C.J. Reports 1986, p. 114, paras. 215 and 218, citing Corfu Channel, Merits, I.C.J. Reports 1949, p. 22).

165. The fundamental guarantees contained in common article 3 are thus applicable in all situations pertaining in the Union of Myanmar:

"(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

"To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

"(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

"(b) Taking of hostages;

"(c) Outrages upon personal dignity, in particular, humiliating and degrading treatment;

"(d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples".

International Labour Organisation Convention concerning Forced or Compulsory Labour

166. Myanmar is a party to the ILO Forced Labour Convention, 1930 (No. 29), of which article 10 (1) stipulates that "forced or compulsory labour exacted as a tax and forced or compulsory labour to which recourse is had for the execution of public works by chiefs who exercise administrative functions shall be progressively abolished".

167. Article 10 (2) stipulates that where forced or compulsory labour is exacted under the conditions stated in 10 (1), the authority concerned shall be satisfied:

(c) that the work or service will not lay too heavy a burden upon the present population, having regard to the labour available and its capacity to undertake the work;

(d) that the work or service will not entail the removal of the workers from their place of habitual residence;

(e) that the execution of the work or the rendering of the service will be directed in accordance with the exigencies of religion, social life and agriculture.

168. Article 12 sets out that for forced or compulsory labour of all kinds, the maximum period for which any person may be taken in any one period of 12 months shall not exceed 60 days, including the time spent in going to and from the place of work.

169. Article 16 (2) sets out that in no case shall the transfer of workers be permitted unless all measures relating to hygiene and accommodation which are necessary to adapt such workers to the conditions and to safeguard their health can be strictly applied.

170. Article 16 (3) When such transfer cannot be avoided, measures of gradual habituation to the new conditions of diet and of climate shall be adopted on competent medical advice.

171. Article 17 requires that before permitting recourse to forced or compulsory labour for works of construction or maintenance which entail the workers remaining at the workplaces for considerable periods, the competent authority shall satisfy itself that:

"(1) All necessary measures are taken to safeguard the health of the workers and to guarantee the necessary medical care and ..."

"(4) in case of illness or accident causing incapacity to work of a certain duration, the worker is repatriated at the expense of the administration;"

172. Article 18 provides that:

"1. Forced or compulsory labour for the transport of persons or goods such as the labour of porters or boatmen, shall be abolished within the shortest possible period. Meanwhile the competent authority

shall promulgate regulations determining, inter alia, ...

"(b) that the workers so employed shall be medically certified to be physically fit, where medical examination is possible, and that where such medical examination is not practicable the person employing such workers shall be held responsible for ensuring that they are physically fit ...

"(c) the maximum load which these workers may carry ...

"the maximum distance from their homes to which they may be taken ...

"3. The competent authority shall further provide that the normal daily journey of such workers shall not exceed a distance corresponding to an average working day of eight hours, it being understood that account shall be taken not only of the weight to be carried and the distance to be covered but also for the nature of the road, the season and all other relevant factors ..."

173. Exceptions to the definition of forced or compulsory labour for the purposes of the Convention are provided by article 2:

"(a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character;

"(b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;

"(d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;"

174. In cases of labour exacted by the State, falling within this category, the obligations incumbent upon the State of Myanmar by virtue of the Charter of the United Nations, customary legal principles embodied in the Universal Declaration of Human Rights and common article 3 of the Geneva Conventions of 1949 regarding the physical integrity of all persons, remain in effect. They must be adhered to in the treatment of all persons providing labour exacted by the authorities of Myanmar regardless of the classification of such labour.

175. Governmental authorities informed the Special Rapporteur that labour on behalf of the State and particularly portering, was not forced, that it was a right of the Government to exact this labour and was in fact an obligation of all persons in Myanmar to provide labour. The legal authority cited was the 1908 Village Act enacted by the British during the colonial period and said to have been incorporated into the 1947 and 1974 Constitutions, in the sense that all laws or regulations existing prior to the drafting of the Constitutions and not specifically rescinded, are considered still in force.

176. However, the Special Rapporteur was informed by numerous high-level authorities and members of the judiciary as well as the Attorney General, that both the 1947 and 1974 Constitutions had been revoked in toto and that for this very reason, there was no legal authority upon which to effectuate the transfer of governmental power.

ILO Convention concerning Freedom of Association and Protection of the Right to Organise of 1948 (No. 87)

177. In 1955 Myanmar ratified the ILO Convention concerning Freedom of Association and Protection of the Right to Organise of 1948 (No. 87) to the effect that:

Article 2: Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.

Article 5: Workers and employers' organizations shall have the right to establish and join federations and confederations and any such organization, federation or confederation shall have the right to affiliate with international organizations of workers and employers.

Article 8 (2): The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

178. Prior to 1988, by Act No. 6 of 1964 and Regulation No. 5 of 1976, workers in Myanmar were restricted to a unitary workers' organization in contravention of articles 2, 5 and 6 of the ILO Convention (see Government of Myanmar Communication to the ILO Committee of Experts, Report No. 24 pp. 48-49). The Government representative reported to the Committee that since 1988 when the SLORC took power, these regulations have not been formally amended or repealed, but that the unitary trade union structure had been automatically removed and the Act and Regulation had become automatically defunct.

179. This, however, has not resulted in freedom of assembly and freedom to organize trade unions as stipulated by the Convention. No new legislation has been promulgated since 1988 to allow for free workers' assembly and/or organization. SLORC Order 2/88 prohibiting the assembly of five or more persons remains in effect and substantially limits any possibility for freedom of assembly or the right to organize and carry on trade or workers' unions. According to the Government, changes would not occur in this legislation until after the drafting of the new Constitution which, it was said, would contain the appropriate safeguards.

B. Myanmar law relevant to the question of human rights

180. One of the fundamental legal principles is that any law should be: accessible to those to whom it would be applied and to those entrusted with upholding the law and those protecting the rights of persons accused of breaking the law; clear and unequivocal; and equitably applied, i.e., applied without discrimination.

181. Non-governmental sources indicated to the Special Rapporteur that even among professionals including those engaged in the law and among persons who are to participate in the National Convention, there is confusion as to what laws apply. One such law in question is the "incorporation" of the 1908 Village Act on portering into the 1947 Constitution, which states that all laws passed prior to the drafting of the Constitution remain extant if not specifically rescinded. The Constitution was cited to the Special Rapporteur by Government sources as the authority for the continuation of the portering law, despite the fact that the Constitution has been abolished.

Nongovernmental

sources indicated confusion as to whether SLORC Order 1/90 regarding the "leading role" participation of elected officials in the drafting of the Constitution applied. At the time the Order was drafted, all potential elected participants were reportedly ordered to acquiesce in writing to this Order upon threat of detention. The Special Rapporteur was informed that ... persons were arrested for refusing to sign. Government sources told the Special Rapporteur that Order 1/90 remains in effect, yet the interpretation and application of the Order were stated by Government officials in contradictory and confusing terms.

Myanmar Penal Code and Code of Criminal Procedure

182. While judicial guarantees set out in the Constitution, according to the Government, do not apply, the Special Rapporteur was informed by Government authorities that those elaborated in the Code of Criminal Procedure applied in all cases heard in civilian courts even when the detention was carried out under a SLORC Order or emergency regulation.

183. Non-governmental sources indicated however, that in the cases of concern to the Special Rapporteur where the person had been detained for reasons having to do with other than common criminality the judicial safeguards, elaborated below, of the Code of Criminal Procedure are not applied.

184. The Myanmar Penal Code and Code of Criminal Procedure guarantee all persons detained for the commission of a crime for which punishment may be imprisonment for more than one year, transportation or the death sentence, to be charged for the crime committed, to be informed of the charges, to be granted a just and fair trial by a competent court and an appeal to a court in which a

fair and impartial judgement may be had. Only cases for "minor" crimes for which punishment would not exceed one year, may, in certain circumstances, be tried in a summary manner.

185. However, the Special Rapporteur received copies of the relevant SLORC Orders and other emergency laws or provisions still in effect which were the basis for detention in most of the cases of violations reported to the Special Rapporteur.

186. SLORC Order 1/91 prohibits civil servants from participating in politics and their dependants or persons under their guardianship from participating directly or indirectly in activities aimed at opposing the government; 2/88, prohibits the assembly of five or more persons; and 3/90, relating to the right to assemble and campaign, forbids criticism of authorities or the defence forces, insults to SLORC and solidarity of the national races, which may be punishable by up to three years in prison and a fine. Order No. 6/90 of October 1990, bans all unlawful Sangha (Buddhist Monk) organizations except the nine sects of Sanghas and has made action possible against political parties for the "misuse" of religion for political purposes. In addition, the 1962 Printers' and Publishers' Law, as amended by the SLORC in July 1989, remains in effect. Under this law, "legal organizations that have registered and that wish to print and publish documents, books and printed material, will have to register with the Ministry of Home and Religious Affairs and apply for exemption in accordance with the 1962 Printers' and Publishers' Law". All material is prohibited that opposes the SLORC, the regional LORC at different levels, or the Government, insults, slanders or attempts to divide the defence forces, instigates actions that affect law and order and peace and tranquillity or contradicts the orders that have been issued whenever necessary. The 1975 State Protection Act, as amended in August 1991 by the SLORC, remains in effect. It allows the State to detain without trial for up to five years any person "who will do, is doing or has done, an act that endangers the peace of most citizens or the security of the State, or the sovereignty of the State". The 1950 Emergency Provisions Act remains and allows for the imprisonment for up to seven years of any person who either "infringes upon the integrity, health, conduct and respect of State military organizations and government employees", "spreads false news about the Government" or "disrupts the morality or the behaviour of a group of people".

187. In the majority of the cases reported to the Special Rapporteur, the person was tried by a military tribunal in which the safeguards stipulated by the Penal Code and Code of Criminal Procedure did not apply. By SLORC Order No. 12/92, Martial Law Orders 1/89 of 17 July 1989 and 2/89 of 18 July 1989, investing certain military commanders within their respective military regions with executive and judicial powers, were rescinded. The Government informed the Special Rapporteur that none of the persons tried and sentenced before the military tribunals were abolished would be retried by civilian courts. The Government stated that the principle of res judicata applied despite the fact that the trials were summary military trials, but that any person detained and tried subsequent to the rescission of the military tribunals would be tried by a civilian court with all the judicial guarantees of the Code of Criminal Procedure.

Burma Citizenship Law

188. Before 1982, the laws pertaining to citizenship in Myanmar were prescribed by Chapter II, articles 10 of the 1947 Constitution (Union Citizenship Act of 1948). Accordingly, Parliament reserved the right to make such laws as it thought fit in respect of citizenship and alienage and any such law could provide for the admission of new classes of citizens or for the termination of the citizenship of any existing classes. The basic law held that "(T)here shall be but one citizenship throughout the Union ..." Citizenship was deemed to exist for:

- (a) Every person, both of whose parents belong or belonged to any of the indigenous races of Burma;
- (b) every person born in any of the territories included within the Union, at least one of whose grandparents belong or belonged to any of the indigenous races of Burma;
- (c) every person born in the territories included within the Union, of parents both of whom are, or if

they had been alive at the commencement of the Constitution would have been, citizens of the Union;

(d) every person who was born in any of the territories which at the time of his birth was included within His Britannic Majesty's dominions and who has resided in any of the territories included within the Union for a period of not less than eight years in the 10 years immediately preceding the date of the commencement of the Constitution or immediately preceding 1 January 1942 and who intends to reside permanently therein and who signifies his election of citizenship of the Union in the manner and with the time prescribed by law, shall be a citizen of the Union.

189. The 1982 Burma Citizenship Law (Pyithu Hluttaw Law No. 1982-7) supersedes the 1948 Constitution Nationality Laws. The 1982 law establishes that there are three classes of citizens: citizens, associate citizens, naturalized citizens.

190. One high-level Government official told the Special Rapporteur that the three groups were: citizens, associate citizens and foreigners. Another high-level official told the Special Rapporteur that under the 1948 law, a person born of one Burmese parent and one "foreigner" was still a citizen but that under the 1982 law, this person would become an "associate citizen". Those who had applied and qualified for citizenship before 1982, would now become naturalized citizens.

191. Under the 1984 law, citizens by birth are those who are nationals such as Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period anterior to 1185 B.E., 1823 A.D. The Council of State may decide whether or not an ethnic group is national. Every national and every other person born of parents, both of whom are nationals are citizens by birth.

192. The following persons are also citizens:

Persons born of parents both of whom are citizens;

Persons born of parents one of whom is a citizen and the other an associate citizen;

Persons born of parents one of whom is a citizen and the other a naturalized citizen;

Persons born of parents of the above categories, one of these parents having a parent who was either an associate or naturalized citizen.

193. According to the Citizenship Law, applicants for citizenship under the Union Citizenship Act of 1948 conforming to the stipulations and qualifications may be determined as associate citizens by the Central Body. No other standard criteria for this determination is set out.

194. Persons may become naturalized citizens if they are persons who have entered and resided in the State anterior to 4 January 1948, and their offspring born within the State may, if they have not yet applied under the Union Citizenship Act, apply for naturalized citizenship to the Central Body furnishing conclusive evidence. The following categories of persons may also apply for naturalization:

(a) Persons born of parents one of whom is a citizen and the other a foreigner;

(b) Persons born of parents one of whom is an associate citizen and the other a naturalized citizen;

(c) Persons born of parents one of whom is an associate citizen and the other a foreigner;

(d) Persons born of parents both of whom are naturalized citizens;

(e) Persons born of parents one of whom is a naturalized citizen and the other a foreigner.

195. The determination is made by the Central Body. Among the qualifications necessary to become a naturalized citizen is the ability "to speak one of the national languages well". The "national races" and thus the "national languages" are determined by the Central Body. There are registration requirements for the application process to each category of citizenship which require travel out of the villages and perhaps to another State.

196. According to articles 30 (c) and 53 (c), associate and naturalized citizens shall be entitled to enjoy the rights under the laws of the State, with the exception of the rights stipulated from time to time by the Council of State.

197. One Government source informed the Special Rapporteur that associate citizens had all the rights of a citizen by birth except possibly the right to hold land. Foreigners have less business rights and are not allowed to own land. It was not made clear to the Special Rapporteur if this category referred to "naturalized citizens". Other Government sources also told the Special Rapporteur that associate citizens could not own land and that some other differences may apply.

198. No Government official informed the Special Rapporteur of article 8 (b) of the 1984 Burma Act, under which, the Council of State may, in the interest of the State revoke the citizenship, associate citizenship or naturalized citizenship of any person except a citizen by birth.

V. THE NATIONAL CONVENTION FOR DRAFTING A NEW CONSTITUTION AND THE TRANSFER OF POWER TO A CIVILIAN GOVERNMENT

199. Under article 21 (1) of the Universal Declaration of Human Rights, everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

200. Article 21 (3) states that the will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

201. In 1988 the SLORC announced that elections would be held. Two hundred and thirty-three political parties were formed by February 1989. Fifty-three contested the election. The rest either were declared illegal, had boycotted the elections (and were then declared illegal for having boycotted) or could not organize sufficiently to put up candidates, in part, because of the legal restrictions on lawful assembly and freedom to publish and distribute campaign material.

202. On 27 May 1990, general multi-party elections were held. Governmental as well as non-governmental sources told the Special Rapporteur that these elections were held in a free and fair manner. Ninety-three parties contested the elections, of which 27 won seats. Results published by the Government showed that the National League for Democracy (NLD), then headed by the presently detained leaders U Tin Oo (Chairman) and Daw Aung San Suu Kyi (General Secretary), won 392 of the 485 seats contested (80 per cent of the vote). Of those, 11 died (1 while in custody) and over 70 were jailed and/or disqualified. There are 281 remaining representatives with 84 of these potential representatives still under investigation as to their campaign expense accounts or other potential campaign irregularities. At present, the NLD is allowed to send 97 MPs and 5 members of the party to the National Convention.

203. The Shan National League for Democracy (SNLD) had 23 elected representatives. Of these, three died (of natural causes) and two were disqualified by the Election Committee. Eight are still being investigated by the Election Commission.

204. The Rakhine Democracy League won 11 seats; the SLORC-backed National Union Party (NUP) won 10 seats; the Mon National Democratic Front won 5 seats; the National Democratic Party for Human Rights won 4 seats. Four other parties won 3 seats each; 5 political parties won 2 seats each; 12 political parties won 1 seat each and 6 independents won seats, totally 485 seats altogether.

205. Government Authorities informed the Special Rapporteur that the intent of the elections had been misunderstood. Following the mass demonstrations for democracy in 1988, the then Chairman of the SLORC, General Saw Maung, announced the military coup and stated that "the military must first try to solve difficulties and hardships faced by the people and then carry out a general election." It was stated that the purpose of the elections had not been to turn over the Government to the elected party, but to select the persons who would draft the new constitution, after which, there would be a change in government. This turning over of the government would occur only after the new constitution provided a legal basis for doing so.

206. On 27 July 1990 Declaration No. 1/90 stated that a broad-based national conference would be convened so that all factors that should be taken into consideration in drawing up the constitution could be discussed and made available to the drafters of the constitution. The Convention was announced for January 1993.

207. On 24 April 1992, by Declaration No. 11/92, the SLORC announced that there would be meetings with the leading members of the elected parliament from existing legal political parties and the independent elected members of Parliament within two months, for the purpose of convening the National Convention in accordance with Declaration No. 1/90.

208. On 10 July 1992, a coordination meeting for the convening of the National Convention was held. It was chaired by a 15-member SLORC Steering Committee headed by Major General Myo Nyunt, Commander of the Yangon Military Command. Twenty-seven elected members of Parliament from the seven remaining legally-standing parties attended. The rules of procedure were determined by the Steering Committee. After three days, Major General Myo Nyunt announced that a general consensus had been reached that delegates from eight different categories would be invited to participate in the National Convention:

Five delegates from each of the legally-standing political parties;

Delegates who are the elected representatives;

About 200 persons representatives of the different "nationalities" in proportions determined by percentage of population;

Peasants - about 100;

Workers - about 100;

Intelligentsia - about 100;

Public servants - about 100;

Special invitees of the Commission - about 50.

These approximately 650 representatives, totalling about 70 per cent of the overall participants, were to be selected by the SLORC, primarily at the township level by the local SLORC representatives.

209. In total, 702 delegates had been named to the National Convention. The representatives of the seven parties which won seats in the elections and which are the only ones of the original twentyseven which still exist are the NLD, SNLD, NUP, Union Pao National Organization, Lahu National Democratic Party, Mro or Khami National Solidarity Organization and the Shan State Kokang Democratic Party.

210. The Government informed the Special Rapporteur that there would be free discussion at the National Convention within the parameters of the six points determined by the SLORC for discussion:

Non-disintegration of the Union;

Non-disintegration of national solidarity;

Consolidation and perpetuation of sovereignty;

Emergence of a genuine multi-party democratic system;

Development of eternal principles of justice, liberty and equality in the State;

Participation of the military (Tatmadaw) in the leading role of politics in the State of the future.

211. As explained to the Special Rapporteur, the SLORC is responsible for determining and administering the rules of procedure by which the discussions will take place. These rules of procedure have reportedly not yet been specified to the delegates. The SLORC is also responsible for the taking of minutes during the Convention and for preparing the final report to be submitted to the SLORC after the Convention. The SLORC will then convene the Constitutional Drafting Committee.

212. By Declaration 1/90, the SLORC stated that the representatives elected in the multi-party democracy general elections in May 1990, would be responsible for drawing up the new Constitution. According to statements by Government authorities to the Special Rapporteur,

Declaration 1/90 remains extant.

213. In regard to Declaration 1/90, during meetings with various Government officials, the Special Rapporteur was variously informed that the elected representatives would be allowed to take a "leading role", that elected representatives would be allowed to participate in the drafting process in which all opinions expressed in the Convention would be reflected; that they would be allowed a "leading role" but that Constitutional experts as determined and selected by the SLORC would also participate; that participation in the Drafting Committee would be determined on the basis of maintaining the integrity of the State and would be a step in the transition to democracy, but that this determination was a question of internal affairs not to be interfered with by the international community.

214. Non-governmental groups and individuals informed the Special Rapporteur that all elected representatives had been required to sign their agreement to Order No. 1/90. The Special Rapporteur was informed that, several elected representatives and party workers were arrested for refusing to sign.

215. Government officials told the Special Rapporteur that it has not been determined if after the constitution is drafted there will be a referendum to endorse it. No answer was received as to whether a general election will be held to elect the People's Assembly under the new constitution, nor was an answer obtained as to whether the Military Orders and laws instituted by the SLORC would be abolished under the new Constitution. Government sources indicated that these decisions would be taken by the Constitutional Drafting Committee members.

216. The Special Rapporteur was further informed that point number 6 of objectives on the agenda of the National Convention, i.e., the "leading role" of the military (Tatmadaw) in the future government was not an objective agreed to by the elected representatives. The Special Rapporteur was told that it is not clear what role or influence the Tatmadaw is to carry out in the Drafting Committee and how its role in the future, democratic government as defined in the constitution to be drafted was another point of great concern to the elected representatives.

217. The National Convention was announced for January 1993. On 9 January 1993, the National Convention was convened with speeches by the Chairman of the Steering Committee and SLORC member, General Myo Thant. There was no other discussion. Several different national constitutions translated into Burmese were said to have been received for consideration by the delegates. Reports received by the Special Rapporteur indicate that a number of elected representatives decided to attempt discussion as to point number 6 of the objectives, i.e., the "leading role" of the Tatmadaw in the new government. It is reported that the following day, the SLORC announced that the National Convention was to be postponed until February. The delegates were told to return home and not to remain in Yangon. Information received by the Special Rapporteur does not clarify whether these same elected representatives will be allowed to participate when the Convention is reconvened.

VI. CONCLUSIONS

218. The visit of the Special Rapporteur to the Union of Myanmar at the invitation of the Government marked the first time international examination of the situation of human rights in Myanmar has been taken up under a public procedure by the Commission on Human Rights by its resolution 1992/58.

219. The Government facilitated the visit, including travel within the Union of Myanmar to Rhakine state and to all three new townships near Yangon, to the projected site of the new university in Dagon New Township, to Insein Prison, to a youth sports facility, some new highway construction projects and extended many courtesies to the Special Rapporteur.

220. "Full and unreserved cooperation" as required under Commission on Human Rights resolution 1992/58, however, was not extended to the Special Rapporteur. Many persons, including nongovernmental

organizations, private groups and individuals wishing to make contact with the Special Rapporteur in order to provide information relevant to the performance of his mandate, as well as persons whom the Special Rapporteur had requested to see, were prevented from doing so through intimidation and threats on the part of the military intelligence. The Special Rapporteur was not allowed to see any of the political leaders, particularly the Nobel Peace Prize laureate, Saw Aung San Suu Kyi, and elected representatives deprived of their liberty.

221. Myanmar is a Member State of the United Nations and is thus bound by all the obligations of the Charter of the United Nations without selectivity. Myanmar became a party to the Geneva Conventions of 1949 in August 1992 but has not yet become party to the two Additional Protocols thereto of 1977. Myanmar is not a party to the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights.

222. Myanmar is a party to the ILO Forced Labour Convention, 1930 (No. 29) and in 1955 it ratified the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). In regard to Myanmar's compliance with this Convention, at the 79th session of the International Labour Conference held in 1992, the Myanmar Government representative stated that "(T)he new constitution will incorporate the rights of all workers to form their own independent trade unions in conformity with the democratic system." However, it was recalled in that session that the case of Myanmar had been considered the previous year (1991) and that since then, no progress had been made despite the assurances given by the Government representative and that furthermore, "In the meantime, the available information on this subject referred to the extreme degree of atrocities and the unprecedented escalation of violations of human rights committed by the military regime".

223. The Government representative recalled that his country was experiencing a period of transition towards democracy, and asked that his Government be given more time to obtain results. It was then clarified that the availability of the choice of trade union pluralism was an obligation derived from the Convention, that had nothing to do with the political situation, and it was suggested that the Government be asked to take prompt action to correct the situation at the legislative level (see Provisional Records of the International Labour Organisation Conference, 79th session, 1992, pp. 60-61).

224. Myanmar is a party to the Convention on the Rights of the Child of 1989. At the time of ratification, Myanmar deposited a number of understandings and reservations pertaining to article 37 on the prohibition of torture, cruel, inhuman or degrading treatment and article 15 on freedom of association and peaceful assembly. Article 37 pertains to the non-derogable principle of international customary law which prohibits torture, cruel, inhuman or degrading treatment in all circumstances regardless of the political system, times of political, social or economic transition or threats to the non-disintegration and national sovereignty of a State. Furthermore, when taking into consideration that these reservations and understandings are in the context of the treatment of children, they must be seen as absolutely contrary to the object and purpose of the Convention.

225. In regard to the understandings and reservations deposited on freedom of association and peaceful assembly, it should be taken into account that the "laws" considered applicable in the restriction of these rights are martial laws and other emergency orders imposed by the military Government in order to protect the "supreme national interest, namely the non-disintegration of the Union, the non-disintegration of national solidarity and the perpetuity of national sovereignty". These concepts have been repeatedly invoked by the Government to restrict free participation in the political process and in the transition to a democratic, civilian government. In the context of this Convention, these restrictions are also to be imposed on children. For these reasons, the

understandings and reservations in regard to article 15 should also be considered as contrary to the object and purpose of the Convention.

226. Many domestic laws contravene the basic underlying principles of jurisprudence. As a general principle, the laws of a country should be clear, unequivocal and consistent, accessible to the public and equitably applied. Various SLORC Orders including Order No. 1/90 pertaining to the participation of the elected representatives in the Constitutional Drafting Committee, and most particularly, the 1982 Citizenship Law, have been inaccessible to those to whom they would be applied, they have been vague, randomly interpreted and arbitrarily applied. Government authorities themselves, in explaining the law to the Special Rapporteur proffered contradictory interpretations. Lawyers and elected representatives told the Special Rapporteur that they did not have any idea which laws and orders were applied, how they were applied or to whom they applied. The new Citizenship Law provides a striking example of discriminatory application. The Law, which was not actually applied until 1988 (the year the new flow of Rakhine refugees began to Bangladesh) jeopardizes in particular the status of Myanmar Muslims of Rakhine state. Historically, the Rakhine Muslims have been unable to obtain nationality or residency status identification cards and thus cannot now prove any kind of residency or previous nationality status. Secondly, under this new law, persons must prove that they have Burmese nationality back to all eight great-grandparents. The Special Rapporteur was informed that these provisions of the law were directed primarily at the Rakhine Muslim population to forbid them from ever gaining nationality or associate nationality (a category of second-class citizenship). The Special Rapporteur has concluded that the effect of this law is to create conditions which promote statelessness. Categories of persons at high risk of becoming victims of human rights violations may create flows of refugees which overburden other countries and create threats to peace and tranquillity within the region.

227. In regard to restrictions on personal freedoms inter alia, freedom of expression, including the freedom to receive and impart information and the right of peaceful assembly, according to testimony received by the Special Rapporteur, violations occurred primarily as a result of attempts of citizens to participate freely in the political process and the transition to the democratically elected civilian government. Peaceful assembly of five or more persons, publication and distribution of political or social ideas, literature or ideas critical of the Government or the military, have been systematically repressed.

228. The Special Rapporteur received numerous reports of violations of physical integrity rights. Detentions without minimum guarantees for persons under custody, torture, cruel, inhuman or degrading treatment, disappearances and arbitrary execution have been carried out by the Myanmar authorities. The amount of written and oral testimony received by the Special Rapporteur was copious. Apart from a small amount of written information which was discounted because the Special Rapporteur was unable to independently verify the allegations, the testimony compiled was consistent. It formed the basis for the Special Rapporteur's assessment that these physical integrity violations in Myanmar have arisen primarily in three major contexts: attempts by citizens to participate freely in the political process and the transition to the democratically-elected civilian government, forced portering and forced labour and the imposition of oppressive measures directed at ethnic minority groups.

229. According to information received, some of these violations have been occurring for many years; nevertheless, the evidence compiled by the Special Rapporteur indicates that the violations have not only continued but have increased over the period of the four years beginning on 18 September 1988 when the SLORC took over as the military Government.

230. In regard to summary executions, although the death penalty is permitted under Myanmar law, no death sentence has been carried out since 1988. On 6 September 1992, military tribunals were revoked and on 1 January 1993, all death sentences passed by civil or military courts or tribunals

between 18 September 1988 and 31 December 1992 were commuted to transportation for life (life imprisonment).

231. According to information received by the Special Rapporteur, Myanmar authorities were responsible for carrying out arbitrary executions, death under custody and death due to torture within the context of armed conflict. This category of violations would include particularly torture (including rape) and arbitrary executions of persons during forced relocation of entire villages by the army. Other such violations included acts of reprisal by the military and torture or execution of persons suspected of being insurgents or giving aid to insurgents. Torture and death of porters by the military have also been prevalent. The ethnic minority groups, including the Shan, Karen, Karenni, Mon and the Rakhine Muslims were victims of these violations. Deaths of political leaders or students due to torture or cruel and inhuman conditions while under custody, however, occurred in circumstances unrelated to any armed conflict.

232. Hundreds of disappearances occurred when persons were taken from villages for forced portering, particularly from the Shan, Mon and Rakhine states. Dozens of Rakhine Muslim women told the Special Rapporteur that their husbands had been taken away by the military for forced portering and had never returned. In addition, many detentions of elected representatives, political leaders, students or other persons detained after the 1988 and 1990 demonstrations, began as disappearances. The torture reported of these persons occurred primarily during the period before the acknowledgement of the detentions by the Government. Acknowledgement was in most cases made after formal sentencing, which in some cases did not take place until days before the person was released. After the 1988 and 1990 demonstrations, thousands of persons were killed and many who never returned home were presumed by their families to have been killed by the military. The authorities have denied all such allegations and have not taken any steps to clarify the fate of these persons. It has been alleged that the bodies of hundreds of these persons were buried in mass graves in a military site near the airport and in Hlaing Thaya New Township where access is only possible by ferry.

233. Regarding the treatment of porters, torture, cruel, inhuman or degrading treatment, disappearance or arbitrary execution occurred while porters were forcibly under the power of the Myanmar army. Some of the violations, such as placing porters weighted down with loads of 45 kilogrammes or more on the front lines, occurred in conditions of armed conflict. But other allegations of violations of these physical integrity rights of porters occurred while under the power of the authorities of Myanmar outside of armed conflict situations. These reports were carefully verified by the Special Rapporteur in accordance with standard United Nations procedures.

234. Dozens of escaped porters told the Special Rapporteur that they had been tortured and had witnessed other porters being tortured or killed during forced labour and portering either for development projects or for the military. They told the Special Rapporteur that persons from villages were abducted for portering. Village headmen were forced to round up persons for the military. Persons were transported in cruel, inhuman or degrading conditions, beaten if weakened by exhaustion, disease and exposure and then often left to die.

235. In the case of the Myanmar Muslims of Rakhine state, testimony and information evaluated strongly indicate, that they have been singled out as objects of these physical integrity violations. As a result, approximately 250,000 Rakhine Muslims have been forced to flee across the border into Bangladesh as refugees. The Special Rapporteur was told by the Government that not one Myanmar Muslim from Rakhine state had fled Myanmar because of ill-treatment. One official suggested that they had been lured across the border by subversive elements and by the promise of international aid. Another Government authority stated that none of the persons in the Bangladeshi refugee camps had come from Myanmar and that they had voluntarily gone there from Dhaka, Bangladesh.

236. Between 7 and 14 December 1992, when the Special Rapporteur visited Myanmar, approximately 1,700 of these persons had returned (without international supervision) to Myanmar.

As of this writing, over 17,000 have now been returned. International humanitarian organizations and members of the international community have expressed serious concern that the repatriations have not been carried out under conditions that are believed to have been voluntary, dignified or providing safety. Monitoring of the conditions of safety of these returnees is not being permitted by the Myanmar Government. This has given rise to fears of a resurgence of cyclical repression of these Myanmar Muslims as occurred at the time of independence in 1948, in 1978 when a census was carried out leading to the flight of 200,000 Rakhine to Bangladesh, and again in 1991 which gave rise to the present mass exodus to Bangladesh.

237. In regard to detention of political leaders and other persons attempting to participate freely in the political process, it was impossible for the Special Rapporteur to determine how many persons in this category remain in detention, but it is believed that there remain scores of persons still in detention without any of the judicial safeguards considered as a minimum standard by the international community. Among these is the Nobel Peace Prize recipient, Daw Aung San Suu Kyi, who was detained without trial in 1989 under the 1975 State Protection Act. The Act was then amended in August of 1991 when her term of detention had almost expired, in order to allow for prolongation of her detention.

238. The law was applied in an ex-post facto manner in contradiction to international legal standards. Recent reports stated that she would be released after the National Convention and after the Constitution was drafted and the new government had taken charge. Although over 1,700 persons were released under SLORC Order No. 11/92 in April 1992, the Special Rapporteur has received confirmed reports that new detentions of political leaders have taken place in 1993.

239. The National Convention preparatory to the drafting of the constitution was convened on 9 January 1993. After one and a half days the Convention was postponed reportedly because some elected representatives were preparing to bring up the question of the "leading role of the Tatmadaw (army) in the new government". Several persons were reportedly arrested for having distributed written material.

240. The National Convention was reconvened on 1 February. Discussion on the constitution is taking place under a panel of 45 chairmen elected by the 8 groups represented as delegates. Of these chairmen, only one is a member of the National League for Democracy which won 80 per cent of the vote in the national elections. It has been announced that the universities will reopen on 19 February 1993.

241. On the basis of the visit to Myanmar and the well-documented information received, the Special Rapporteur has assessed that serious repression and an atmosphere of pervasive fear exist in Myanmar. He found that there is a lack of accountability on the part of the Government and an absence of legal and administrative protection and/or recourse available for victims and families of victims of human rights abuses. In the light of these findings, the Special Rapporteur recommends that the Commission on Human Rights continues its close monitoring of the situation of human rights in Myanmar and extend the mandate of the Special Rapporteur to report to the Commission at its fiftieth session.

VII. RECOMMENDATIONS

242. In the light of the above conclusions, the Special Rapporteur submits the following recommendations for the consideration of the Government of Myanmar:

(a) Although the Special Rapporteur believes the Government should give effect to the political will of the people by transferring power to the freely and fairly elected civilian government; nevertheless, he is of the opinion that implementation of the following non-political, human rights recommendations should not be delayed by, nor subordinated to, considerations of political transition.

(b) The Government of Myanmar should fulfil in good faith the obligations it has assumed under Articles 55 and 56 of the Charter of the United Nations "to take joint and separate action in cooperation with the Organization for the achievement of ... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language and religion." Other rights under the Charter should not be invoked as limitations on these obligations assumed erga omnes.

(c) The Government of Myanmar should consider accession to: the International Covenants on Human Rights; the Convention against Torture, Cruel, Inhuman or Degrading Treatment or Punishment and to the two protocols additional to the Geneva Convention of 1949. In addition, it should immediately withdraw its reservations and understandings to articles 15 on freedom of association and 37 regarding the prohibition of torture of minors, of the Convention on the Rights of the Child.

(d) The system of law, both constitutionally and legislatively, in Myanmar should be regularized to be accessible to those to whom it would be applied, to be clear and unequivocal and to be equitably applied. The ongoing state of emergency should be lifted and martial law in the form of SLORC Orders and other emergency legislation should cease to be the basis of law.

(e) Myanmar law should be brought into line with accepted international standards regarding protection of the physical integrity rights. Among these international standards are the right to life, protection against disappearance, prohibition of torture, cruel, inhuman or degrading treatment, providing humane conditions for all persons under detention and granting the minimum standard of judicial guarantees, as accepted by the international community, in order to further ensure the physical integrity of all persons under all forms of detention. Freedom of expression should be allowed including a free press and media. The Special Rapporteur recommends that constitutional and international legal experts from different regions be invited by the Government of Myanmar to share their expertise with Myanmar in the drafting of the new constitution and other legislation.

(f) The Government should take measures to comply with its obligations under ILO Convention No. 29 by eradicating the practice of forced portering and other forced labour which has provoked systematic torture, cruel inhuman and degrading treatment or punishment, disappearances and mass arbitrary executions. It should also take immediate steps to amend and implement legislation in accordance with ILO Convention No. 87. In compliance with this Convention, it should allow for the existence and practice of free trade unions and free association for the purpose of participation, in the civil and political as well as economic, social and cultural life of the country.

(g) The 1982 Citizenship Law should be revised or amended to abolish its over-burdensome requirements for citizenship. The law should not apply its categories of second-class citizens in a manner which has discriminatory effects on racial or ethnic minorities particularly the Rakhine Muslims. It should be brought in line with the principles embodied in the Convention on the Reduction of Statelessness of 30 August 1961. The Union of Myanmar should consider ratification of both this Convention and the Convention relating to the Status of Refugees of 28 July 1951 and its Additional Protocol of 31 January 1967.

(h) In order to promote repatriation of the Myanmar Muslims and other minorities, the Government should create the necessary conditions of respect for their human rights. The Government should assure, in law and practice, their safe return and resettlement in villages of origin. To this end, it should also promote their complete civil, political, social, economic and cultural participation in Myanmar without restriction or discrimination due to status.

(i) The Special Rapporteur recommends, in the light of the seriousness of the refugee and repatriation problem, and the grave threat this situation poses to the physical integrity of Myanmar ethnic and racial minorities as well as to the peace and security in the region, that an international human rights monitoring team, in conjunction with the mandate of the Special Rapporteur, be allowed access to the border areas. In addition, this team should be allowed access to the sites of

[illegible]