

COLLECTED REPORTS TO THE UN GENERAL ASSEMBLY BY THE SPECIAL RAPPORTEURS ON THE SITUATION OF HUMAN RIGHTS IN MYANMAR

Sr Tomás Ojea Quintana (2008-)

Professor Paulo Sergio 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) by the UN Special Rapporteurs on Myanmar.

Special Rapporteurs are independent experts appointed by the Commission on Human Rights (now the 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 Paulo Sergio Pinheiro.

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 over 12 years 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 Commission on Human Rights/Human Rights Council are intended to facilitate searching of the reports as a body. Since they are rather large documents, they are mostly presented in Text. Text does not permit tables, 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.

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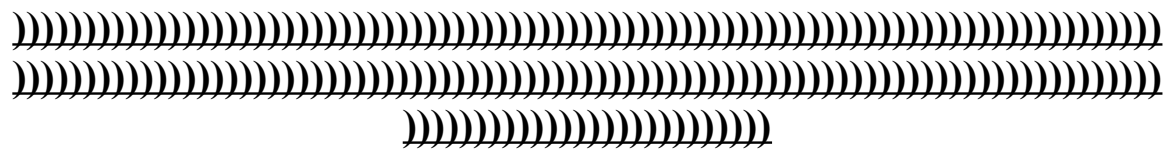
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**Promotion and protection of human rights:
human rights situations and reports of special
rapporteurs and representatives**

Situation of human rights in Myanmar*

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, in accordance with paragraph 6 of General Assembly resolution 62/222.

* This report was submitted after the deadline so as to include the most recent developments.

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

Summary

In its resolution 1992/58, the Commission on Human Rights established the mandate on the situation of human rights in Myanmar, which was then extended by the Human Rights Council in its decision 1/102 and resolution 5/1.

In March 2008, by its resolution 7/32, the Council extended the mandate for one year. On 26 March 2008, Tomás Ojea Quintana (Argentina) was appointed as the new Special Rapporteur, and he officially assumed the function on 1 May 2008.

Following a request for a visit from 3 to 13 August 2008, on 9 July the Special Rapporteur received a positive response from the Government of Myanmar to undertake a mission to that country from 3 to 7 August 2008. The Special Rapporteur would like to thank the Government of Myanmar for its hospitality and the cooperation he received during his first mission to the country. This visit was mainly aimed at establishing working relations with the authorities, to meet with civil society and also with those who do not enjoy their fundamental rights. The programme of the visit is annexed to the report.

The present report is submitted pursuant to General Assembly resolution 62/222. The first part focuses on the activities and programme of work of the Special Rapporteur.

The second part of the report concentrates on substantive issues and elaborates on those related to the protection of human rights in the context

of the new Constitution; and the question of participation in the democratic process and organization of the 2010 elections; the right to assembly and right to freedom of opinion and expression and their formulation in the new Constitution; and the question of international humanitarian law and protection of civilians, as well as the situation of specific groups such as ethnic groups, women and children. The Special Rapporteur further elaborates on the mechanisms in place to ensure maximum protection in the context of natural disaster cyclone Nargis, and the living conditions, sustenance and its human rights implications. Finally, the Special Rapporteur discusses developments that have taken place in international cooperation and that relate to human rights issues pertinent to his mandate and the environment for a strengthened cooperation on the promotion and protection of human rights in the country. In his recommendations, the Special Rapporteur includes four core human rights elements for paving the road to democracy in Myanmar.

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I. Introduction

1. The mandate of the Special Rapporteur on the situation of human rights in Myanmar was established in 1992 by the Commission on Human Rights resolution 1992/58. In March 2008, by its resolution 7/32, the Human Rights Council extended the mandate for one year. On 26 March 2008, Tomás Ojea Quintana (Argentina) was appointed as the new Special Rapporteur and he officially assumed the function on 1 May 2008. The present report is submitted in accordance with General Assembly resolution 62/222.

2. Upon assuming the mandate, the Special Rapporteur established contact with the Government of Myanmar through its Permanent Mission at Geneva. In a letter of

6 May 2008, he presented his sympathy to the Government and people of Myanmar regarding the disaster caused by cyclone Nargis.

3. On 3 July 2008, the Special Rapporteur wrote again to the Permanent Representative to announce his intention to conduct a visit to Myanmar from 3 to

13 August 2008. He enclosed the official terms of reference for fact-finding missions by special rapporteurs/representatives of the Commission on Human Rights (E/CN.4/1998/45, appendix V dated 20 November 1997) as applicable to his visit. In addition to the capital city Naypyitaw, the Special Rapporteur expressed his intention to visit Mandalay, Kayin State, Rakhine State and Yangon. In his communication, the Special Rapporteur requested that the Government facilitate the organization of meetings with Government officials; representatives from the political parties and ethnic groups; representatives of the civil society organizations both national and international working in the country; religious groups; and the United Nations country team and the diplomatic community in the country. He also mentioned his intention to visit prisons and to meet in private with a number of prisoners of conscience.

4. On 9 July 2008 the Special Rapporteur received a letter from the Permanent Mission of Myanmar at Geneva inviting him to visit the country from 3 to 7 August 2008. The Special Rapporteur would like to thank the Government of Myanmar for its hospitality and the cooperation he received during his first mission to the country. This visit was mainly aimed at establishing working relations with the authorities, to meet with civil society and also with those who do not enjoy their fundamental rights. The programme of the visit is annexed to the report.

5. Building on the information from his first report to the Council and the

findings of his first visit to Myanmar, the present report focuses on the main human rights issues, taking into consideration the main areas of concern expressed by the General Assembly in its resolution 62/222.

6. Finally, the Special Rapporteur would like to extend his sincere thanks to the Office of the United Nations High Commissioner for Human Rights, in particular at Geneva, Bangkok and New York, for assisting him in discharging his mandate.

II. Activities and programme of work of the Special Rapporteur

7. The Special Rapporteur presented his first report (A/HRC/8/12) to the Human Rights Council in June 2008. While in Geneva, he met with representatives of the

Permanent Mission of the Union of Myanmar to the United Nations and held consultations with representatives of Member States, officials of United Nations agencies, representatives of civil society organizations and members of the academic community.

8. The Special Rapporteur flagged to the Council that, in discharging his mandate, he would like to cooperate with and assist the Government of Myanmar in its efforts to promote and protect the human rights of the people of Myanmar. The Special Rapporteur said that he would highlight shortcomings with a view to assisting the authorities to remedy them.

9. The Special Rapporteur sees as the primary objective of his mandate as ensuring effective ways to engage with the authorities to assist the latter in achieving improvements in the protection and promotion of the human rights of the people of Myanmar. This can be done through technical advice and guidance for the establishment of policies, legislation, institutions and structures concerning the protection of human rights in the country.

10. One of the main requirements for achieving this objective is the carrying out of regular visits to Myanmar and frank dialogue with the authorities and civil society.

11. The Special Rapporteur considers his first visit to Myanmar to have been fruitful, since the objective was to establish positive working relations with the authorities, meet with civil society and also with those who do not enjoy their fundamental rights and/or are victims of human rights violations. The Special Rapporteur visited areas affected by cyclone Nargis and took note of the progress made in the reconstruction phase; his visit to Kayin State was cancelled, owing to bad weather conditions. The Special Rapporteur had two constructive meetings with the Government's Human Rights Group, during which it was agreed that the Special Rapporteur would present four core human rights elements that were indispensable for paving the road to democracy. The four core human rights elements are also reflected as recommendations in the present report.

12. The Special Rapporteur would like to highlight the fact that Myanmar is going through a unique moment in its political history. If elections in 2010 are prepared and conducted in an atmosphere in which human rights are fully respected, the process will be credible, resulting in progressive achievement of democratic values. In this regard, the Special Rapporteur requests the full cooperation of the Human Rights Council, as well as the good offices of the Association of Southeast Asian Nations (ASEAN) and other relevant neighbouring countries of Myanmar, to support him in discharging his mandate, and to assist the Government of Myanmar to ensure that the completion of the seven-step road map will be meaningful, will respect human rights, and will entrench democratic values for the

country and the people of Myanmar.

13. The Special Rapporteur will continue his regular contacts with the Permanent Mission of Myanmar to the United Nations Office at Geneva and in New York. He will share his findings with the United Nations High Commissioner for Human Rights and the Office of the Secretary-General.

III. Human rights issues

14. Myanmar is party to only two of the core international human rights instruments, namely, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women.

15. However, as a Member State of the United Nations, Myanmar is bound by the provisions of the Universal Declaration of Human Rights and the Government has the obligation to ensure full enjoyment for the people of Myanmar of those rights proclaimed therein. These are fundamental rights, innate to every human being, regardless of one's origin, whether from East, West, South or North. This was why the United Nations General Assembly, a melting pot of all cultures and backgrounds, adopted the Universal Declaration on 10 December 1948.

16. Important developments since the last report to the General Assembly include the finalization of the new Constitution in February 2008 and its adoption through a referendum in May.

17. The next step in the road map for national reconciliation and democratic transition is the election in 2010. As stated in the Universal Declaration of Human Rights, the will of the people shall be the basis of the authority of the Government. The right to freedom of peaceful assembly and association, as well as the right to freedom of opinion and expression, are fundamental rights to be respected in the process towards the establishment of a solid and reliable democracy. However, full enjoyment of those rights remains outstanding in Myanmar, according to reliable reports on the extension of detentions and/or new arrests of political activists.

18. Another important development concerns the protection of human rights and humanitarian assistance during natural disasters. The devastating cyclone Nargis, which struck Myanmar on 2 and 3 May 2008, made landfall in the Ayeyarwady Division. Some 84,537 persons were reported killed, and 53,836 disappeared. A total of 2.4 million people were reportedly affected by this natural disaster. The Government bears main responsibility for addressing the human rights challenges posed by the disaster; this includes cooperation with the international community.

19. Protection of civilians during armed conflict also requires in-depth consideration and respect for international humanitarian law has to be imperative for all parties involved in the conflict. Ethnic minorities must enjoy human rights without discrimination.

A. Human rights in the new Constitution and the full enjoyment of fundamental freedoms

20. On 19 February 2008, the Government announced that the draft

Constitution had been finalized and on 9 April, it was announced that a referendum on the adoption of the new Constitution had been scheduled for 10 May 2008. General elections are scheduled to be held in 2010.

21. Notwithstanding the recent cyclone, the Government proceeded with the referendum, as had been announced by the commission responsible for holding it, in its statement 8/2008. On 10 May, the referendum was held in all states and divisions, except for 40 towns in Yangon Division and 7 towns in Irrawady Division that had been hit by cyclone Nargis. In those 47 towns, the referendum was held on 24 May. The head of the Commission for holding the Referendum, Aung Toe, 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.

21. The National League for Democracy (NLD) publicly dismissed the national referendum on the adoption of the draft Constitution stating that the process had not been inclusive and on 17 May, it 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.

23. The Special Rapporteur has received allegations of irregularities surrounding the holding of the referendum. Those included, inter alia, the distribution of advance ballots, intimidation of villagers to secure a "yes" vote, issuance of a temporary registration card in Rakhine state, solely for participation in the referendum, permitting heads of family to vote for the whole family, employees in factories and other enterprises asked to vote in favour, and victims in cyclone-affected areas being incited to vote in favour by distributing aid to them. It was also brought to the attention of the Special Rapporteur that, rather than each polling office announcing its results, the Commission for Holding the Referendum was the only body tasked with the announcement of results and that was done at the national level.

24. During his mission, the Special Rapporteur was informed by the Commission for Holding Referendum that free campaigning either in favour or against the approval of the new State Constitution was not permitted. The Special Rapporteur asked about the possibility of the Government issuing a comprehensive report on how the referendum had been held, as recommended in his report to the Human Rights Council, and the response was that all information concerning the referendum had already been released.

25. The prospect of the country becoming a democratic State will depend

on each of the remaining steps of the road map being conducted in a democratic and inclusive manner. The Special Rapporteur recommends to the Government of Myanmar four core human rights elements that are indispensable for paving the road to democracy, to be implemented before the elections of 2010.

26. During his meeting with the National Convention, the Special Rapporteur discussed the provisions of the new Constitution guaranteeing fundamental rights for the people of Myanmar, including chapter I on “State Fundamental Principles” and chapter VIII on “Citizenship, Fundamental Rights and Duties of Citizens”.

27. However, the Special Rapporteur notes with concern that a number of existing domestic laws do not comply with those constitutional provisions. In that regard, he recommends to the Government that it initiate the revision of laws to ensure compliance with the constitutional provisions and international human rights standards.

28. The Special Rapporteur would like to stress that, according to the international obligations of Myanmar, exception clauses in the new Constitution which may limit the enjoyment of human rights for reasons of State security, public order, prevalence of law, community peace, morality or any other reason, shall (a) be defined by law; (b) be imposed for one or more specific legitimate purposes; and (c) be necessary for one or more of these purposes in a democratic society, including proportionality. Any limitation which does not follow these requirements and jeopardizes the essence of the right with vague, broad and/or sweeping formulas, would contravene the principles of legality and international human rights law.

29. At his meeting with the National Convention, the Special Rapporteur was told that an English translation of the new Constitution was under preparation, and that it would be available very soon.

B. Participation in the democratic process: the road to the 2010 elections and the situation of prisoners of conscience

30. Articles 19, 20 and 21 of the Universal Declaration of Human Rights provide for freedom of opinion and expression, of peaceful assembly and association and the right to take part in the government.

31. In January 2007, the Government of Myanmar announced that it had decided to release more than 40 prisoners of conscience. However, in the meantime, the Special Rapporteur received reports of new arrests of political and civil rights activists. As of 10 August 2008, and according to

reliable sources, some 2,000 political and civil activists were in detention in Myanmar.

32. 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 have called into question the openness of the environment in which the referendum was held, given the fact that any opposition to the referendum was expressly proscribed. In the new path towards the elections scheduled for 2010, a number of legal reforms are required for a genuine democratic election. This will include lessons learned from the referendum process, such as effective ways to guarantee, among other rights, the full respect for the anonymity of voters, free campaigning by candidates and free access by voters to information.

33. In this context, the situation of the General Secretary of NLD, Aung San Suu Kyi, and in particular her house arrest, are issues of particular concern. According to Opinion No. 2/2007 of the Working Group on Arbitrary Detention, the Government argued that Aung San 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. The Government had applied the 1975 State Protection Act. On 25 May 2007, the Government extended Aung San Suu Kyi's arrest for another year, reaching the five-year limit provided for by law. In May 2008, the Government of Myanmar exceeded the limit by again extending Aung San Suu Kyi's arrest with no new evidence or allegations against her, and with no legal basis whatsoever. A new petition to the Working Group on Arbitrary Detention has been submitted.

34. In his meetings with the relevant authorities, the Special Rapporteur reiterated the right to legal counsel and the State's obligation to provide the suspect with one and to guarantee access to the legal counsel. He notes with satisfaction that thereafter, Aung San Suu Kyi met with her lawyer after five years, and he expects that she will meet with her lawyer on a regular basis and as often as deemed necessary by either party. According to reports, and as of 3 September 2008, Aung

San Suu Kyi and her lawyer had met three times to discuss a lawsuit against her continuing detention. The Special Rapporteur hopes that, if such a case is filed, it would be examined in a transparent and impartial manner, as is expected from any independent judiciary. The Special Rapporteur informed the Human Rights Council in June 2008 that Aung San Suu Kyi's detention was in contravention of articles 9, 10 and 19 of the Universal Declaration on Human Rights, according to which no one shall be subjected to arbitrary arrest or detention; everyone is entitled to a fair and public hearing by an independent and impartial tribunal; and everyone has the right to freedom of opinion and expression.

35. During his mission, the Special Rapporteur met with U Win Tin, the longest-serving prisoner of conscience in Myanmar, who has spent 19 years in prison. He had had a hernia operation in January 2008, and suffers from heart problems. He has been sentenced three times, to a total of 21 years' imprisonment. U Win Tin was sentenced in 1995 to an additional ten years for writing to the United Nations about prison conditions.

36. The Special Rapporteur also met with U Gambira, co-founder and spokesperson for the All Burma Monks Alliance, which was instrumental in getting monks onto the streets during the so-called "Saffron Revolution" phase of protests in September 2007. U Gambira was arrested on 4 November 2007 in Singaing township in Mandalay division. He was wearing a blue shirt and pair of pants, as, upon his arrest he had been disrobed by the authorities. The Special Rapporteur has been informed that, since his visit, U Gambira has been charged with ten different violations of laws, including violations of article 505 (A) and (B) of the State Offence Act, article 13/1 of the Illegal Border Crossing Act, article 17 (1) of the Unlawful Association Act and article 5 (j) of the Emergency Protection Act, article

303A of the Electronic Act and article 6 of the Organization Act for inciting a riot, causing public alarm, bringing the Sasana (Buddhism) into disrepute and violating the press law. At the time of finalization of the present report, the Special Rapporteur was informed that, on 4 September 2008, U Gambira was brought before the court. His lawyers, who had filed a petition on his behalf to allow him to wear his robe in prison, were not allowed entry to the courtroom to present and defend the case. This is in breach of section 340 of the Criminal Procedure Code, and of section 40 of the Prison Act providing for access to a lawyer.

37. The Special Rapporteur also met Thurein Aung and Kyaw Kyaw, who were arrested at the American Centre on Labour Day on 1 May 2007. He also met with Su Su Nway, an NLD member who was arrested on 13

November 2007.

38. The Special Rapporteur was informed that a number of political and civil activists were arrested on 8 August 2008, including Myint Aye, leader of the Human Rights Defenders and Promoters Group, who, at the time of writing of the present report, was in incommunicado detention. Myint Aye had been subject to previous arrests in the past. The Special Rapporteur reiterates his call for freedom of expression and opinion, and regrets the arrests of human rights defenders.

39. On 4 June 2008, the Special Rapporteur was informed of the arrest of Mr. Zarganar, a famous comedian in Myanmar, who had been leading some of the relief efforts after cyclone Nargis. According to information received, some seven police, led by the Yangon Western District police chief and the local council chairman, went to Mr. Zarganar's house just before 8 p.m. on 4 June, searched his house and took him away. In his meeting with the Chief of Police, the Special

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Rapporteur enquired about Mr. Zarganar and was told that he was being detained at Insein prison, and had been taken to court on 30 July 2008. He had been taken to court a second time on 7 August 2008 and had been charged with eight alleged offences under the Emergency Provisions Act, section 5 (j) and section 17 (a).

40. On 19 June 2008 a number of NLD members were reportedly arrested in Yangon while releasing sparrows and doves to mark the 63rd birthday of Aung San Suu Kyi.

41. The Special Rapporteur regrets that the majority of prisoners of conscience are detained permanently in solitary confinement, which is against international human rights law, and may also be considered in breach of the new State Constitution, which establishes in article 44, that “there is no right to prescribe punishments that violate human dignity”. He also regrets the ongoing practice of charging political and civil activists with unrelated alleged offences as a pretext for their detention.

42. The Special Rapporteur takes note of the fact that the majority of prisoners rely on food and medicine delivered by their families. In this regard, the Special Rapporteur has received allegations that prisoners are intentionally transferred to prisons far from their hometowns, in order to make it difficult, or in some cases impossible, for families to ensure regular and frequent visits to their imprisoned relatives. The Special Rapporteur has also received reports that in some prisons, inmates are denied adequate medical treatment and that Thet Win Aung, a student leader, died in prison due to lack of treatment for malaria. Reports of prisoners having been sent to hard labour camps have also been received.

43. It is also reported that U Ne Win, the 60-year-old NLD secretary, who was arrested on 27 September 2007, suffers from hypertension and heart problems. However, he does not receive any proper medical treatment, and has to rely on medicine provided by his family. On 28 September 2007, he was sentenced to two years’ imprisonment with hard labour. Reportedly, he has not been given access to a lawyer, and is currently in Myitkyina prison.

44. The Special Rapporteur has also received reports about U Khun Htun Oo, the 64-year-old Chairman of the Shan Nationalities League for Democracy (SNLD), which gained 23 seats in the 1990 elections. It is reported that, on 7 February 2005, he attended a private meeting of senior political representatives. Soon after, he was arrested and sentenced in November 2005 to 93 years’ imprisonment. He was transferred to Puta-O Prison in Kachin State, far from his home and family, where conditions are said to be very harsh. Reports are that he is suffering from prostate problems, diabetes, gout and high blood pressure, and that he is being denied outside medical assistance.

45. The continuing detention of political leaders such as U Win Tin and Hkun Htun Oo puts in great jeopardy the participatory aims of the democratic process as expressed by the Government in its seven-step road map to democracy.

46. With respect to the situation of monks in detention who have been disrobed by the authorities, the Special Rapporteur stresses that, together with article 18 of the Universal Declaration of Human Rights, this practice contravenes article 34 of the new State Constitution, which recognizes the right freely to profess and practice religion, and it is even in contradiction of article 361, which recognizes the special position of Buddhism as the faith professed by the great majority of the citizens of the State.

47. The Special Rapporteur has received numerous allegations that proceedings against prisoners of conscience do not respect basic guarantees, such as the effective exercise of the right to counsel, and that courts lack independence and impartiality. In this regard, he was informed that on 2 September 2008, 7 women and 28 men, leaders of the “88 Generation” students’ group, were brought to a court in Insein prison. The judge ordered the continuation of their detention and their appearance the following week before the same court. All of them are said to face multiple alleged charges. It is also reported that none of them was allowed to meet with their lawyers.

48. The Special Rapporteur would like to reiterate his call to the authorities to re-engage with the International Committee of the Red Cross and provide free access to the detention centres, in accordance with its mandate.

49. He welcomes the moratorium on the use of the death penalty. According to information received, to date, some 500 prisoners are sentenced to death, but no execution has been carried out since 1998.

C. Freedom of opinion and expression, the crackdown on the September 2007 demonstrations and its implications for free elections in 2010

50. In his mission report (A/HRC/6/14), the former Special Rapporteur concluded that, during the repression of peaceful demonstrations from 26 to 29 September 2007, the security forces, including the army and the riot police, as well as members of the Union Solidarity and Development Association and the Swan Ah Shin militia, had used excessive force against civilians, including unnecessary and disproportionate lethal force. Following the reprisal, the former Special Rapporteur had received reports alleging killings, severe beatings, arrests, torture and deaths in custody. It was noted that there were solid grounds to believe that at least 31 persons had died, and that some 3,000 to 4,000 people had been arrested as a result of the crackdown on the demonstrations of September and October.

51. The Special Rapporteur has sent 74 cases of enforced disappearance to the Government requesting information on their whereabouts. According to the information brought to the attention of the Special Rapporteur, as of July 2008, there were 700 individuals still detained in relation to the events of September and October 2007.

52. Accountability for these violations of human rights is still pending. The Government of Myanmar established an “Investigation Body”, chaired

by the Minister for Home Affairs, to investigate the deaths, arrests and disappearances in connection with the crackdown of September (A/HRC/7/G/8). However, no identification and sanction of the personnel responsible has yet occurred. Under articles 8 and 10 of the Universal Declaration of Human Rights and international human rights law, the Government has the duty to investigate the facts effectively, promptly, thoroughly and impartially, and where appropriate, to take action against those allegedly responsible. The Government must also provide victims with access to justice and effective remedies, including reparation.

53. The Special Rapporteur has no information regarding the intervention of an independent and impartial court in the investigation of the abuses. However, he

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continues to receive information about prisoners being charged by district courts for their participation in the events.

54. Without due accountability, drastic events such as those of September 2007 may occur again. Not only does this put at stake the rights to life, personal integrity and liberty, but it also demonstrates the vulnerability of the freedom of opinion, expression and peaceful assembly.

D. International humanitarian law, the protection of civilians and ethnic minorities

55. In paragraph 2 (d), of its resolution 62/222, the General Assembly expressed grave concern at the discrimination and violations suffered by persons belonging to ethnic nationalities of Myanmar, particularly in border and conflict areas, and attacks by military forces and non-State armed groups on villages in Karen State and other ethnic states in Myanmar, leading to extensive forced displacements and serious violations and other abuses of the human rights of the affected populations.

56. In this context, the General Assembly in paragraphs 4 (f) and (h), respectively, of resolution 62/222, strongly calls upon the Government of Myanmar to ensure immediately safe and unhindered access to all parts of Myanmar, including conflict and border areas, for United Nations, international humanitarian organizations and their partners and to cooperate fully with those organizations in order to ensure that humanitarian assistance is delivered to all persons in need throughout the country, and to take urgent measures to put an end to the military operations targeting civilians in the ethnic areas, and to the associated violations of human rights and humanitarian law directed against persons belonging to ethnic nationalities, to end the systematic forced displacement of large numbers of persons and other causes of refugee flows to neighbouring countries and to respect existing ceasefire agreements.

57. The Special Rapporteur's visit to Kayin State was cancelled, owing to bad weather conditions. However, he met with a number of civilians who had travelled to Thailand in April 2008. Their villages had been burnt down during military offensives and they had lost their houses and livelihoods and had therefore been forced to flee to Thailand for survival. He also met with a 13-year-old boy who explained that he had lived in Laki village in Thandaung, an hour's walk from the insurgents' base. The village had been attacked in September 2007 and landmines had been laid all around. He had fled with his family to the forest. On 17 November 2007, while he was cutting wood, a mine had exploded in his face and he had lost both eyes.

58. The Special Rapporteur has received information concerning a large

number of internally displaced persons in northern Kayin State. Allegations about civilians being forcibly used by the military as porters have also been received. As at July 2008 and according to the Office of the United Nations High Commissioner for Refugees estimations, which include registered camp residents and officially registered Provincial Admission Board applicants, the population of refugees from Myanmar in Thailand was estimated at 131,000.

59. Myanmar is State party to the four Geneva Conventions, which provide, in common article 3, for the protection of civilian population during armed conflicts

not of an international character. These international instruments — recalled also by article 2.2.j of the ASEAN Charter which Myanmar has ratified — together with customary international law and the Universal Declaration of Human Rights, shall be the guidance for military operations in the field.

60. The Special Rapporteur expresses his concern regarding violence against unarmed civilians by the Myanmar army or non-State armed groups, and calls for the ratification of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction, and the implementation of measures to assist civilian victims.

61. The Special Rapporteur is also concerned about the situation of a Muslim community in the border area of Northern Rakhine State, which, according to information received, has been arbitrarily deprived of citizenship for many years, in contravention of article 15 of the Universal Declaration of Human Rights.

62. In addition, in that region of the country, which is located on the Myanmar- Bangladesh border, several factors have affected the availability of food, as well as opportunities for households to make up for the shortage. In 2007, weather conditions resulted in a low yield and families that had sold their harvest in advance, at the lower rates of that time, were later forced to buy their own subsistence rice at higher prices. As cyclone Sidr (2007) had destroyed crops both in coastal areas of Myanmar and throughout Bangladesh, families in Myanmar were not able to purchase rice at reduced rates from Bangladesh in order to supplement their own reserves for 2008, as they had done in previous years. At the same time, there are continuing demands on the population by the military for contributions to cyclone Nargis victims. Contributions include cash, paddy (including improved seed), buffaloes and cattle. Furthermore, there are serious travel restrictions in breach of article 13 of the Universal Declaration of Human Rights, which have eliminated conventional means of securing food and income, such as gathering forest products and seeking wage labour.

63. The principle of non-discrimination is enshrined in the main international instruments, such as the Charter of the United Nations (Articles 1.3 and 55), and the Universal Declaration of Human Rights (article 2), and it is contained in all human rights treaties, included the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, to which Myanmar is a State party. It is also contained in the ASEAN Charter (article 2.2 (l)), which Myanmar has ratified. All ethnic minorities, particularly the most vulnerable, shall enjoy human rights without discrimination, and

progressive measures should be taken in order to improve the current conditions.

E. Human rights protection and humanitarian assistance in natural disasters

64. 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. As of 24 June 2008, the official death toll was estimated at 84,537. Some 53,836 people were still reported missing.

65. The establishment of the "Tripartite Core Group" bringing together ASEAN, the Government and the United Nations has led to be an effective forum for

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discussion and decisions on operational issues to address problems in an effective and prompt manner. The Special Rapporteur welcomes this initiative.

66. He met with the Tripartite Core Group and was briefed on recovery efforts. He was also briefed on activities such as finding permanent solutions for orphans, mainly ensuring as much as possible that they live with relatives and that they are granted scholarships to go back to school. The Group mentioned that there were no reports of forced labour related to cyclone Nargis and that it was very difficult to verify reports of the involuntary return of internally displaced persons. It was mentioned, however, that “land rights” could become problematic. This includes returnees whose property may have been occupied by others, victims’ families who want to claim their heritage and also those who lost their property titles during the cyclone. The Group also stressed that speculations regarding the second death wave resulting from the outbreak of infections and diseases in the aftermath of cyclone, were not borne out and that no such outbreaks had been reported by the medical teams from the neighbouring countries actively working in the affected areas.

67. The Special Rapporteur travelled to Labutta in Ayeyawady Division and visited the villages of Kyaukkalatt, Khongyi, Pyinsalu and Kyatshar. He met with displaced persons in temporary shelters and visited a school. He had emotional discussions with the survivors of the disastrous cyclone, some of whom had lost their entire family. He took note of the implementation of reconstruction projects.

68. The protection of women and children cluster is co-led by the United Nations Children’s Fund (UNICEF) and the international non-governmental organization Save the Children. Such a co-leadership arrangement (which is also in place for the health and education clusters) is unique and has strengthened the engagement of partners in those clusters. Moreover, the joint work of two cluster leaders with different and extensive knowledge in the subject of protection has proved to be mutually reinforcing. The main task is of coordinating among cluster members for the provision of immediate care and protection to children and women in areas affected by the cyclone (Ayeyarwady and Yangon Divisions), and to ensure that common standards and coordinated structures are in place which can promote the full coverage of affected populations.

69. Specific objectives of this cluster are the promotion of family unity and, where possible, prevention of separations; reunification of separated children with their parents or extended family; ensuring adequate care for separated, orphaned and other vulnerable children; ensuring adequate and appropriate care for vulnerable women, including unaccompanied/separated

women, female heads of households, pregnant and nursing mothers, injured women, women with disabilities, traumatized, elderly and women living with HIV; promotion of psychosocial well-being of women and children; establishment of safe environments for women and children and mainstreaming the protection of children and women through all clusters.

70. The situation in the country has reportedly fuelled further displacement to neighbouring Thailand. Since the cyclone, some 200 new arrivals have been reported in Tak province.

71. A number of allegations related to forced relocations have been received. Concerns have been raised with regard to the situation of land property of both those who fled the affected areas and those who regrettably died during the cyclone.

Mechanisms should be put in place to address their claims and to protect their rights.

72. In the immediate aftermath of the disaster, many people found themselves displaced. These internally displaced persons face a number of challenges that further increase the vulnerability of their fundamental rights. For this reason, in addition to addressing their immediate needs with regard to their safety, efforts should be focused on access to food and shelter and to the protection of specific fundamental human rights. Issues such as equal access to assistance, the protection against gender and sexual violence; forced military recruitment or forced labour; the reproduction of lost documentation and the challenges people may face upon their return should be prioritized.

F. Living conditions, sustenance and its human rights implications

73. Disasters such as cyclone Nargis can have a devastating effect on survivors who are already suffering from malnutrition. According to information published by UNICEF in its *State of the World's Children 2008*, the malnutrition rate for children in the country is 32 per cent. Organizations such as the World Food Programme were already distributing food to vulnerable groups in Myanmar, including children, pregnant and lactating women, and people with HIV/AIDS and tuberculosis, as part of its relief programme before the cyclone struck the country.

74. According to the information brought to the attention of the Special Rapporteur, adequate access to food remains a challenge in Myanmar. Insufficient nutritious food, poor access to health facilities, inadequate water and sanitation facilities, and limited livelihood opportunities exacerbate the food security situation and jeopardize the full enjoyment of human rights for large portions of the population in the country.

75. The Special Rapporteur continues to receive allegations of arbitrary land confiscation throughout the country, inter alia,

confiscation by the authorities of thousands of acres of privately owned farmland in Bogalay in circumstances where farmers had already bought farming equipment and seeds on credit from the Government. The farmers' and landworkers' work and life conditions continue to be precarious.

76. During his meeting with Myanmar Maternal and Child Welfare Association, the Special Rapporteur took note of the Association's engagement in addressing major shortcomings in the realization of economic, social and cultural rights of the people of Myanmar.

IV. Developing cooperation in the context of human rights

77. The country has gone through important changes over the past year and still continues to face complex challenges. The promotion and protection of human rights in the country continue to be among the main challenges ahead. In this context, the traditional concept of the indivisibility and interdependence of civil, cultural, economic, political and social rights is particularly relevant. The transition from a military authority to a civil democratic Government requires a number of structural changes leading to ensuring the involvement of all the sectors of Myanmar society in the political transition. Moreover, the situation in the areas inhabited by the ethnic minorities would require stabilization and solid peacebuilding. The Special Rapporteur intends to request visits to these areas one at a time, to get a better idea of the reality on the ground and not depend only on reports, which he regularly receives.

78. The Special Rapporteur notes with satisfaction the recent cooperation between ASEAN, the United Nations and the Government of Myanmar in addressing the aftermath of cyclone Nargis.

79. The progressive ratification of the ASEAN Charter, which the Government of Myanmar has already fulfilled, is also a motive of satisfaction. The Charter includes respect and protection of human rights provisions (Preamble and articles 1.7, 2.2(l)), and provides for the establishment of regional human rights body (article 14).

80. The Special Rapporteur notes that the supplementary understanding between the International Labour Organization (ILO) and the Government of Myanmar, reported on in 2007, which provides a mechanism to enable victims of forced labour to seek redress, was extended in February 2008 for a further 12-month trial period. As of 1 July 2008, some 16 months after the establishment of the mechanism, the liaison officer had received a total of 100 complaints, of which 52 have been formally submitted to the Government for its investigation and action. The Special Rapporteur notes that 33 of those cases have been investigated and subsequently closed.

There is still a low level of citizens' awareness of this mechanism, which gives them the right to complain. Incidences of reprisals against a number of complainants or those who support others in exercising their rights have been reported and need to be addressed. The Special Rapporteur strongly encourages the Government of Myanmar to maintain its collaboration with the ILO liaison officer with a view to further strengthening the effectiveness of the mechanism.

81. In this regard, it has to be said that article 359 of the new Constitution prohibits any form of forced labour, except hard labour as a punishment for crime duly convicted and duties assigned thereupon by the State in accord with the law in the interest of the people.

82. The Special Rapporteur encourages the donor community to give the United Nations and financial institutions the mandate to strengthen the capacity of State institutions in carrying out the United Nations objectives, including the promotion and protection of human rights.

V. Conclusion

83. The possibility to visit Myanmar and establish working relations with relevant authorities is very useful for the Special Rapporteur in discharging his mandate. He has a clearer picture of the needs of the country, as well as his interlocutors, whom he thanks again for their hospitality. The Special Rapporteur assessed the great need for human rights capacity-building of States institutions, but also the great potential for such capacity-building, since most of his interlocutors were well educated, ready to learn and apply international human rights standards.

84. As reflected in the present report, improvement of human rights in Myanmar is still a challenging task, but the Special Rapporteur refuses to carry out his mandate by criticizing and not cooperating. On the contrary, the Special Rapporteur opts for the challenging course of action, which includes engagement and cooperation with the authorities and assisting them to achieve their ultimate goal of restoring democracy and ensuring respect for human rights. This will take time, but it is worth trying, rather than condemning. If, after some time, there is no sign of any results in the horizon, then the Special Rapporteur may decide to change his strategy.

85. International community should remember that the ultimate beneficiaries are the people of Myanmar and that every international decision and action will ultimately affect the population. Therefore, the Special Rapporteur appeals to the

international community, Member States of the General Assembly, to provide him with all the necessary means to discharge his mandate in a meaningful manner to assist the Government of Myanmar to improve the situation of human rights of the people in Myanmar.

VI. Recommendations

86. The Government of Myanmar has established the “seven-step road map to democracy”, which includes the drafting of the new Constitution, and the holding of a referendum for its approval. The “road map” will continue with general elections in 2010. Respect for international human rights standards is indispensable in paving the road to democracy.

87. In his meetings with the Human Rights Group, the Special Rapporteur mentioned his intention to propose to the Government four core human rights elements to pave “the road to democracy”. The Government should implement progressively the four core human rights elements and complete them before the elections of 2010. During this period, the Special Rapporteur stands ready to provide full assistance to the authorities in achieving the objective of each and every core element.

A. First core human rights element: review of national legislation in accordance with the new Constitution and international obligations

88. During his meeting with the National Convention, the Special Rapporteur was informed that chapters I and VIII of the new Constitution provide for a number of rights, including freedom of expression, freedom of opinion, and freedom of peaceful assembly and association. Articles 19 and 20 of the Universal Declaration of Human Rights also provide for these rights.

89. The National Convention also affirmed that the new Constitution had been approved by 92.4 per cent of voters. Therefore, it is clear that, according to that information, the will of the people of Myanmar was, among other things, to recognize their human rights, which include freedom of expression, opinion, peaceful assembly and association, and to enjoy those rights in the process towards the elections of 2010.

90. In this regard, the Special Rapporteur recommends that the Government of Myanmar start reviewing and amending those

domestic laws which limit these fundamental rights and are in contravention with the new Constitution and with international human rights standards.

91. As concerns the State Constitution, article 198 (d) clearly establishes that national law cannot be in contrast with its provisions. With respect to international law, the Charter of the United Nations (Preamble and Article 1.3), the Universal Declaration of Human Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the ILO conventions, all these international instruments contain obligations regarding protection of human rights that the Government shall respect (see third statement of the Preamble to the Charter of the United Nations, and article 26 — *pacta sunt servanda* — of the Vienna Convention on the Laws of Treaties). Myanmar, as a United Nations Member State having signed the Charter of the United Nations soon after it gained independence in 1948, must honour its international obligations, and cannot invoke provisions of its domestic law as justification for its failure to comply with them (article 27, Vienna Convention).

92. The Special Rapporteur has identified a number of domestic laws which unreasonable limit human rights provided for in the new Constitution and under international law. Any limitation to the enjoyment of these rights shall (a) be defined by law; (b) be imposed for one or more specific legitimate purposes; and (c) be necessary for one or more of these purposes in a democratic society, including proportionality. Any limitation which does not follow these requirements and jeopardizes the essence of the right with vague, broad and/or sweeping formulas, would contravene the principle of legality and international human rights law.

93. According to information received, the office of the Attorney General is tasked with analysing legislation. The following is the first set of domestic laws to be reviewed and amended:

- State Protection Act (1975)**
- Emergency Provisions Act (1950)**
- Printers and Publishers Registration Act (1962)**
- Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention against Disturbance and Opposition (No. 5) (1996)**

- **Law Relating to Forming of Organizations (1988)**
- **Television and Video Law (1985)**
- **Motion Picture Law (1996)**
- **Computer Science Development Law (1996)**
- **Unlawful Association Act**
- **Electronic Communication Law**
- **Sections 143, 145, 152, 505, 505(b) and 295-A of the Penal Code.**

B. Second core human rights element: progressive release of prisoners of conscience

94. As a result of a number of political conflicts and circumstances since 1988, there are more than 2,000 prisoners of conscience detained in different facilities around the country.

95. Prisoner of conscience may be defined as a person who: (a) is charged or has been convicted for the infringement of national legislation which impedes reasonable enjoyment of freedom of expression, opinion, peaceful assembly or association; and (b) does not have access to a court, or is being tried by courts which lack independence and impartiality, and/or due process of law is denied. These two circumstances are against basic human rights recognized in the new Constitution and the Universal Declaration of Human Rights. Therefore, prisoners of conscience are basically individuals whose human rights are being systematically denied.

96. The road to democracy includes the general elections in 2010. The essence of any voting is participation and free and fair election. Without the free participation of prisoners of conscience, the very credibility of the general elections of 2010 would be at stake. Release of prisoners would also bring reduction of tension and inspire political participation. Therefore, progressive release of those prisoners is a core human rights element for paving the road to democracy.

97. Given the fact that fundamental rights, such as liberty and personal integrity, are being affected in detention, the release, although progressive, should start as soon as possible. Release must be without the imposition of any particular condition which may result in new forms of diminishing enjoyment of human rights, such as written statements renouncing to political participation or campaign. On the other hand, parallel to the release, immediate measures should be taken to avoid any cruel treatment, to improve conditions of detention, and to ensure urgent medical treatment.

98. In the past, the Government of Myanmar has issued several amnesty laws or decrees for the release of prisoners of conscience, in order to restore human rights and to seek national reconciliation. Such mechanisms, and others, such as pardons, reduction of sentence or conditional release, can now be implemented. The following particular circumstances of prisoners should be taken into account for progressive release:

- (a) Elderly prisoners**
- (b) Prisoners with health limitations**
- (c) Prominent members of political organizations, and ethnic leaders**
- (d) Long-standing prisoners**
- (e) Members of religious orders**
- (f) Women who have children**
- (g) Prisoners transferred to forced labour camps**
- (h) Prisoners not convicted**
 - (i) Prisoners without previous criminal records**
 - (j) Prisoners held in remote jails from their homes.**

99. Additional criteria include the release of prisoners connected to specific events, such as those arrested in August 1988, May 2003, September 2007 and May 2008, in connection with the referendum and the aftermath of cyclone Nargis.

C. Third core human rights element: armed forces

100. Myanmar has been under military regime for decades, and most Government offices and major ministries have been under military administration. Transition to multiparty democratic and civil government, as planned by the new Constitution, will require an intensive process of incorporating democratic values, especially those contained in international human rights and humanitarian law. Transition will also require capacity- building in a wide range of areas and modern governance training.

101. In this regard, the following measures should be adopted vis-à-vis the general elections of 2010 to address the various human rights shortcomings:

- (a) Repeal discriminatory legislation and avoid discrimination practices, particularly in Northern Rakhine State, where a large part of the Muslim community has been deprived of citizenship and movement for many years;**
- (b) Continue developing efforts to attend the aftermath of cyclone Nargis, and implement similar measures to address other humanitarian emergencies in the country;**
- (c) Ensure enjoyment of economic, social and cultural rights. The Special Rapporteur is ready to be the intermediary between the Government of Myanmar and the relevant international mechanisms, including thematic mandate holders, which can contribute on how to**

achieve improvement regarding those fundamental rights.

102. According to the new Constitution, the Armed Forces, *Tatamadaw*, will play an important role in the new government. In this regard, the *Tatmadaw* should develop a number of measures which will include:

(a) Respect for international human rights and humanitarian law in areas affected by armed conflict. This will include ensuring efficient working of health providers in the conflict areas;

(b) Continuation of the policy applied to avoid recruitment of child soldiers;

(c) Forbidding the use of anti-personnel landmines. In this respect, *Tatamadaw* should promote the ratification of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction;

(d) Refraining from detaining individuals for alleged infringement of national laws which are under review according to recommendation No. 1. This measure should also encompass police and prison forces;

(e) Establishing a permanent and meaningful training programme on human rights for members of the *Tatamadaw*, police and prison forces, with international cooperation.

D. Fourth core human rights element: the judiciary

103. The legal framework in Myanmar purports to function impartially issuing sentences under an apparent rule of law. However, under the current functioning, the judiciary is not independent and is under the direct control of the Government and the military.

104. The new Constitution, if correctly interpreted, provides for due process of law and for an independent and impartial judiciary (article 19). These are fundamental conditions for the enjoyment of human rights in a democratic society, as recognized by the Universal Declaration of Human Rights (articles 8 and 10).

105. The gap that exists between the unacceptable functioning of the legal framework under the current conditions, and the principles established in the new Constitution, shows a compelling necessity for immediate change and improvement in order to respect fundamental human rights. In this regard, the judiciary of the Union of Myanmar should undertake a series of measures which include:

(a) Exercise full independence and impartiality, particularly in cases involving prisoners of conscience;

(b) Guaranteeing due process of law, including public hearings, in trials against prisoners of conscience;

(c) Refraining charging individuals for alleged infringement of national laws which are under review according to recommendation No. 1;

(d) Establishing effective judicial mechanisms to investigate human rights abuses in order to fight impunity;

(e) Seeking international technical assistance with a view to establishing an independent and impartial judiciary that is consistent with international standards and principles. In this respect, the Special Rapporteur suggests that the Supreme Court engage with the Special Rapporteur on the independence of judges and lawyers for assistance in this regard.

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Annex I

Programme of the visit: 3-7 August 2008

Sunday, 3 August 2008

18:45 Arrive at Mingaladon Airport
19:00 Proceed to Mya Yeik Nyo Hotel
19:15 Arrive at Mya Yeik Nyo Hotel
19:30 Dinner hosted by Deputy Minister for Home Affairs

Monday, 4 August 2008

07:45 Leave Mya Yeik Nyo Hotel
07:50 Arrive at Myanmar Red Cross Society headquarters
08:00 Meeting with Myanmar Red Cross Society
08:35 Proceed to Myanmar Women's Affairs Federation Office
08:40 Arrive at Myanmar Women's Affairs Federation Office
08:45 Meeting with Myanmar Women's Affairs Federation
09:15 Proceed to State Sangha Mahanayaka Office
09:20 Arrive at State Sangha Mahanayaka Office
09:30 Call on Chief Reverend, State Sangha Mahanayaka
10:30 Proceed to Ministry of Religious Affairs
10:35 Arrive to Ministry of Religious Affairs
10:40 Call on Minister of Religious Affairs
11:40 Meeting with 4 Major Religious Federations of Myanmar
12:40 Proceed to Mya Yeik Nyo Hotel
Lunch hosted by Chairman of Myanmar Red Cross
13:15 Society
13:45 Rest
14:00 Leave Mya Yeik Nyo Hotel
14:15 Arrive at Yangon Division Military Common
Meeting with National Disaster Preparedness Central
14:20 Committee
15:30 Proceed to Ministry of Foreign Affairs (Old Building)
16:00 Meeting with Tripartite Core Group
17:30 Leave Ministry of Foreign Affairs (Old Building)
18:00 Arrive at Mya Yeik Nyo Hotel
19:00 Dinner hosted by Deputy Minister for Religious Affairs

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Tuesday, 5 August 2008

07:00 Leave for Airport
Travel to Ayeyardwady Division by helicopter to see areas
07:30 affected
by cyclone Nargis
13:00 Arrive back at Yangon Airport
13:15 Proceed to Insein Prison
13:30 Visit Insein Prison and meet with prisoners
16:30 Return to Mya Yeik Nyo Hotel
16:45 Meeting with diplomatic corps
17:30 Meeting with United Nations agencies
19:00 Dinner hosted by Deputy Minister for Foreign Affairs

Wednesday, 6 August 2008 (morning schedule cancelled)

06:00-
06:20 16:30-17:30 17:35-18:00 18:00-18:10 18:15-19:45 19:50-
06:25- 20:00 20:00-23:00
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D o Mingaladon International Airport Departure from
 e Mingaladon Airport to Nubu, Thotcoco Meeting
 p with Htein Maung and his group
 a Departure from Thotcoco to Pha-an
 rt Meeting with Can Saw Mu Thahe, Phado Aung Sun and
 u Democratic Karen Buddhist Army groups
 r Meeting with the United Nations Resident
 e Coordinator Departure from Pha-an to Mingaladon
 f Airport Departure from Mingaladon Airport to Mya
 r Yeik Nyo Hotel
 o Meeting with Political Parties (National League for
 m Democracy (NLD), National Unity Party (NUP), Phao,
 individual, U Aye Win group, Wuntharnu NLD groups)
 Departure to Nay Pyi Taw
 H Departure to Shwe Aeit Thae
 o Hotel Departure to Ministry of
 t Home Affairs
 e Meeting with Myanmar Human Rights
 l Group Departure to Shwe Aeit Thae
 t Hotel
 Dinner hosted by the Myanmar Human Rights Group

Thursday, 7 August 2008

07:00-07:40 Leave Shwe Aeit Thae Hotel from Ministry of Home

Affairs 07:45-08:15 Call on Minister for Home Affairs

08:20-08:25 Leave Ministry of Home Affairs from Ministry of Foreign
Affairs

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	14:30 14:30-15:30
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	ment Association Leave for Ministry of Labour
Call on	Call on Minister for Labour
Deputy	
Minister	Leave Ministry of Labour Office of the Attorney General
for	Meeting with responsible persons from the National
Foreign	Convention
Affairs	
Leave	Leave the Referendum Holding Commission from Shwe Aiet
Ministry	Thae Hotel
of Foreign	
Affairs	Lunch hosted by Director-General of the General
from	Administration Department
Myanmar	Proceed to Myanmar Maternal and Child Welfare
Police	Association Meeting with Myanmar Maternal and Child
Force	Welfare Association Proceed to Ministry of Home
Headquart	Affairs
ers	
Meeting	Wrap-up meeting with Deputy Attorney General, Dr. Tun
with Chief	Shin Myanmar Human Rights Group
of	Proceed to Shwe Aiet Thae
Myanmar	
Police	Hotel Rest and prepare for
Force	departure Leave for airport
Leave	Arrive at Mingaladon Airport
Myanmar	Meeting with the diplomatic community/press
Police	conference Prepare for departure
Force for	Leave Mingaladon Airport for Bangkok
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Meeting	
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Union	
Solidarity	
and	
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Report of the Special Rapporteur on the situation of human rights in Myanmar

Summary

The present report is submitted in accordance with General Assembly resolution 61/232.

The Special Rapporteur welcomes the decision of the Government of Myanmar to reconvene the National Convention for its last session on 18 July 2007, to finish laying down principles for a new constitution as part of a seven-stage road map to democracy. He remains concerned, however, at the lack of opportunity for effective and genuine participation by the National League for Democracy (NLD) and ethnic groups, which have deliberately chosen not to participate owing to the lack of transparency and meaningful input.

He has repeated on several occasions that there will be no authentic democratic transition in Myanmar until all political prisoners are released. Given the importance of the last phase of the National Convention, he deplores the extension of the house arrest of the NLD General Secretary and the continued detention of other political leaders. At a time of such importance to the political reform process and in view of the need for reconciliation, such severe treatment of senior ethnic nationality leaders sends a very counterproductive signal, shocking many citizens and human rights observers.

The human rights concerns enumerated in the present report are largely very similar to those highlighted by the Special Rapporteur last year. The Special Rapporteur deplores the fact that the Government, despite several requests, has not invited him to visit the country. For this reason he was not able to assess any improvements or verify the accuracy of the allegations received from credible sources.

Severe restrictions on fundamental freedoms are imposed on political activists and human rights defenders. As of 27 June 2007, the number of political prisoners was estimated at 1,192. Throughout the country communities are subjected to patterns of abuse by members of the military who, in order to assert greater central government control, and often to implement national development projects, resort to forced labour, the seizure of property and assets and the forced relocation of populations, particularly in the border areas where ethnic nationality groups reside.

The lack of an effective commitment by the Government of Myanmar to respond to the human rights situation continues to raise serious concerns. At the national level, the capacity of law enforcement institutions and the independence and impartiality of the judiciary have been hindered by sustained impunity. The restrictions on the exercise of fundamental freedoms by political opponents, human rights defenders and victims of human rights abuses is also a matter of concern.

The Special Rapporteur also takes note with great satisfaction of the Understanding between the International Labour Organizations and the Government of Myanmar, concluded on 26 February 2007, to provide a mechanism to enable victims of forced labour to seek redress.

The Special Rapporteur has also noted concrete developments which he considers to be significant milestones in the fight against impunity in Myanmar. These include the establishment of a national redress mechanism to receive complaints of forced labour, and the dialogue initiated by the Special Representative of the Secretary-General for Children and Armed Conflict with the Government regarding the development of an action plan to halt recruitment of child soldiers and to develop reintegration programmes and the setting up of a national mechanism to report on human rights violations committed against children during armed conflict. These mechanisms should lead to greater access to currently restricted areas for the provision of humanitarian assistance, as well as the monitoring of violations.

The Special Rapporteur is convinced that Myanmar would benefit from more active cooperation with his mandate, now under terms of reference that have been redefined by the Human Rights Council. He insists that it is his obligation to go public about allegations of human rights violations, but that this 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.

As indicated by the Special Rapporteur in his previous report, it will not be easy for Myanmar to promote political transition and basic human rights. The collaboration of the United Nations and the international community are essential to support the efforts of the Government and civil society.

In his recommendations, the Special Rapporteur encourages the international community to promote a framework of principles to enable Member States to pursue a plurality of strategies and cooperation with the Government of Myanmar in accordance with their particular strengths and capacities. It is urgent that the international community build on existing programmes of humanitarian assistance and support health, education and human rights, in particular through support to the development of civil society.

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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 1992/58¹ and extended in resolution 2005/10.² At its fifth session, the Human Rights Council decided to extend the mandates of the special procedures of the Commission on Human Rights until they could be considered by the Human Rights Council according to its annual programme of work (resolution 5/1 of 18 June 2007, annex, appendix I). The present report is submitted in accordance with General Assembly resolution 61/232.

2. Since he assumed the mandate in December 2000, the Special Rapporteur has visited the country on six occasions at the invitation of the Government; however, he has not been allowed to conduct a 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. Throughout the seven-year period of his mandate, he has continued to receive substantiated reports of grave human rights violations. While 72 communications have been sent to Myanmar since 2004, the Government has replied to only 14 of them.

3. The Special Rapporteur does, however, take note of recent replies by the Government to official communications from other 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.

4. Building on the Special Rapporteur's previous reports, the present report focuses on the main pattern of human rights violations that he has identified during the period from 12 January to 31 July 2007.

II. Activities of the Special Rapporteur

5. The Special Rapporteur presented his report (A/HRC/4/14) to the Human Rights Council in March 2007. While in Geneva, he met several times with representatives of the Government 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.

6. During the reporting period, the Special Rapporteur was not in a position, as in the past, to conduct a mission in the region as the decision by the Human Rights Council to extend his mandate was still pending.

7. On 20 March 2007, the Special Rapporteur participated in an exchange of views on the human rights situation in Myanmar

¹ ¹ *Official Records of the Economic and Social Council, 1992, Supplement No. 2 (E/1992/22), chap. II, sect. A.*

² ² *Ibid., 2005, Supplement No. 3 (E/2005/23), chap. II, sect. A.*

organized by the Subcommittee on Human Rights of the European Parliament in Brussels.

8. The Special Rapporteur continued to have regular contacts with the Permanent Mission of Myanmar to the United Nations Office at Geneva. He shared his findings with the United Nations High Commissioner for Human Rights, the Executive Office of the Secretary-General, the United Nations Department of Political Affairs, the Special Adviser to the Secretary-General on the International Compact with Iraq and Other Political Issues as well as the Special Representative of the Secretary-General on Children and Armed Conflict. While in the United States of America in early June 2007, he met with the latter two officials.

III. Recent developments

9. The Special Rapporteur notes that important 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 and a number of ongoing development projects that would profoundly modify the landscape in Myanmar. Whether these changes will be positive depends on the ease of the political transition. The involvement by foreign investors and other international actors in Myanmar is uncertain because of the political instability of the regime. Lack of access to conflict areas by United Nations human rights mechanisms and other relevant international agencies and associated personnel exacerbates an already difficult human rights situation. The long-standing culture of non-accountability, which is deeply rooted in the structures of the regime and national institutions, also seriously obstructs the rule of law and the administration of justice.

10. The Special Rapporteur welcomes the decision to reconvene the National Convention and its resumption on 18 July 2007 for its last session, to finish laying down principles for a new constitution as part of a seven-stage road map to democracy. He nevertheless remains concerned at the lack of opportunity for effective and genuine participation by the National League for Democracy (NLD) and some ethnic nationality groups that had chosen not to participate because of the lack of transparency and meaningful input. He also regrets that the international press was not allowed to participate in the opening ceremony as planned.

11. In view of the complexity of the challenges facing a country emerging from long periods of armed unrest, the question remains whether the National Convention can be welcomed as an effective step towards a civilian Government and, most importantly, towards a peaceful settlement of the conflict. The ways in which the Government and some of the main armed ethnic nationality parties will or will not use the Convention process as a mechanism for moving beyond their current ceasefires will be crucial. The Special Rapporteur would, for example, welcome the inclusion in the draft constitution of limited autonomy arrangements and structures for continued dialogue between the central Government and the major armed ethnic parties.

12. The Special Rapporteur has observed with satisfaction that the United Nations system has established mechanisms to facilitate better communication among the political, humanitarian and human rights sectors to address the situation in Myanmar. This represents an unprecedented opportunity for the United Nations to implement a concrete approach to addressing the main elements of the crisis in the country. In this context, the Special Rapporteur welcomes the designation by the Secretary-General on 22 May 2007 of his Special Adviser on The International Compact with Iraq and Other Political Issues, Ibrahim Gambari, to continue to pursue the good offices mandate on Myanmar entrusted to the Secretary-General by the General Assembly. Having already twice visited Myanmar in the context of the good offices mandate, the Special Adviser can continue to play a particularly useful role by working in coordination with relevant parts of the United Nations in order to support Myanmar's efforts in implementing relevant General Assembly resolutions, including in the area of human rights. 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, with a view to making tangible progress towards democracy and the protection of human rights in Myanmar.

13. The Special Rapporteur also welcomes the more direct engagement of the Office for the Coordination of Humanitarian Affairs (OCHA), through the designation of a United Nations Humanitarian Coordinator for Myanmar and the implementation of a number of operational and policy measures that were agreed to in the course of a mission by Assistant Secretary-General Margareta Wahlstrom in April 2007. He further expresses his full support for the work of the Special Representative of the Secretary-General on Children and Armed Conflict, Radhika Coomaraswamy, including her visit to Myanmar from 25 to 29 June 2007.

14. On 12 January 2007, China and the Russian Federation vetoed a draft resolution on Myanmar tabled at the Security Council by the United States of America and the United Kingdom of Great Britain and Northern Ireland. The vote was 9 in favour and 3 against, with South Africa joining in the opposition. Indonesia, Qatar and the Republic of Congo abstained.

15. The Special Rapporteur took into careful consideration statements made by the delegations, as reproduced in the official records of the Security Council. He was pleased to note that South Africa, Qatar, Indonesia and the Russian Federation expressed the view that issues raised by the resolution should be dealt with by other United Nations bodies, including the Human Rights Council. In this context, the Special Rapporteur would like to welcome the decision of the Council, at its fifth session in June 2007 to extend the mandate on the situation of human rights in Myanmar.

16. The Special Rapporteur also noted with satisfaction that China "supports continuing efforts on the part of the Myanmar Government and all parties in the country aimed at inclusive dialogue and national reconciliation" and "will, as always, support the ASEAN [Association of Southeast Asian Nations] in playing a leading role in addressing the

issue of Myanmar (see S/PV.5619)". During its twelfth Summit held in January 2007 in Cebu, Philippines, ASEAN encouraged Myanmar "to make greater progress towards national reconciliation" and "called for the release of those placed under detention and for effective dialogue with all parties concerned".³ As the High Level Task Force embarks upon the drafting of the ASEAN Charter, to be completed in time for the thirteenth ASEAN Summit in Singapore next November, the Special Rapporteur believes that this process provides a vehicle for ASEAN members and their partners to further encourage the Government of Myanmar to speed up democratic reforms with due respect for human rights. The Special Rapporteur is pleased to learn that Myanmar joined the ASEAN foreign ministers on 30 July 2007, during the ASEAN Ministerial Meeting in Manila, in agreeing to include a provision in the draft of the Charter mandating the creation of a human rights body.

17. As noted in the report of the Eminent Persons Group on the ASEAN Charter, respect for human rights and fundamental freedoms and international humanitarian law should be an integral part of the objectives and principles to be included in the ASEAN Charter.⁴ The blueprint for the Charter that was endorsed by ASEAN members in Cebu on 13 January 2007 offers an important means of bringing democratic changes with due respect for international human rights law, including through regular consultation with ASEAN parliamentarians, civil society organizations, human rights groups and other stakeholders.

18. In its report, the Eminent Persons Group also discussed the possibility of setting up an ASEAN human rights mechanism. The Group noted that this worthy idea should be pursued further, in particular to clarify how such a regional mechanism can contribute to ensuring respect for and protection of the human rights of every individual in every member State. In Africa, Europe and Latin America, regional human rights charters and mechanisms have emerged as an important complement to the international and national protection systems.

19. The Special Rapporteur would like to commend continuing efforts towards the adoption of a human rights-based ASEAN Charter and a genuine human rights mechanism for the region, which would provide for a stronger regional framework to address the human rights situation in Myanmar.

20. The Special Rapporteur took note with satisfaction of the meeting of the Minister of Communication and the Minister of Culture of Myanmar with the Deputy Assistant Secretary of State of the United States of America on 25 and 26 June 2007 in Beijing.

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Statement by the Chairperson of the twelfth Summit of the Association of Southeast Asian Nations, H.E. Gloria Macapagal-Arroyo, President of the Philippines, Cebu, Philippines, 13 January 2007. Available at www.aseansec.org/19280.htm.

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Report of the Eminent Persons Group on the ASEAN Charter, December 2006, available at www.aseansec.org/19247.pdf.

IV. Human rights issues of concern

A. Political prisoners

21. In his last report to the Human Rights Council, the Special Rapporteur noted with satisfaction the decision by the Government of Myanmar in January 2007 to release more than 40 political prisoners, including Min Ko Naing, Ko Ko Gyi, Pyone Cho, Min Zeya and Htay Kywe. However, since the decision was made — just prior to the examination of the draft resolution submitted by the United States of America to the Security Council — the Special Rapporteur has noted an increase in the number of political prisoners from January to June 2007: as of 27 June 2007, the number of political prisoners was estimated at 1,192.

22. On 16 February 2007, the Special Rapporteur issued a press release, expressing deep regret over the Government's one-year extension of the house arrest of Tin Oo, Vice-Chairman of NLD. On 10 May 2007, 14 special procedures mandates,⁵ issued a press release in which they noted that the current term of detention of Aung San Suu Kyi, General-Secretary of NLD, was coming to an end on 27 May 2007, stressing that she had been detained for 11 of the last 17 years without charge or trial and held in isolation for the past four years. They called on the Government of Myanmar to release her unconditionally and to free all the remaining political prisoners. The experts stressed that the stability of Myanmar was not well served by the arrest and detention of several political leaders or by the severe and sustained restrictions on the exercise of civil, cultural, economic, political and social rights. In 2007, the Working Group on Arbitrary Detention was once again seized of the case of Aung San Suu Kyi. The results of the Working Group's deliberations will be submitted as part of the Working Group's annual report to the Human Rights Council in 2008.

23. On 25 May 2007, the Secretary-General stated that he deeply regretted the decision of the Government of Myanmar to extend once again the detention under house arrest of Aung San Suu Kyi, despite his direct appeal to Myanmar's senior leadership and the many public calls worldwide for her release (see SG/SM/11014).

24. The Special Rapporteur also deeply regrets the continued imprisonment of the distinguished poet and editor Win Tin, who spent his seventy-seventh birthday in a prison cell in Yangon. Imprisoned

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The Special Rapporteur on the situation of human rights in Myanmar; the Special Representative of the Secretary-General on the situation of human rights defenders; the Working Group on Arbitrary Detention, the Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression; on the independence of judges and lawyers; on torture and other cruel, inhuman or degrading treatment or punishment; on violence against women, its causes and consequences; on freedom of religion or belief; on the situation of human rights and fundamental freedoms of indigenous people; on adequate housing as a component of the right to an adequate standard of living; on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; on the right to food; on trafficking in persons, especially women and children; and on the sale of children, child prostitution and child pornography.

since 4 July 1989, he is now the longest-serving political prisoner in Myanmar.

25. The Special Rapporteur has repeated on several occasions that there will be no authentic democratic transition until all political prisoners are released. He also considers that it is part of his mandate to offer his assistance to the Government of Myanmar to address this complex issue. Given the importance of the last phase of the National Convention, he deplores the continued detention of NLD leaders and other leaders still serving draconian jail terms such as Kkun Htun Oo of the Shan Nationalities League for Democracy. At a time of such importance to the political reform process and in view of the need for reconciliation, such severe treatment of senior ethnic nationality leaders sends a very counterproductive signal, shocking many citizens and human rights observers.

26. As Myanmar embarks upon the final rounds of discussion at the National Convention, the Special Rapporteur believes it is of the utmost importance to explore ways and means of addressing urgently — and with pragmatism — the issue of political prisoners, whose release, would be seen as a good-faith gesture that would help tremendously to pave the way to democratization. While the Special Rapporteur will continue as a matter of principle, to advocate for the release of all political prisoners, the Government of Myanmar may wish to consider approaching this question in phases, as the Special Rapporteur suggested in a letter to the Government dated 18 July 2007, as follows:

- *Phase 1.* Priority should be given to political prisoners at risk, including women and those who are aged and ill. The release of female prisoners should be considered a high priority, bearing in mind that the Government of Myanmar recently submitted its combined second and third reports to the Committee on the Elimination of Discrimination against Women.
- *Phase 2.* The release of political prisoners in arbitrary detention who have not been charged or sent for trial.
- *Phase 3.* The release of political prisoners who have been charged with criminal offences for peacefully expressing their opinions through various means such as demonstrations, gatherings, publications, or by providing information to the press.
- *Phase 4.* The release of all remaining political prisoners, including those under house arrest.

27. The Government of Myanmar may also wish to consider the following principles when addressing the question of the release of political prisoners: (a) the releases could take the form of an amnesty, bearing in mind that this would not imply that those who will benefit from it have committed crimes; (b) the releases should be unconditional. Beneficiaries should not have to recognize any wrongdoing or refrain from engaging in peaceful political activities; and (c) the releases should be accompanied by an easing of the restrictions on the peaceful exercise of fundamental freedoms by political opponents and human rights defenders. This would involve

steps towards the amendment or repeal of domestic laws restricting the freedoms of opinion, expression, association and movement.

28. As a first step, the Special Rapporteur would like to urge the Government of Myanmar to release urgently all political prisoners at risk (phase 1), including female political prisoners and those who are aged or ill. He has provided the Government with a detailed list of these three categories of detainee.

29. The Special Rapporteur hopes that the Government will find this suggested approach constructive; he would very much welcome an opportunity to discuss this approach further with the authorities.

B. Restrictions on the exercise of fundamental freedoms

30. The Special Rapporteur is seriously concerned about the lack of accountability in many cases of human rights violations. Often, the legal system prevents meaningful exercise of fundamental freedoms. The Special Rapporteur regrets to observe 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 Special Rapporteur has also repeatedly expressed concern about the absence of due process in political trials and the denial of basic rights in detention. In the first four years of his mandate he acknowledged improvements in the penal system, in collaboration with the International Committee of the Red Cross (ICRC). During the period covered by this report, however, the Special Rapporteur has received allegations of poor conditions of detention without access to adequate food and medical treatment, arbitrary arrests without warrants, incommunicado detention and ill-treatment in pre-trial detention. 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.

31. 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 several initiatives by individuals to organize, even for non-political purposes such as fighting HIV/AIDS.

32. A series of criminal charges brought in April and July 2007 against seven human rights defenders in Henzeda township, Irrawaddy Division, and Pyay township, Pegu Division, have been brought to the attention of the Special Rapporteur.

33. Through an established legal framework,⁶ the voices of opposition are being silenced. The Press Scrutiny and Registration Division (PSRD) 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, performance 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 to have undesirable connections will be put on a blacklist and their work will not be allowed to be published.

34. In spite of the flexible censorship policies introduced by PSRD in 2005, Reporters sans frontières placed Myanmar 164th on its press freedom index, five places from the bottom, and the Committee to Protect Journalists ranked Myanmar as second on its list of “10 Most Censored Countries”. These regulations were supposed to mark a reduction in censorship practices and a move towards a more open and independent press. While a number of new publishing licences have reportedly been granted during the past several years, very few of them have resulted in the establishment of viable publications given the excessive restrictions and bureaucratic demands of the Government of Myanmar.

35. In order to access information about what is really happening within their country, and the rest of the world, many citizens are forced to rely on sources of information that are prohibited by the national authorities. The main sources of outside information are the daily Myanmar-language radio broadcasts from abroad. In recent years, there has been an increase in the import of cheap, Chinese-manufactured short-wave radios so that more people have been able to access these stations. 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 free, independent e-mail services.

36. As noted above, the freedom of expression of those attending the National Convention appears to continue to be strictly curtailed. The code under which the Convention apparently continues to be run includes provisions that prohibit any criticism of the Convention.

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The Official Secrets Act of 1923, the Burma Wireless Telegraphy Act of 1933, the 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, the Emergency Provisions Act of 1950, the Printers and Publishers Registration Law of 1962, the State Protection Law of 1975 (the “Law to Safeguard the State from the Dangers of Destructive Elements”), the Television and Video Law of 1985, the Motion Picture Law and the Computer Science Development Law of 1996 and the Unlawful Associations Act (1908, amended in 1957 and in 1988), State Law and Order Restoration Council and Law 5/96 of 7 June 1996 on the National Convention.

37. The Government has also continued to tightly restrict, monitor and interfere with the movement of the Myanmar population. This was especially true for villagers in ethnic nationality border areas of Kayah and Mon States. In addition, members of certain communities, in particular Muslim groups and most notably the Muslim returnees (known as the Rohingyas) in northern Rakhine State, were unjustly targeted by such restrictions. The movements of politically active people in the country are also closely monitored. All residents in Myanmar are required to carry national identity cards showing their citizenship status, normal place of residence, date of birth, name of father and other personal information; since 1990 these cards have often been required to contain information on the holders' ethnicity and religion. As possession of a national identity card is mandatory in order to pass certain checkpoints, buy train or bus tickets, register with a local council outside one's normal place of residence, vote in any future election, or enrol in institutions of higher learning, those without such cards face severe restrictions on their freedom of movement.

38. Citizens with proper identification are generally able to travel freely within the country, except in areas of armed activity by ethnic nationalities. Receiving guests is tightly circumscribed throughout Myanmar. According to Government Order 1/90, everyone must register with the local Village or Township Peace and Development Council when they have guests at home.

39. The Government has apparently continued its attempts to limit and regulate international travel through punitive measures imposed upon illegal migrants and regular closures of official border crossings. Nevertheless, the country's borders with China, Thailand, Bangladesh and India remained permeable throughout the year and significant undocumented migration and commercial travel regularly took place. At the same time, 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.

40. The freedoms of assembly and association are also significantly curtailed by the Government. The Unlawful Associations Act of 1908 (afterwards amended) prohibiting unauthorized outdoor assemblies of more than five persons 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. Many political parties and social organizations have also been outlawed by the regime. Those that are allowed to exist have been denied the ability to function freely and securely. In particular, the regime has targeted its political opponents. Over the course of the year the Government has continued to pressure NLD and Shan Nationalities League for Democracy members 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.

C. Human rights violations and accountability

41. During the course of his mandate, the Special Rapporteur has received allegations of human rights violations, including summary executions, torture, forced labour practices, sexual violence and recruitment of child soldiers. He has not received information about investigations into these violations and whether their perpetrators have been prosecuted. Victims have not been in a position to assert their rights and receive a fair and effective remedy. The Special Rapporteur regrets that in previous discussions in the General Assembly the Myanmar authorities have denied the allegations and denounced 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 these allegations.

42. 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.

43. The Special Rapporteur took note with great satisfaction of the conclusion on 26 February 2007 of an Understanding between the International Labour Organization (ILO) and the Government of Myanmar to provide a mechanism to enable victims of forced labour to seek redress. As of 23 May 2007, some three months after the establishment of the mechanism, the ILO Liaison Officer had received a total of 23 complaints. After reviewing them, he determined that eight cases involved a situation of forced labour. These cases were transmitted to the authorities for investigation and appropriate action. Additional information was needed to complete the assessment of five other cases. He rejected 10 cases, either because he did not consider that they involved forced labour (eight cases), or because the complainants were reluctant to agree to their complaints being transmitted to the authorities for investigation (two cases). The Special Rapporteur 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 of Myanmar to collaborate with the Liaison Officer to strengthen its effectiveness.

44. The Special Rapporteur also noted that the ILO Governing Body decided to defer the question of an advisory opinion by the International Court of Justice, on the understanding that the necessary question or questions would continue to be studied and prepared by the Office. The Special Rapporteur still believes that this approach has the merit of placing the issue of accountability at the heart of the discussion on forced labour in Myanmar and should continue to be explored.

45. The Special Rapporteur noted with satisfaction that from 25 to 29 June 2007, the Special Representative of the Secretary-General for Children and Armed Conflict conducted a visit to Myanmar within the

framework of Security Council resolution 1612 (2005).⁷ During the mission, the Myanmar committee on the Prevention of the Military Recruitment of Underage Children agreed to develop an action plan in collaboration with UNICEF and to set up a subcommittee with relevant line ministries on issues related to the reintegration of the affected children in accordance with the Principles and Guidelines on Children Associated with Armed Forces or Armed Military Groups (the Paris Principles). Under this action plan, training on child protection in armed conflict will also be conducted on a regular basis, especially with the Ministry of Defence. The Special Rapporteur commends the work of the Special Representative and expresses his appreciation for the positive outcome of her visit.

46. 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”, 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; and 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 widening and deepening of the Salween and other important rivers is in progress and is already affecting the environment in Myanmar. The removal of rocks and other natural formations in rivers is affecting the fish, plants and shape of river beds and their banks. It is also affecting fishing and the lives of the people who both depend upon the activity for their living and the catch as a major source of food. The changes have forced people to move from their traditional homes. These projects and the extraction of natural resources, notably offshore gas, are providing various interest groups, including the military and foreign groups, with business opportunities; economic concessions, including for logging and mining, have been granted. Numerous forced evictions, relocations and resettlements have taken place, especially in rural areas but also in urban areas, most notably in connection with the move of the capital from Yangon to Pyinmana.

47. 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 political and economic stability of the country if it is not addressed. In addition, the widespread practice of smaller-scale land confiscation for nut plantations, as well as the forced labour required to farm the plantations, is having a deleterious effect on livelihoods throughout the country.

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The Security Council in its resolution 1612 (2005) requested the Secretary-General to implement the monitoring and reporting mechanism specified in his report on children and armed conflict (A/59/695-S/2005/72). The Secretary-General suggested that the six most grave violations should be particularly monitored (*ibid.*, para. 68). Following the adoption of resolution 1612 (2005), the Office of the Special Representative of the Secretary-General for Children and Armed Conflict was tasked with the coordination of the Secretary-General’s reports to the working group of the Security Council established in the same resolution.

48. The Special Rapporteur also believes that non-accountability 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. Military operations in rural areas have contributed to the impoverishment of villagers. Often, 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 because they refused to perform forced labour, and of unlawful taxation and appropriation of their land, livestock, harvest and other property.

D. Breaches of international humanitarian law

49. Violations of the human rights of ethnic nationalities continue to be reported in Kayin State and with respect to other ethnic nationalities in eastern Myanmar (Mon, Shan and Kaya) and in northern Rakhine State. These violations have been perpetrated by military agents as well as by non-State armed groups. Military operations have had a serious impact on the civilian population. There are reportedly 540,000 internally displaced peoples in eastern Myanmar whose prospects of return and resettlement are minimal. The Government severely restricts access to them by United Nations agencies and other humanitarian actors. Internal displacement in Myanmar results not only from direct relocation or eviction orders issued by the military and civil authorities, but also from a combination of coercive measures such as forced labour, extortion and land confiscation which drive down incomes to the point that the household economy collapses and people have no choice but to leave home. As of 9 July 2007, the population of refugees from Myanmar in Thailand, including the registered population, asylum-seekers waiting for action by the Provincial Admission Board and students (i.e. children who are in the camps to attend classes) was estimated by the Office of the United Nations High Commissioner for Refugees (UNHCR) at 139,075.

50. Violence against unarmed civilians by the Myanmar military or non-State armed groups is a very serious concern. Direct attacks against civilians not taking an active part in hostilities are prohibited under international humanitarian law. Moreover, the Government of Myanmar and non-State armed groups have a positive obligation under international humanitarian law to take the appropriate measures to protect the civilian population against the effects of conflict.

51. The Special Rapporteur considers that many of the above-mentioned abuses in the conflict areas may constitute breaches of international humanitarian law. Among the most worrisome features of operations in the ethnic nationality areas is their 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 and displacement of civilians are common. It is timely to recall that article 3 common to the four Geneva Conventions provides that “[p]ersons taking no active

part in the hostilities ... shall in all circumstances be treated humanely”, without any form of discrimination.

52. On 23 February 2007, the Special Rapporteur issued a statement expressing serious concern about the ongoing military operations in Kayin State and their humanitarian and human rights implications. He had received testimonies from villagers who fled from Toungoo District and Eastern Bago Division. These villagers, who had already been forcibly displaced on several occasions, provided information that verified allegations received by the Special Rapporteur in 2006 on the magnitude of the humanitarian and human rights situation in these areas. As the result of the increase in military operations, the number of persons in need, including villagers facing food shortages, internally displaced villagers and refugees, significantly increased during the year.

53. On 29 June 2007, ICRC issued a public statement denouncing major and repeated violation of international humanitarian law committed against civilians and detainees, including the use of convicts as porters. The Special Rapporteur expresses his concern at those violations and his frustration about the restrictions imposed on ICRC, which has made it impossible for ICRC staff to move around in the affected areas and to enter places of detention in accordance with their standard procedures. He regrets that the dialogue between the Government and ICRC has not been fruitful and hopes that the situation will improve.

E. Discrimination against minorities

54. While the Special Rapporteur is not in a position to state that ethnic minorities in Myanmar are targeted because of their religion or belief, he notes that in northern Rakhine State, the Muslim returnees (Rohingyas) have long been discriminated against, and were denied citizenship under the 1982 Citizenship Law. They continue to flee to Bangladesh, seeking asylum. They are subjected to serious abuses, especially forced labour (e.g. for the construction of roads, bridges, model villages and military facilities and for camp maintenance and portering) and arbitrary taxation. New developments observed in recent months included 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 that had been repaired or enlarged without permission.

55. On 2 April 2007, six special procedures of the Human Rights Council⁸ called publicly on the Government of Myanmar to take urgent measures to eliminate discriminatory practices against the returnees in northern Rakhine State and to ensure that no further discrimination was carried out against persons belonging to that community. They reminded the Government of its obligation to protect

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The Special Rapporteur on the situation of human rights in Myanmar; the independent expert on minority issues; as well as the Special Rapporteurs on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; on adequate housing; on the right to food; and on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

all individuals within its territory and subject to its jurisdiction from any form of discrimination. They also reiterated the important role of minority rights in promoting equitable development, peace and stability, as enshrined in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

56. The Special Rapporteur praises UNHCR for its five-year effort to mitigate the impact of statelessness on Muslims returnees to Myanmar by initially providing 35,000 persons in northern Arakan State with identity documents (Temporary Registration Certificates).

57. The Special Rapporteur encourages the Government of Myanmar to repeal or amend the 1982 Citizenship Law and to ensure the compliance of its legislation with the country's international human rights obligations, including article 7 of the Convention on the Rights of the Child and article 9 of the Convention on the Elimination of All Forms of Discrimination against Women, and to guarantee that the right to nationality as enunciated in article 15 of the Universal Declaration of Human Rights and article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination finds meaningful expression within Myanmar's borders.

F. International human rights and humanitarian obligations

58. 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".

59. 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.

60. 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. The Special Rapporteur believes that the Government of Myanmar will benefit from the expertise of the Committee's members in view of the widespread sexual violence against women and girls in the country. He encourages the Government of Myanmar to seek the Committee's assistance to implement the Committee's

recommendations meaningfully. 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 and 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 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.

61. Both committees have examined Myanmar's reports 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 recommendations 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.

V. Concluding remarks

62. The human rights concerns enumerated in the present report are largely similar to those highlighted by the Special Rapporteur last year. The Special Rapporteur deplores the fact that the Government, despite several requests, has not invited him to visit the country. For this reason he is not able to assess any improvements or to verify the accuracy of the allegations received.

63. The Special Rapporteur is convinced that Myanmar would benefit from more active cooperation with his mandate, particularly under the terms of reference as redefined by the Human Rights Council for the functioning of special procedures mandates. He has insisted that his obligation to comment publicly on allegations of human rights violations does not exclude a constructive dialogue with the Government. The combination of these two elements could contribute to a new dynamic for the improvement of the situation of human rights in the country.

64. As the Special Rapporteur has indicated in previous reports, it would be a great mistake to consider easy the challenges facing Myanmar in promoting political transition while at the same time effectively promoting the most basic human rights. Besides the efforts of the Government and civil society, they continue to require the collaboration of the United Nations and the international community. Each time that the Government refuses access to the Special Rapporteur, one possible vehicle for dialogue — the possibility of cooperation in the area of human rights — is severely curtailed.

65. Recommendations formulated by the General Assembly, the Commission on Human Rights, the Secretary-General and his former

Special Envoy, as well as those advocated by the Special Rapporteur and relevant human rights treaty bodies, have regrettably not been implemented.

VI. Recommendations

66. 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.

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

(a) To release urgently all political prisoners at risk, including female political prisoners and those who are aged 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 and representatives of ethnic groups, to complete the drafting of the constitution;

(c) To ensure that all officials who commit human rights violations are strictly disciplined and punished;

(d) 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;

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

(f) To take steps to improve conditions of detention;

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

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

(i) To respect its obligations under international human rights and humanitarian law in the areas affected by armed conflict;

(j) To continue its efforts with ILO towards the effective implementation of the national mechanism established to receive complaints of forced labour;

(k) To pursue its collaboration with the Special Representative of the Secretary-General on Children and Armed Conflict;

(l) To work with civil society, the United Nations system and the Committee on the Rights of the Child for the submission of

its third and fourth periodic reports under the Convention on the Rights of the Child;

(m) 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.

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

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

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

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

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Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in Myanmar Note by the Secretary-General*

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the situation of human rights in Myanmar, Paulo Sérgio Pinheiro.

* The report was submitted after the deadline so as to include the most recent developments, including within the Security Council.

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

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 by which the Council decided to extend, exceptionally for one year, the mandates and mandate holders of the special procedures of the Commission.

The Special Rapporteur has not been permitted 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 the present 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.

In the past two years, the reform process proposed in the “seven-point road map for national reconciliation and democratic transition”, which was meant to become eventually open to various relevant actors, has been 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 inclusive nature of the reforms which were required for democratization. The work of the National Convention has been adversely affected by this evolution.

Through the decades, the space for the establishment of civilian and democratic institutions has been seriously curtailed. The capacity of law enforcement institutions and the independence and impartiality of the judiciary have been hampered by sustained practices of impunity. This situation has contributed to reinforce inequality and increased the gap between the poorest and the richest.

On 27 May 2006, the house arrest of Aung Sang Suu Kyi was further prolonged by 12 months in spite of various international appeals, including by the Secretary-General of the United Nations. As at the end of August 2006, the number of political prisoners was estimated at 1,185. From April to July 2006, 1,038 members of the National League for Democracy were reportedly forced to resign from the party following intimidation and threats. 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 nowadays the road map for democracy faces too many obstacles to bring a genuine transition. In the past, the Special Rapporteur acknowledged that the road map could play a positive role in the political transition. Sadly, the positive momentum in the early years of his mandate is apparently stalled.

The Special Rapporteur remains particularly concerned about the continuing impunity, which has become systematic and must be urgently addressed by the Government of Myanmar. It has become increasingly clear that the persistent impunity does not only stem from a lack of institutional capacity. Impunity has allowed accountability to be avoided for acts that have oppressed voices questioning existing policies and practices. Several individuals and groups responsible for committing serious violations of human rights, in particular members of the military, have not been prosecuted. There is also little evidence that these serious crimes have been investigated by relevant authorities

. Grave human rights violations are received among the established structures of the State Peace and Development Council and indulged not only with impunity but authorized by the sanction of laws. In that respect, the Special Rapporteur is also very concerned by the continued misuse of the legal system, which denies the rule of law and represents a major obstacle for securing the effective and meaningful exercise of fundamental freedoms by citizens. He considers especially as a matter of grave concern the criminalization of the exercise of fundamental freedoms by political opponents, human rights defenders and victims of human rights abuses.

The Special Rapporteur is very concerned by the ongoing military campaign in ethnic areas of eastern Myanmar and by its effects on human rights, 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, seemingly aiming to anchor military control, especially in

ethnic areas. Such a practice has led to numerous forced evictions, relocations and resettlements, situations of 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 takes note of the recent vote of the Security Council on 15 September 2006 to include Myanmar in its agenda. He believes that a forthcoming debate of the Council on Myanmar may offer an opportunity to speed up the process of transition towards democracy.

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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. This extension implies similar reporting obligations for the Special Rapporteur as those contained in the annual resolutions of the Commission, including reporting to 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 responding 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 on human rights. He finds this evolution encouraging and urges the Government to continue its dialogue with the Special Rapporteur and other special procedures of the newly established Human Rights Council.

5. The present report covers the period from February to September 2006 and should be read in line with the recent report the Special Rapporteur presented at the second session of the Human Rights Council in September 2005 (E/CN.4/2006/34).

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 Foreign Ministry representatives, diplomats, Indian parliamentarians, the Inter-Parliamentary Caucus of the Association of Southeast Asian Nations (ASEAN) in Malaysia, Indonesia and Thailand, as well as non-governmental actors.

7. Additionally, in Jakarta, the Special Rapporteur held meetings with the Secretariat of ASEAN, the former Minister for Foreign Affairs of Indonesia and academic scholars. In Kuala Lumpur, he held a meeting with the former Special Envoy of the Secretary-General to Myanmar. In Bangkok, consultations were also conducted with representatives of United Nations agencies from Myanmar and Thailand, members of the diplomatic community, and non-governmental organizations operating in Myanmar, Thailand and the Thai-Myanmar border.

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

9. The Special Rapporteur presented his report to the newly established Human Rights Council in September 2006. While in Geneva, he met with representatives of the diplomatic mission of Myanmar and held consultations with representatives of States Members of the United Nations and officials from United Nations agencies, members of civil society organizations and the academic community.

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

11. In September 2006, the Special Rapporteur met with the Southeast Asia Unit of the European Union (EU) in Brussels. He also had a discussion with directors of EU Council Working Party on Human Rights and made a presentation to EU Asia-Oceania Working Party.

12. During the reporting period, the Special Rapporteur continued to have regular contacts with the Mission of Myanmar in Geneva. He also continued to share his findings with the High Commissioner for Human Rights in Geneva, and the Executive Office of the Secretary-General, the Department of Political Affairs and the Special Adviser to the Secretary-General on the prevention of genocide in New York and his team.

III. Major developments and human rights issues of concern

A. Political developments

13. First convened in 1993, the National Convention was adjourned in May 1996 until 2004 when it was reconvened for an eight-week period (17 May to 9 July 2004). Having been again suspended for a further nine months, following its previous session (17 February to 31 March 2005), the National Convention reconvened on 5 December 2005. On 31 January 2006, after meeting for nearly two months without significant progress, the National Convention adjourned once more. The Special Rapporteur addressed this issue in details in his report to the Commission on Human Rights (E/CN.4/2006/34), which was discussed during the

second session of the Human Rights Council in September 2006 at Geneva. He was deeply dismayed to learn that “no progress towards instituting genuine democratic reform had 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” (E/CN.4/2006/34, para. 23). In September 2005, the Government announced the resumption of the National Convention process by 10 October.

14. 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 of Myanmar. 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. It has been reported that nine chapters had been completed, with six more left to go. Constitutional proposals submitted by ethnic nationality groups were reportedly rejected.

15. Persecution and harassment of members of NLD continue. In February 2005, NLD offered to recognize the State Peace and Development Council (SPDC) as the legitimate transitional Government if it agreed to convene the Parliament elected in 1990. SPDC rejected the offer and intensified harassment of NLD members. At the end of August 2006, the number of political prisoners was estimated at 1,185, a figure which does not include the numerous prisoners reportedly detained in ethnic areas and secret jails since the Special Rapporteur was not in a position to verify these allegations. He will further explore the issue in his next report to the Human Rights Council, in June 2007.

16. The house arrest of 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, like U Tin Oo, Than Nyein and May Win Myint, were also extended. Several leaders of ethnic political parties, including the chairman of the Shan NLD, have been detained and given extraordinary severe prison terms of 100 years or more. A recent report, entitled “Eight seconds of silence”, released 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. In the past year alone, the number of deaths has reportedly risen to 10.

17. On 25 May 2006, the Special Rapporteur appealed to the Government of Myanmar to release Aung Sang Suu Kyi unconditionally and to free all political

prisoners. On 19 June, at the occasion of the inaugural session of the Human Rights Council, the Special Rapporteur together with the Special Representative of the Secretary-General on the situation of human rights defenders issued a public statement calling upon the members of the United Nations to support the Nobel Peace Prize Laureate.

18. The Special Rapporteur deeply regrets the continued imprisonment of the distinguished poet and editor U Win Tin, who spent his seventy-sixth birthday in a prison cell in Yangon last March. Imprisoned since 4 July 1989, he is now the longest serving political prisoner in Myanmar. Having been sentenced three times since 1989, each time while he was already in prison, U Win Tin is currently serving a further seven years' sentence following a letter of concern he wrote to the United Nations regarding the ill-treatment and poor conditions of political prisoners. In spite of strong expectation that he would be released last year, he remains in captivity. On 11 March 2006, the Special Rapporteur appealed to the Government to unconditionally release him and all prisoners of conscience.

19. The Special Rapporteur is also extremely worried by allegations of the forced resignation of NLD members following various forms of intimidation and threats. Since April 2006, 1,038 NLD members have reportedly been forced to resign from the party. While NLD members in Myanmar had been under tremendous harassment, the Union Solidarity and Development Association (USDA) — established by SPDC in 1993 — recently announced its intention to become a political party and run for the next election. The Special Rapporteur believes this development is a matter of grave concern. Along the years, the Special Rapporteur received various allegations of the involvement of USDA in acts of political and criminal violence. There is a perception among many observers that USDA is being used to legitimize a transition from a military regime to a civilian government that is not genuine. These allegations also seriously question the political will of SPDC towards a legitimate democratization process in Myanmar.

20. The international community strongly reacted to the current state of the political process and human rights situation. Unprecedented pressure from ASEAN compelled Myanmar to decline its first opportunity to chair ASEAN in 2006. At its December 2005 meeting, ASEAN effectively abandoned its non-interference policy in the affairs of its member States, calling for democratic reform in Myanmar and insisting on sending an envoy. When the ASEAN Envoy was finally authorized to visit the country in March 2006, he interrupted his mission as the Government refused to let him meet with Aung San Suu Kyi. Several ASEAN members have afterwards issued very critical public statements, highlighting the significant absence of progress in terms of democracy and human rights.

21. On 18 May 2006, the United States Senate adopted a resolution calling for a legally binding, non-punitive resolution on Myanmar that would force the Government to work with the United Nations on a plan for national reconciliation. It also extended unilateral economic sanctions on Myanmar for another year.

22. From 18 to 20 May, the Under-Secretary-General for Political Affairs, Ibrahim Gambari, visited Myanmar where he met with Senior General Than Shwe and Aung San Suu Kyi. Democratization and human rights were part of the terms of reference of his mission. He further briefed the Secretary-General and the Security Council on the outcome of his visit which was seen as a positive step for the resumption of a dialogue with Myanmar. At the request of the Government of Myanmar, a second visit of the Under-Secretary-General is being considered by the United Nations. The Special Rapporteur expresses his hope that the recent visit of the Under-Secretary-General has created a momentum that will further encourage the Government to engage more effectively with other United Nations bodies and mechanisms, such as the Human Rights Council and its special procedures.

23. In July, ASEAN Parliamentarians from Singapore, Malaysia, Indonesia, the Philippines, Thailand and Cambodia, along with fellow Parliamentarians from India, the Republic of Korea, Australia, New Zealand and the European Parliament gathered in Malaysia for a two-day conference on Myanmar. They called unanimously upon ASEAN Governments to suspend Myanmar's membership and requested the Security Council to include Myanmar in its formal agenda. The Foreign Minister of Malaysia, Syed Hamid Albar, then chairman of the Standing Committee of ASEAN, acknowledged in his message to the Conference that it would be very difficult for ASEAN Governments to ignore the views of their democratically elected legislators.

24. On 25 August, meeting for the ASEAN Inter-Parliamentary Myanmar Caucus, Cambodian Members of Parliament launched a national parliamentary caucus on Myanmar to advocate democratization in the country. It is the sixth of its kind in ASEAN following Thailand, Indonesia, Malaysia, Singapore and the Philippines.

25. Early in September, the United States formally requested the United Nations Security Council to add Myanmar on its agenda, to potentially expose the country to international condemnation for human rights violations and other abuses. Still in September, the current rotating President of the European Union, the Prime Minister of Finland, reiterated the Union's call for the unconditional release of Myanmar's democracy leader, Aung San Suu Kyi, and urged Myanmar to improve its human rights and democracy records.

26. On 15 September, the Security Council voted by 10 votes to 4, with 1 abstention, to place Myanmar on its formal agenda. The Special Rapporteur views this decision as a major step that will 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. The Special Rapporteur believes that a forthcoming debate of the Security Council on Myanmar may offer a positive opportunity to speed up the transition process towards democracy and to find ways to better coordinate the different approaches of the members of the Security Council towards the country, to strengthen an effective and authentic partnership with the countries of the region, to tackle protection issues while improving the level of humanitarian action, including humanitarian access, and to ensure the realization of economic, social and cultural rights.

B. Systematic human rights violations and impunity

27. 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. During the course of his mandate, the Special Rapporteur 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.

28. 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.

29. 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.

30. 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. In 2002, the Special Rapporteur received report of the rape of 625 women and girls in Shan State between 1996

and 2001. For the last three years, 188 additional cases in Shan State have been brought to the attention of the Special Rapporteur. In 2004, the Special Rapporteur received report of 125 cases of rape in Kayin State over a period of one year and half. In 2005, he received reports of 37 cases involving sexual violence against 50 women and girls in Mon areas between 1995 and 2004. In 2006, he has received information about 30 cases of rape against Chin women. 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. 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 bring 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.

31. Cases of forced labour represent another manifestation of the culture of impunity. The Government of Myanmar has acceded to International Labour Organization (ILO) Convention No. 29 of 28 June 1930 that prohibits forced labour, and in 2000 it issued an Order outlawing the practice. However, there have been serious shortcomings when it comes to effective implementation. Furthermore, 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 ILO. The effect of this has been to strengthen the sense of impunity felt by those Government officials who continue to impose forced labour. The Special Rapporteur would like to insist on the importance of the ILO presence in Myanmar and commends the high quality of its work along the years.

32. The serious human rights violations described above have been widespread and systematic over the last decade as to suggest they are not simply isolated acts of individual misconduct of middle or low rank officers but rather the result of the upholding of a system under which individuals and groups have been allowed to breach the law and violate human rights without being held to account.

33. 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 created a vicious circle of impoverishment of villagers. The military rely on local labour forces and other resources as the result of the

incapacity of the Government to deliver any forms of support for their activities (self-reliance policy). The Special Rapporteur has received many allegations of villagers who have been severely punished outside the framework of the law because they refused forced labour and the unlawful appropriation of their land, livestock, harvest and other property. While Myanmar has tremendously 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 undermine the rule of law at the expense of the livelihoods of local communities.

C. Rule of law

34. Grave human rights violations are received among the established structures of SPDC and indulged not only with impunity but authorized by the sanction of laws. In that respect, the Special Rapporteur is seriously concerned by the continued misuse of the legal system, which denies the rule of law and represents a major obstacle for 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 the “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 past six years, the Special Rapporteur received numerous reports concerning arbitrary arrest without warrant, detention incommunicado, torture or ill-treatment in pre-trial detention, death in custody and very poor conditions of detention without access to adequate food and medical treatment. He also received reports of defendants who have been denied the right to legal counsel and reports of political trials often being held in camera.

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

36. Political opponents and human rights defenders are arbitrarily arrested and detained under laws promulgated by the Government as “security” legislation, should they be considered to be acting or harbouring views which are in opposition to those of the Government. Such “security” laws include the Emergency Provision Act (1950), the Unlawful Association Act (1908) and the Printers and Publishers Registration Law (1962).

37. The Special Rapporteur also notes with concern that individuals have been prosecuted after they reported cases of forced labour whereas Myanmar is bound by ILO Convention No. 29.

38. Some positive developments must, however, be acknowledged. In January 2005, Su Su Nway successfully sued her village authorities for forced labour. On 16 October 2005, she was sentenced to 18 months imprisonment following an unfair trial. The Special Rapporteur welcomes her unconditional release on 6 June 2006 and the cancellation of the remainder of her terms. On 31 October 2005, U Aye Myint, a lawyer was sentenced to seven years' imprisonment for passing to the Government complaints of farmers whose land had been confiscated by the local authorities. The Special Rapporteur is pleased to note that he was released on 8 July 2006; however, he questions the restrictive terms of this release as U Aye Myint had to sign a paper acknowledging that he would have to serve the remainder of his terms if he commits any offence in the future.

39. More recently, Law No. 5/96, which provides for up to 20 years' imprisonment to anyone who directly or indirectly instigates, protests, preaches, says or writes anything to disrupt the stability of the State and criticizes the National Convention, was used to arrest and prosecute senior Shan political representatives under charges of treason in February 2005. Since then, the Special Rapporteur has received additional allegations of people threatened to be prosecuted under this law if they criticize the National Convention.

D. Fundamental freedoms

40. SPDC has continued to impose severe restrictions on freedom of movement, freedom of expression, freedom of association and freedom of assembly. The Special Rapporteur 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 fighting against HIV/AIDS.

41. The Special Rapporteur is very concerned by allegations he received for the reporting period. In July 2006, Myanmar authorities have reportedly forced students from Rangoon University to sign agreements declaring they will not become involved in politics or try to instigate political unrest. On 7 August, 13 pupils were reportedly arrested, one day ahead of the eighteenth anniversary of the 8888 Uprising, for laying wreaths and saluting those who gave up their lives in the struggle for democracy, in front of No. 3 State High School, Bago, in lower central Myanmar.

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

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

E. Military operations in ethnic areas

44. Since 1948 in the country's conflict areas, millions of people have been uprooted and thousands have died every year, mostly from preventable diseases. The situation has become critical. Attacks on villages in ethnic areas by the army since late 2005 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 2005, over 2,800 Kayin, Mon, Shan and Kaya villages have been burned down and/or relocated en masse, or otherwise abandoned as a result of military campaigns.

45. The situation in Kayin State has been well documented. Some 18,000 people are estimated to have been displaced in eastern Myanmar, with 3,000 having crossed the border to Thailand, since the beginning of 2006 because of the military campaign in Kayin State. There are reportedly a total of 540,000 internally displaced persons in eastern Myanmar with minimum prospects of return and resettlement. The Government does not recognize the existence of internally displaced persons within its borders and severely restrict access to them by United Nations agencies and other humanitarian actors.

46. Widespread violence continued to spiral for the past nine months in mountain areas outside of the military control in Toungoo, Nyaunglebin and Papun Districts of Kayin State and Eastern Bago Division. For many independent and reliable observers, it is the worst offensive and worst humanitarian situation since the 1996-97 military campaign. On 16 May 2006, the Special Rapporteur together with the Independent Expert on minority issues, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on adequate housing, the Special Rapporteur on the right to food and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health called on the Government of Myanmar to take urgent measures to end the counter-insurgency military operations targeting civilians in Northern Kayin and Eastern Bago areas. These military operations have led to the forced eviction and displacement of thousands of ethnic minority villagers. Members of the military forces allegedly acted with excessive use of force and firearms. Homes were demolished and according to reports, residents have been offered neither alternative housing nor

any form of compensation. Other reports seem to corroborate very serious allegations of unlawful killings, torture, rape and forced labour. The state of destitution in which many of the displaced persons are forced to live is alarming. These difficulties are mainly linked to obstructed access to food, education, housing and health services. The continued insecurity both in the areas of origin as well as in those to which the displaced persons have fled, is an additional source of concern.

47. Among the most tragic 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. The Special Rapporteur has received reports from reliable and independent sources alleging the militarization of refugee camps at the border that put also at risk the safety of civilians.

48. 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.

49. 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., brick-baking, construction of roads, bridges, model villages and military facilities, camp maintenance, portering), arbitrary taxation and skyrocketing rice prices. Since January 2006, the Government-imposed physic nut agriculture is causing new hardships, including forced labour, extortion and land confiscation. The Special Rapporteur praises the presence of international humanitarian organizations and their expatriate staff in northern Rakhine State who have very much helped to provide protection to the Muslim minority from the Myanmar military and border security forces.

F. Land and management of natural resources

50. 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 — 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 the agriculture sector (including fisheries, forestry

and livestock), which accounts for 40 per cent of the gross domestic product. Land and natural resources issues lie, therefore, at the heart of livelihood in Myanmar.

51. A large-scale and effectively arbitrary land confiscation policy prevails throughout the country. Several aims appear to form the basis of these confiscations, including relocating civilian populations deemed sympathetic to the armed opposition, anchoring military presence in disputed areas through the construction or support of new army battalions, opening the way for infrastructure development projects (e.g., Lawpita dam, three proposed Salween dams, Day Loh dam in Toungoo district), facilitating natural resources extraction (e.g., Arakan Shwee Gas offshore) and vesting various interest groups (including the military and foreign groups) with business opportunities (e.g., economic concessions, including 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.

52. Under the Land Nationalization Act of 26 October 1953, all land is owned by the State. Legal practice in Myanmar today generally reverts to the above law, which recognizes some private ownership of agricultural land, although it restricts land sales or transfers. However, this law provides for the State to confiscate land that is left fallow. The current legislation on land offers little protection to rural farmers. In addition, victims of land confiscations are not encouraged to lodge complaints by fears of reprisals and knowledge of the lack of independence of the judiciary.

53. 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 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 resources management, such as collective property rights and swidden culture.

54. The Special Rapporteur views the ongoing large-scale confiscation of lands as a matter of grave concern that will continue to impact dramatically on the political and economic stability of the country, if 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 resources management in Myanmar. In this context, he welcomes the organization in August 2006 in Chiang Mai by the Centre on Housing Rights and Evictions of a workshop on housing, land and property rights in Myanmar. The Special Rapporteur will further document this issue in his next report to the Human Rights Council in June 2007.

G. Humanitarian situation

55. According to numerous and consistent reports from the border areas, there have been marked signs of deterioration in the economic and social sectors that would lead to a humanitarian crisis, if the situation in eastern Myanmar is not adequately and urgently addressed.

56. 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 among 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 March/April outbreak of H5N1 avian influenza remains of serious concern, although there is no human case of H5N1 in Myanmar.

57. 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 that 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 have deeply deplored. The International Committee of the Red Cross (ICRC) has been subjected to increased restrictions in effectively carrying out its work. In recent months, Myanmar authorities have requested that representatives of Government-sponsored organizations accompany and supervise ICRC delegates on their visits to places of detention. As a result, ICRC has suspended all prison visits since December 2005. The restrictions imposed on ICRC are unfortunate as the Special Rapporteur continues to receive reports concerning allegations of serious cases of torture in interrogation centres and prisons and reports of degrading conditions of detention. The withdrawal of Médecins sans Frontières (France) at the end of 2005, due to access restrictions, has further complicated the humanitarian situation.

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

introduce some flexibility. In that regard, the Special Rapporteur encourages the Government to ensure a mutually agreeable operating environment for humanitarian agencies, in accordance with the guiding principles provided by the United Nations country team on 7 March 2006.

59. The Special Rapporteur welcomes the launching of the Three-Disease Fund,¹ which will provide funding roughly equivalent to that of the Global Fund to fight HIV, tuberculosis and malaria, and will start soon flowing to implementing agencies. It shows that donors have still an important commitment to humanitarian aid in Myanmar. The Special Rapporteur encourages the provision of humanitarian assistance to Myanmar. He also believes 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 forms of threats and intimidation for working on humanitarian assistance and development programmes.

H. International human rights obligations

60. 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”.

61. Myanmar is a 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 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 and the United Nations Convention against Corruption.

62. Article 3 common to the four Geneva Conventions provides that “persons taking no active part in the hostilities ... shall in all circumstances be treated humanely” without any forms of discrimination. The Special Rapporteur considers

that many human rights abuses in the conflict areas constitute a breach of international humanitarian law.

63. The Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child provide for monitoring mechanisms, known as treaty bodies, that follow up the implementation of the treaty by the States parties through the consideration of reports, which are to be regularly submitted by Governments. Although Myanmar submitted its initial report to the Committee on the Elimination of Discrimination against Women in 1999, it faces important delays in meeting its reporting obligations under the Convention and 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 the Committee 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 have been submitted. The third and fourth periodic reports are due in August 2008. The Special Rapporteur believes that it represents an opportunity for the Government of Myanmar working with civil society, the United Nations system and the Committee to engage in a discussion on sexual violence against girls and on the recruitment of child soldiers with a view to preparing its report to the Committee in the best conditions.

64. The Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child already reviewed Myanmar's reports and produced concluding observations and recommendations, 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 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.

65. Myanmar also acceded to a number of ILO Conventions, such as Conventions No. 29 on forced labour and No. 87 on freedom of association and protection of the right to organize 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 has been strongly criticized by various ILO bodies regarding the implementation of Convention No. 29. The major focus of the criticisms related to the outcome of a 1997 Commission of Inquiry appointed by the Governing Body of ILO, which concluded that the "Convention was violated in national law and in

practice in a widespread and systematic manner”. The report of the Committee of Experts on the Application of Conventions and Recommendations refers to material that purports to be “from nearly every State and Division of the country on several hundreds of 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 made by the Committee last June would help to prevent significantly forced labour as they identified practical steps that are required to put an end to these abuses.

IV. Concluding remarks

66. The human rights concerns enumerated in the present report are largely the same as those highlighted by the successive Special Rapporteurs since 1992. Despite early indications from the Government that it was willing to address these problems when the Special Rapporteur started his mandate six years ago, the Special Rapporteur regrets that such willingness has disappeared.

67. Recommendations formulated by the General Assembly, the former 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.

68. If the Government of Myanmar resume, without further delay, dialogue with all political actors, including NLD and representatives of ethnic groups to complete the drafting of the Constitution, the international community would be in a better position to recognize the democratic legitimacy of a constitutional framework to be built on Myanmar people’s aspirations. The Special Rapporteur is also convinced that progress towards resolving the ethnic conflict in Myanmar will be much more facilitated and sustainable with tangible democratic reforms.

69. The Special Rapporteur reminds the Government of Myanmar and non-State armed groups of their obligation to protect civilians from the effects of armed conflict.

70. The Special Rapporteur strongly commends the determined efforts of individuals and groups, including civil society organizations from both inside

and outside the country who document human rights violations committed in Myanmar. He also wishes to acknowledge the crucial contribution made by international organizations, including members of the United Nations country team and non-governmental organizations who continue to operate in the country under extremely difficult circumstances. The United Nations has an obligation under the Charter of the United Nations to address the humanitarian situation that prevails in the country independently of the prevailing political situation.

71. The Special Rapporteur reiterates that humanitarian needs of the population in Myanmar must not be hostage of politics. The international community has the duty to address the humanitarian needs in the country and any decision should be guided by the best interests of children, women, people living with disabilities, those affected by diseases and minority groups.

V. Recommendations

72. The Special Rapporteur's recommendations given in earlier sections of the present report, as well as in his previous reports, remain valid in view of the prevailing situation in Myanmar. The Special Rapporteur would like also to stress the following specific recommendations.

73. The Special Rapporteur would like:

(a) To recommend that, given the magnitude of human rights abuses, the Government of Myanmar should subject all officials committing these acts to strict disciplinary control and punishment and put an end to the culture of impunity that prevails throughout the country. In that respect, a number of immediate steps should be taken, such as setting up (an) independent national commission(s) to look into the mob attack of Aung San Suu Kyi in November 1996 and the brutal Depayin incident in May 2003, and to investigate the widespread sexual violence against women and girls with a view to ensuring that those responsible for such crimes are brought to justice;

(b) To call upon the Government of Myanmar to authorize access to the affected areas by the Special Rapporteur, the United Nations and associated personnel, as well as personnel of humanitarian organizations and to guarantee their safety, security and freedom of movement.

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>

² Report of the Committee of Experts on the Application of Conventions and Recommendations 2005 (76th session), Observation, para. 6.

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Human rights questions: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in Myanmar

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar, Paulo Sérgio Pinheiro, submitted in accordance with Commission resolution 2005/10 and Economic and Social Council decision 2005/257 of 25 July 2005.

Interim report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar

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 2005/10. In that 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 present report is submitted further to that request and is based on information received by the Special Rapporteur up to 22 July 2005. It is to be read in conjunction with his last report to the Commission (E/CN.4/2005/36).

The Special Rapporteur has not been permitted 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 the present 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.

The National Convention was reconvened from 17 February to 31 March 2005 without the involvement of a number of political parties, including the National League for Democracy (NLD). The invited delegates were selected from the same eight categories as for the previous Convention: political parties, representatives of ethnic nationalities, peasants, workers, intellectuals and intelligentsia, State service personnel and ceasefire groups. According to the National Convention Convening Commission, 1,073 out of the 1,081 delegates invited attended the meeting.

The exclusion of important and representative political actors from the process, the restrictions placed on their involvement, the intolerance of

critical voices and the intimidation and detention of pro-democracy activists render any notion of a democratic process devoid of meaning. Freedom of movement, assembly and association must be guaranteed, as they are basic requirements for national reconciliation and democratization.

The Special Rapporteur firmly believes that if the inherent procedural restrictions are not amended and the representatives of the democratic opposition are not involved in the National Convention, any constitution that emerges will lack credibility. Placing the procedural arrangements that govern the National Convention on a sound democratic footing would allow for the full inclusion and involvement of all political parties and true progress to be made in the democratization process. The Government can and should take immediate steps to salvage the National Convention and its credibility both at home and internationally.

The question of defining who will draft the constitution is one of the most relevant issues in the current political process. Furthermore, there is at present no clear indication of the rules for the adoption of the constitution through a national referendum.

The Special Rapporteur regrets to note that the information received demonstrates that the situation regarding the exercise of fundamental rights and freedoms has not substantially changed during the reporting period. He constantly receives reports of restrictions and violations of basic rights and freedoms.

There reportedly remain over 1,100 political prisoners in Myanmar. The release of 249 political prisoners on 6 July 2005 was tempered by the continuation of the arrests, detention and harsh sentences meted out to civilians and democracy advocates for peaceful political activities. The Special Rapporteur remains very concerned at the practice of administrative detention. It is deeply regrettable that NLD General-Secretary Daw Aung San Suu Kyi celebrated her sixtieth birthday under house arrest. Her virtual solitary confinement and lack of access to NLD colleagues run counter to the spirit of national reconciliation.

The Special Rapporteur is encouraged that HIV/AIDS prevention and treatment activities have increased, but remains very concerned that HIV/AIDS has become a generalized epidemic in Myanmar. While the Government continues to work on a national plan of action for children, it has yet to ratify the two Optional Protocols on the Convention on the Rights of the Child.

Serious human rights violations continue to be perpetrated against Myanmar's ethnic minority communities. Widespread reports of forced labour, rape and other sexual violence, extortion and expropriation by Government forces continue to be received. Victims of violations rarely have recourse to redress.

The transition to a full, participatory and democratic system in Myanmar can no longer be postponed. Political and constitutional dialogue must begin without delay. By instituting values of democracy and human rights, the Government will send a clear signal to the people of Myanmar and the international community that it is actively committed to facilitating the creation of a stable and democratic future for the country.

The United Nations and the international community stand ready to work in partnership with the Government, the political parties and civil society organizations, to effectively facilitate national reconciliation and the transition to democracy. By strengthening its cooperation with international organizations, the Government can be assured of support for conflict resolution, political and economic reform, institution- and capacity-building, humanitarian assistance and human development.

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I. 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 2005/10 of 14 April 2005.

2. In that resolution, the Commission requested that the Special Rapporteur report to the General Assembly at its sixtieth session and to the Commission at its sixty-second session. The present report is submitted further to that request and is based upon information received by the Special Rapporteur up to 22 July 2005. It is to be read in conjunction with his last report to the Commission (E/CN.4/2005/36).

II. Activities of the Special Rapporteur

3. The Special Rapporteur presented his report to the Commission on Human Rights on 29 March 2005. While in Geneva, the Special Rapporteur had meetings with officials from the Government of Myanmar to discuss matters pertaining to the implementation of his mandate. In parallel, the Special Rapporteur held consultations with United Nations agencies, representatives of Member States, civil society groups and non-governmental organizations.

4. Since assuming his mandate in December 2000, the Special Rapporteur has visited Myanmar on six occasions. His visits provided an opportunity to gain a greater understanding of human rights concerns in Myanmar. In all his reports, the Special Rapporteur has striven to report objectively on the situation as he has witnessed and understood it. He has acknowledged encouraging developments, commented upon positive efforts and undertakings of the Government and put forward recommendations on how areas of concern might be constructively addressed.

5. In spite of his expressed willingness to travel to the country and repeated requests for a visit (most recently on 9 July 2005), the Special Rapporteur has not been permitted to conduct a fact-finding mission to Myanmar since November 2003. The Government has cited its inability to find mutually convenient dates as the reason for failing to facilitate the full execution of the Special Rapporteur's mandate.

6. While the Special Rapporteur has not been granted access to the country during the reporting period, he has continued to fulfil his mandate to the best of his ability on the basis of information collected from a variety of independent and reliable sources.

7. The Special Rapporteur is also the independent expert for the Secretary-General's study on the question of violence against children. In this capacity, he travelled to Bangkok from 13 to 18 June 2005 to attend the East Asia and Pacific Regional Consultation on Violence against Children. While in Bangkok, he took the opportunity to meet local and regional actors in the governmental, diplomatic, parliamentary and non-governmental sectors, in fulfilment of his mandate on Myanmar. He also met with the Royal Thai Government Minister for Foreign Affairs, Kantathi Suphamongkhon. The Special Rapporteur convened a press conference on 17 June 2005, at which he expressed his disappointment at the current human rights situation in Myanmar, and the lack of meaningful political progress and cooperation on the part of the Government to facilitate the full exercise of his mandate.

8. Prior to his visit, his team travelled to Chiang Mai and Mae Sot, Thailand, to meet with academics as well as non-governmental organizations and representatives of the diplomatic community.

9. In mid-June 2005, the Special Rapporteur held further meetings with officials of United Nations agencies, representatives of Member States, including Myanmar, and civil society organizations in connection with his mandate.

10. In implementing his mandate, the Special Rapporteur collaborates closely with the United Nations country team, other United Nations agencies and the Special Envoy of the Secretary-General for Myanmar. The Special Rapporteur deeply regrets that the Special Envoy has not been invited to return to the country since March 2004. In the light of the continued difficulties experienced by both the Special Rapporteur and the Special Envoy, more frequent consultations were held throughout 2004 and 2005.

11. During the reporting period, the Special Rapporteur sent 17 communications to the Government of Myanmar regarding particular cases of alleged human rights violations. He sent those letters of allegation and urgent appeals jointly with other special procedures of the Commission on Human Rights, including the Special Rapporteurs on the question of torture, on extrajudicial, summary or arbitrary executions, on the independence of judges and lawyers, and on the promotion and protection of the right to freedom of opinion and expression; the Special Representative of the Secretary-General on the situation of human rights

defenders; and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention.

III. National Convention

12. First convened in 1993, the National Convention had the task of laying down the basic principles for the drafting of a firm and stable constitution (State Law and Order Restoration Committee Declaration 11/92, 1992). Comprising delegates chosen by the Government, it met sporadically for three years, having been instructed by the Government to develop language based on the six objectives that had been drawn up three months earlier. The objectives upon which the future constitution was to be based were: the maintenance of the integrity of the Union; the maintenance of national solidarity; the perpetuation of sovereignty; the flourishing of a genuine multiparty democratic system; the development of the eternal principles of justice, liberty and equality in the State; and the participation of the Tatmadaw (army) in the national political leadership role of the State.

13. Included in the principles laid down was the assurance of a leading role for the army in any future Government, including in the choice of the Head of State; the allocation of 25 per cent of the seats in the legislature to the military; the proviso that the Tatmadaw be free to administer itself, without any parliamentary supervision; and the appointment of members of the military to the positions of Minister of Defence, Minister for Security/Home Affairs and Minister for Border Affairs.

14. The six objectives, together with the 104 principles and subsequent seven detailed basic principles (regarding the judiciary, the executive, the legislature, selfadministered areas, the State, the State structure and the Head of State), dictate the parameters and language and provide a skeleton structure for the future constitution. Throughout the various sessions of the National Convention, the Government made it clear to the delegates that participation in the Convention should entail the acceptance of the fact that the above-mentioned principles governed the constitution-drafting process.

15. The National Convention has now been in existence for over 12 years. By 1996, the National League for Democracy (NLD), the winners of the 1990 election, had boycotted some of the Convention sessions, citing the undemocratic nature of its procedures and the human rights abuses perpetrated during its proceedings. These violations have been well documented by former special rapporteurs.

16. Adjourned in May 1996, the National Convention remained suspended for a further eight years, until 2004, when it was reconvened for an eight-week period from 17 May to 9 July 2004 and resumed work on the detailed basic principles. The reconvening of the National Convention represented “the first step of the sevenpoint road map for national reconciliation and democratic transition”, according to the then Prime Minister, General Khin Nyunt.

17. The seven points in the road map to democracy cited by the Government were as follows:

(a) The reconvening of the National Convention, which had been adjourned since 1996;

(b) After the successful holding of the National Convention, step-by-step implementation of the process necessary for the emergence of a genuine and disciplined democratic State;

(c) The drafting of a new constitution in accordance with basic principles and detailed basic principles laid down by the National Convention;

(d) The adoption of the constitution through national referendum;

(e) The holding of free and fair elections for legislative bodies (Hluttaws) according to the new constitution;

(f) The convening of legislative bodies attended by legislative body members in accordance with the new constitution;

(g) The building of a modern, developed and democratic nation by the State leaders elected by the legislative bodies, the Government and other central organs.

18. The Government of Myanmar, under the new Prime Minister, Lieutenant-General Soe Win, explicitly expressed its continued commitment to implement the road map. The Prime Minister stated that it would be fully realized, without any changes, along with the political agenda of the Government, with a view to seeing to the emergence of a peaceful, developed and disciplined democratic nation.

19. In a press conference on the National Convention, held on 1 February 2005, the Minister for Information stated that the detailed basic principles for sharing legislative power which had been discussed during the last phase of the National Convention would be approved in its next phase, starting on 17 February 2005. He

added that discussion and coordination would also take place for formulating detailed basic principles for sharing executive and judicial powers.

A. Recent developments

20. Beginning on 15 January 2005, invitations were issued by the National Convention Convening Commission to those delegates who had been invited to the last session of the Convention. The invited delegates were selected from the same eight groupings as before: political parties, representatives-elect, national races, peasants, workers, intellectuals and intelligentsia, State service personnel and ceasefire groups. According to the Commission, 1,073 of the 1,081 delegates invited attended the meeting.

21. The National League for Democracy, which won the majority of seats in the 1990 elections, did not join the reconvened National Convention. NLD offices remain closed and sealed by the Government, with the sole exception of the Yangon Office. The General-Secretary of NLD, Daw Aung San Suu Kyi, and the ViceChairman, U Tin Oo, remain under house arrest, with no date given by the Government for their release. NLD members continue to suffer intimidation and arrest by Government forces. Other political party activists, including Members of Parliament-elect, remain in detention for their political activities.

22. In a statement issued on 27 May 2005 on the occasion of the fifteenth anniversary of the multiparty democratic election, the Central Executive Committee of NLD reiterated its belief in the need for the creation of a political environment in which all people could freely and contentedly participate without obstructions and restraints. To this end, the reinstatement of the democratic rights and the removal of anti-democratic procedures were essential. The NLD called for dialogue with the Government and negotiations with leaders of ethnic nationalities.

23. NLD called for the immediate release of Daw Aung San Suu Kyi and U Tin Oo from house arrest and the unconditional release of all political prisoners, including Members of Parliament, imprisoned for their peaceful political activities and beliefs. It urged the Government to allow all NLD offices to reopen and to recognize and protect the right of political parties to function in accordance with the Political Parties Registration Laws and democratic principles.

24. The Special Rapporteur was saddened to hear reports that the civilian population was allegedly forced to attend mass meetings to demonstrate its support for the National Convention. It is understood that members of Governmentsponsored associations were designated to lead the demonstration in

support of the National Convention held by the State Peace and Development Council (SPDC) in Yangon.

B. Participation of political parties, ethnic nationality parties and ceasefire groups

25. Of the 25 political parties that won seats in the 1990 general elections, fewer than half of them reportedly participated in the 1993-1996 phase of the National Convention. Allegedly, only eight of these parties were still “legally registered” in 2005, but not all took part in the 2005 session. Those that did attend included six ethnic nationality parties: Kokang Democracy and Unity Party, Union Kayin League, Union Pa-O National Organization, Mro or Khami National Solidarity Organization, Lahu National Development Party and Wa National Development Party. The two remaining legal ethnic parties, the Shan Nationalities League for Democracy (SNLD) and the Shan State Kokang Democratic Party, did not participate.

26. It is understood that none of the political parties that participated in the 1990 elections (including those that won seats), and which were subsequently deregistered, was invited to participate in the latest session of the National Convention. Those parties that are members of the informal umbrella organization the United Nationalities Alliance reportedly supported the NLD decision not to join the Convention.

27. The Special Rapporteur is concerned by the continuing arrests and harassment of members of registered political parties for exercising their peaceful political activities. Prior to the National Convention, at least 10 political activists were arrested for participating in a meeting of senior representatives of the Shan ethnic nationality on Shan National Day, 7 February 2005. It is understood that all those arrested, including Khun Htun Oo, Chairperson of SNLD, are still being arbitrarily detained and that U Shwe Ohn, the 82-year-old author and lawyer, remains under house arrest. SNLD, which won the second-largest number of seats in the 1990 election but was prevented from taking them up, has, along with NLD, stayed away from the National Convention because of the lack of adherence to minimum democratic standards.

28. In his previous report, the Special Rapporteur welcomed the fact that the National Convention had taken a potentially significant step towards national reconciliation and political transition, given that it had secured the participation of a large number of ethnic nationalities, including ceasefire groups (see E/CN.4/2005/36, para. 14). Its active and credible involvement in the

constitutional talks and the future political direction of the country is imperative for the process of national reconciliation.

29. The Special Rapporteur has been informed that some ethnic nationality ceasefire groups have reportedly begun to seriously consider reviewing their policy of cooperation with the SPDC. Discontent at the grass-roots level is reportedly evident at the continued involvement of ceasefire groups in the National Convention process, which to date has yielded them little benefit and has not furthered progress towards national reconciliation. During the last session of the National Convention in 2004, ceasefire parties reportedly believed that it was easier for them to put forward their own views. In 2005, however, it was reported that ethnic proposals and discussions were curtailed by Government policy.

30. The Government has indicated that its policy towards those armed groups that had “returned to the legal fold” would continue. Such groups are being urged to join in the efforts of the Government to ensure the implementation of its political road map. However, the submissions made by the ceasefire groups at the recent National Convention apparently were not acted upon.

31. There remain a number of ethnic minority-based armed groups and factions, such as the Karen National Union, the Karenni National Progressive Party and the Shan State Army (South), located primarily in the border areas, which have either no peace agreements or failed peace agreements with the Government and are thereby excluded from the National Convention process.

C. Proceedings

32. As the Special Rapporteur has indicated in previous reports and at the beginning of this section, the very procedures and conditions under which the National Convention operates involve restrictions on and violations of the rights of its civilian participants. The procedural code, order 5/96, issued in 1996, for example, outlaws any criticism of the Convention and provides for imprisonment of up to 20 years and the outlawing of related organizations for those who violate this code.

33. If the inherent procedural restrictions are not amended and the representatives of the democratic opposition are absent from the National Convention, any constitution that emerges will lack legitimacy and thus credibility. Such impediments serve only to further postpone the democratization process in Myanmar. The Special Rapporteur reiterates his opinion that the National Convention will lack credibility as long as it fails to adhere to minimum

democratic standards and fails to represent the people of Myanmar fairly and adequately.

34. At the opening of the latest phase of the National Convention, the Secretary of the National Convention Convening Commission asserted that delegates would have to engage in discussions in order “to approve the detailed basic principles for sharing legislative power and to lay down the detailed basic principles for sharing executive and judicial powers ... within the framework of the procedures”.

35. In an address to the Convention on 31 March 2005, the Chairman of the National Convention Convening Commission, Secretary-1 of SPDC Lieutenant-General Thein Sein, outlined the proceedings that had taken place. With regard to the presentations of delegates during the previous session of the Convention on the detailed principles for legislative power and formation of a financial commission, he stated, “As the suggestions of some of the groups and delegates are found to be beneficial and appropriate for the nation and the people, the Work Committee coordinated with the panel of chairmen whether or not to lay them down as detailed basic principles.” He continued, “The present Convention successfully laid down detailed basic principles for the distribution of legislative power and the formation of a financial commission that should be included in writing a constitution.”

36. Concerning the detailed basic principles to be laid down for the executive and judicial sectors, the clarifications of the Chairman of the Work Committee were presented and the delegates held discussions and read papers, after which the delegates supported the clarifications of the Work Committee Chairman. The presentations made by the delegates were within the framework of the six objectives of the Convention, which include the Main National Causes and the 104 basic principles, as drawn up by the Government.

37. The Chairman stated that the National Convention would be adjourned until the end of the year, and that the Work Committee would examine the papers on the detailed basic principles for the executive and judicial powers presented by a large number of delegates, and with the National Convention Convening Commission’s approval, would lay down detailed basic principles at the coming Convention. In this way the members of the panel of chairmen would have enough time to compile their studies and enable the delegates to continue their business and attend to social affairs.

38. Delegates were informed that when the National Convention reconvened, detailed basic principles would be adopted for the delegation of executive and judicial powers and for enabling the Work Committee to submit their studies on channels of functions regarding the tasks of legislative bodies between the Head of

State and legislative bodies, as well as the submission of bills to the respective legislative bodies.

39. The Special Rapporteur firmly believes that if the procedural arrangements which govern the National Convention were put on a sound democratic footing, it would allow for the full inclusion and involvement of all political parties and for true progress to be made in the democratization process.

IV. Civil and political rights

40. The Special Rapporteur regrets to note that the information received demonstrates that the situation regarding the exercise of fundamental rights and freedoms has not substantially changed during the reporting period. Civilians, including members of registered political parties and pro-democracy activists, continue to be harassed, arrested, tried and sentenced to prison for the peaceful exercise of basic civil and political rights and freedoms. All NLD offices remain shut, with the exception of its headquarters in Yangon, and political party members are consistently liable to politically motivated prosecution and incarceration. It is understood that more Members of Parliament-elect were arrested in February and March 2005 than at any time since May 2003. Three Members of Parliament-elect are believed to have received prison sentences in 2005.

41. On 7 February 2005, at least 10 political activists were arrested for participating in a meeting of senior representatives of the Shan ethnic nationality. As noted above, it is reported that those arrested, including Khun Htun Oo (SNLD Chairman), are still being arbitrarily detained and that U Shwe Ohn, the 82-year-old author and lawyer, remains under house arrest. On 8 April 2005, a Member of Parliament-elect of Shan State, U Kyaw Khin, was sentenced, for the second time, to 14 years' imprisonment. He was accused of distributing a leaflet describing the list of awards won by Daw Aung San Suu Kyi and photocopying them without permission. This second arrest came only seven weeks after his release on 3 January 2005 from prison, where he had been detained since 1996. On 1 and 6 June, respectively, Win Aung and Soe Win, two NLD leaders, were arrested and later sentenced on 8 July to 13 years' imprisonment on charges of possessing and watching a video of a political tour by Daw Aung San Suu Kyi and for reading a book by an exiled journalist. On 13 June 2005, Ko Aung Myo San, U Ba Myint, U Ba Tint and Ko Khin Kyaw, all NLD leaders, and Ko Thet Naing Aung, member of the Democratic Party for a New Society, were reportedly given life sentences for distributing a political pamphlet.

42. In his press statement of 7 July 2005, the Special Rapporteur welcomed the release of 249 political prisoners from various prisons throughout Myanmar the previous day. It has been reported that according to the Government, those freed were inappropriately detained by purged military intelligence machinery. Among those released were politicians, pro-democracy activists and members of political parties and students.

43. Such welcome news was, however, sadly tempered by reports of ongoing arrests, detention and sentencing of political activists, such as Chit Swe, the NLD leader and renowned cartoonist, on 12 July 2005. To date, there reportedly remain over 1,100 political prisoners in Myanmar, including monks, lawyers, teachers, journalists, farmers, politicians, student leaders, writers and poets. Their continued detention runs counter to the spirit and objective of democratic transition and national reconciliation, as expressed in the road map. The Special Rapporteur is disappointed to note that U Win Tin, the 75-year-old editor and poet, imprisoned now for 16 years, who had been told on 6 July 2005 of his imminent release, remains in Insein prison.

44. The Special Rapporteur is encouraged to note that in 2005, the International Committee of the Red Cross (ICRC) continues to have regular access to prisons, labour camps and hospitals in order to monitor the treatment and living conditions of persons detained therein. Several cases were followed up on an individual basis, including some relating to security detainees, minors, detainees claiming foreign citizenship and those in need of particular protection, such as the sick or elderly. The mortality rate among detainees has reportedly decreased in most places of detention.

45. Despite the above-mentioned positive development, the Special Rapporteur continues to receive complaints about the conditions and treatment of some political prisoners.

46. The Special Rapporteur is concerned at ongoing allegations of the pervasive and systematic use of torture and ill-treatment by the authorities against persons in pre-trial detention. Since January 2005, at least four deaths in custody have been reported. To date, the Special Rapporteur has received no confirmation that full investigations have been conducted into these deaths. He has also received reports that detainees are often subjected to prolonged deprivation of sleep, food and water during initial interrogation, which may stretch over a period of days.

47. The Special Rapporteur is concerned to note that former Prime Minister General Khin Nyunt, along with many of his aides and allies, has been taken into custody and subjected to unfair judicial procedures. He is currently being held under house arrest and has reportedly received a lengthy suspended sentence,

having been convicted on charges which included corruption and bribery. In the wake of the dismantling of Myanmar's military intelligence from the end of 2004, it is understood that up to 100 senior military intelligence officials have been arrested. Many of these former officials are being detained in Insein prison without access to lawyers and are reportedly being tried in secret tribunals set up inside the prison.

48. The Special Rapporteur is very concerned to note that the Myanmar authorities continue, as an apparent matter of standard practice, to deny detainees access to relatives, legal professionals or other external persons for considerable periods of time after arrest and, in the vast majority of cases, until after the detainees have been sentenced.

49. With incommunicado detention continuing to be used by Government personnel, political activists are often arrested and detained without the knowledge or notification of their families. Furthermore, they are often detained for long periods of time, in some cases years, without legal representation.

50. According to information received, detainees have little or no access to legal counsel or the means by which they might prepare their own defence. While the authorities have granted legal representation to some recently arrested detainees, they have in many instances blocked access to information and not given adequate indication of trial dates. The arrested SNLD Member of Parliament-elect U Khun Htun Oo and others detained with him in February 2005 were denied access to lawyers of their own choosing, but were given Government-appointed lawyers.

51. The Special Rapporteur continues to receive reports alleging torture and ill-treatment of prisoners, including severe beatings, shackling and forcing prisoners to assume difficult squatting and standing positions for long periods of time. Solitary confinement in darkened cells is understood to be a frequent punishment for any complaints made.

52. Aung Hlaing Win, an NLD activist, was arrested in May. Ten days later his family was informed by the authorities that he had "passed away unexpectedly". However, an autopsy found 24 external wounds on his body, three fractured ribs and a broken rib which caused bruising to the heart, indicating that he had been tortured. Those responsible have yet to be prosecuted.

53. At least 22 political prisoners are believed to have been tortured and ill-treated after a number of them participated in a hunger strike in Insein prison on 28 April 2005. The group was protesting against a decision by the prison authorities to force political prisoners to share cells with prisoners convicted of criminal

offences, who allegedly ill-treated them. It is reported that at least two hunger strikers were confined to punishment cells.

54. There is serious concern that the health problems of prisoners that have been caused or exacerbated by their conditions of detention are not being adequately addressed. The most common complaints are heart disease, mental illness, hypertension and illnesses related to malnutrition. In spite of the urgent requirements of several prisoners for specialist treatment, the authorities are often slow to act upon the requests of medical professionals and in some cases deny access outright.

55. The Special Rapporteur is very concerned at the continued application of the 1975 State Protection Law, which permits the Home Minister to detain without charge or trial, or re-detain, anyone who is believed to constitute a “danger to the State”. There appears to exist no clear definition of what in fact constitutes a danger to the State, which allows the phrase to be broadly interpreted and acted upon. Besides allowing the authorities to arbitrarily detain anyone for engaging in peaceful political activities that the Government may consider subversive, it permits the authorities to extend the detention of prisoners without charge or trial, thereby violating international legal standards.

56. Among those prisoners detained under the State Protection Law is Daw Aung San Suu Kyi, who has been under house arrest pursuant to this legislation for over nine of the last 16 years. Since May 2003, she has been held without charge or trial. U Tin Oo (aged 77), the Vice-Chairman of NLD who has been under house arrest without charge since 30 May 2003, had his detention extended by another year on 13 February 2005. Than Nyein, Member of Parliament-elect, was due for release from prison on 19 January 2005; however, the authorities have reportedly extended his prison sentence for another year, in spite of a serious deterioration in his health. That was the fourth time that the authorities had extended his prison term. U Shwe Ohn (82), a Shan leader, remains under house arrest since being detained following a meeting of Shan politicians on 7 February 2005. It has been alleged that the State Protection Law has been invoked and his detention ordered for one year.

V. Economic, social and cultural rights

57. Myanmar possesses considerable development potential, given its fertile agricultural land, a rich endowment of other natural resources and potential as a locus of regional trade. Sadly, the people of Myanmar today do not enjoy the fruits of economic and social development as they might. A growing number of households are living in acute poverty and are facing serious threats to their

livelihood, including limited health care and inadequate opportunities for quality education.

58. The economy shows little sign of improving in the near future unless fundamental political and economic reforms are undertaken, as the Special Rapporteur has previously stated (see E/CN.4/2005/36, para. 62). The underlying structural weaknesses of the economy are a major contributor to the country's health and education crises. Current economic trends threaten to undermine any progress made.

59. The public health budget is currently insufficient to provide health staff and facilities with adequate and appropriate supplies, equipment, operational budgets and support for medical training. In order to maintain the overall quality of health-care services, it is important to ensure that the private sector complies with reasonable standards. Furthermore, efforts must be made to prevent resources from being drawn away from the public sector and into private health-care services, which are often too expensive for most people.

60. The Special Rapporteur welcomes reports that the Government has introduced hepatitis B immunization and new strategies, including programmes for remote areas. He regrets, however, that infant and under-five mortality rates remain high, largely as a result of preventable or treatable causes, such as acute respiratory infections, diarrhoea, malaria and tuberculosis.

61. He is encouraged by the news that HIV/AIDS prevention and treatment activities have increased in scale and scope, including community and hospital-based prevention of mother-to-child transmission programmes, and that HIV/AIDS prevention and life skills education is being provided in schools and for out-of-school children. It remains of very serious concern, however, that HIV/AIDS has now exceeded the benchmark of a generalized epidemic, with a doubling of the prevalence rate among the adult population over the past two years. Efforts to address the situation of orphans and vulnerable children, including those affected by HIV/AIDS, have recently been initiated and will require continued attention.

62. The Special Rapporteur is pleased to acknowledge that the Government continues to work on a national plan of action for children, as discussed last year by the Committee on the Rights of the Child (see CRC/C/SR.960), but has yet to ratify the two Optional Protocols to the Convention on the Rights of the Child. However, he understands that technical ministries have participated in a number of regional forums, including the Regional Consultation on Violence against Children. Furthermore, at the national level, a juvenile justice inter-agency working group has been created to promote action on juvenile justice areas. The

United Nations Children's Fund (UNICEF) has reported increased recognition of some child protection issues in Myanmar, including the situation of children deprived of parental care, street and working children, and children in conflict with the law.

63. Approximately 55 per cent of schoolchildren in Myanmar complete the five years of primary school, with most of the remainder dropping out of school to work. It is reported that the costs of education are largely borne by parents, in the form of "donations" which are expected to be paid towards teachers' salaries, supplies and the maintenance of schools. While these problems are endemic in the country, they are particularly acute in border areas, which have suffered from decades of armed conflict.

64. The Special Rapporteur welcomes the steady and remarkable reduction in opium poppy cultivation. Supply control will bring more stability to the region, whose already significant problems are exacerbated by narco-trafficking. It is vital that alternative income-generating sources be generated to stave off relocations and the creation of internally displaced persons, and to ensure the success and sustainability of the opium reduction programme. To this end, he calls on the Government to ensure that, in the interim, the basic needs of former opium farmers are met and sufficient resources allocated to those whose livelihoods depended upon opium-generated income.

VI. Human rights situation in ethnic minority areas

65. The Special Rapporteur is very concerned to learn that serious human rights violations continue to be perpetrated against Myanmar's ethnic minority communities, which constitute approximately 35 per cent of the country's population. Widespread reports of forced labour, rape and other sexual violence, extortion and expropriation by Government forces continue to be received. While those in areas where counter-insurgency operations are taking place are particularly badly affected, there are also reports of violations in ceasefire areas, where large contingents of Government forces continue to be present. Numerous violations of humanitarian law by these forces are still being reported. Allegations of human rights abuses by members of non-State armed groups have also been received. A widespread culture of impunity persists, in which victims of violations rarely have recourse to redress.

66. The Special Rapporteur is seriously concerned at ongoing allegations of forced labour throughout Myanmar, and particularly in ethnic minority states. The Government issued two orders prohibiting the practice of forced civilian labour by military and civilian authorities in 1999 and 2000, stating that it was a punishable

offence. This notwithstanding, it is reported that men, women and children are forcibly made to perform duties such as road repair and construction, portering for the military, sentry duty, transport of military supplies, forced rice and tea cultivation, rock-breaking, digging, gathering of firewood, construction, bush and scrub clearance, fencing of military barracks and compounds and digging of military bunkers and trenches. Civilian vehicles and their owners are frequently requisitioned to transport military supplies.

67. In many instances, those who are not in a position to undertake forced labour duties are allegedly obliged to pay a sum to cover the hire of another to go in their place. Fees such as a “porter” or “self-reliance development” fee for road construction are regularly extorted by Government forces in lieu of forced labour.

68. Civilians living in counter-insurgency areas who are unable to carry out their forced labour duties are particularly vulnerable to reprisals and collective punishment. Cases of severe punishment of those who are unable, unwilling or too weak to carry out orders continue to be received. Several cases have been brought to the attention of the Special Rapporteur of persons who have been conscripted as porters and have become too weak to carry their loads or keep up with the military column (owing to a lack of food, water or medical care) often being beaten and, in some instances, summarily executed.

69. The Special Rapporteur is particularly concerned at the assertion made by the Government at a recent press conference that anyone making what it deemed to be false allegations of forced labour, or found to be reporting such allegations to the International Labour Organization (ILO), would face prosecution. He is also disturbed to note the increased restrictions placed on the ILO liaison officer and calls by Government-affiliated organizations for the Government to consider withdrawing from ILO.

70. The Special Rapporteur is concerned to note that ceasefire groups have also allegedly insisted upon forced labour by the civilian population for tasks including clearing tracts through the jungle and preparing land for crop cultivation.

71. The Special Rapporteur continued to receive reliable reports of forcible recruitment and training of children for the Government armed forces and non-State armed groups. Lamentably, because of his lack of access to the country, he was not in a position to assess the extent of these alleged practices. He is aware that the dialogue between the Government and UNICEF on issues such as child soldiers has been limited owing to changes in ministerial leadership, with whom a new dialogue has had to begin. While there has been discussion on the need to further develop and operationalize the national plan of action to prevent the recruitment of child soldiers, cooperation on this issue has yet to be seen.

72. The Special Rapporteur is distressed that sexual violence committed by Government personnel against women and children allegedly continues. Civilians in ethnic minority areas such as Shan, Kayin, Kayah and Mon states have allegedly been particularly vulnerable to such violations. Documented reports of rape, sexual slavery and forced marriage continue to be received. Such incidents have resulted in the restricted movement of women, who allegedly are often fearful of working in the fields or travelling unaccompanied. It is reported that prosecution of the alleged perpetrators rarely takes place.

73. The imposition of arbitrary taxes is reportedly commonplace. Random and temporary checkpoints are understood to be periodically erected and “taxes” demanded of the civilian population. Reports have been received that many farmers have been prohibited from selling their rice and bran to anyone other than the military. They are allegedly forcibly obliged to sell produce at a price fixed by the authorities that is many times lower than the market price. Others were compelled to make a payment to the authorities before they could harvest their crops.

74. The Special Rapporteur is concerned about ongoing reports of the self-sufficiency policy for the military, which continues to result in Government forces confiscating land, livestock, fish-catches and harvested crops from the civilian population and randomly shooting the cattle of civilians for their own consumption. It is reported that civilians refusing to acquiesce to the demands of the Government forces are subjected to fines and physical punishment.

75. The requisitioning of possessions, forcible evictions, house destruction and the burning of civilian dwellings are more prevalent in counter-insurgency areas. A large number of villages in ethnic minority areas have reportedly been burnt down and the villagers forced to relocate as a result of military offensives against armed opposition groups.

76. The Special Rapporteur is concerned about continued reports that the freedom of movement of civilians is unnecessarily restricted. In this regard, he notes reports that members of the Rohingya Muslim minority are prevented from travelling outside their villages without official permission. Others who are particularly affected are the Shan in the south-eastern part of Shan state and the Mon in southern Ye township in Mon state. It is understood that in several instances, civilians have been required to obtain passes, at a fee, in order to farm their own land and have had limits imposed on the length of time they may travel outside their village.

77. The Special Rapporteur is very concerned to hear that the use of landmines by Government forces and some non-State armed groups continues, affecting nine out

of 14 states and divisions. He is disturbed by reports of the ongoing practice of “atrocities demining” whereby civilians are forced to act as human mine-sweepers by the military, resulting in severe mutilation and sometimes death. It is believed that Myanmar continues to produce landmines, with devastating effects. The lack of provision of adequate care and assistance for victims affected by landmines is to be very much regretted. The continued practice of laying landmines in fields and forests, and the lack of mine clearance, has had a negative impact upon the freedom of movement of civilians and their economic right to earn a living. Livestock are understood regularly to be maimed or killed in landmine incidents.

78. The Special Rapporteur is pleased to note that some progress has been made by the Government in tackling the issue of human trafficking. He welcomes news that anti-trafficking legislation is currently being drafted and that some progress has been made in prosecuting those involved in trafficking for forced labour purposes. The recent establishment of a police anti-trafficking unit is to be welcomed, as is the training of the anti-trafficking unit within the Ministry of Home Affairs in the investigation of trafficking cases. He remains concerned, however, that men, women and children continue to be trafficked for forced labour and sexual exploitation.

79. The Special Rapporteur has taken note of allegations of ongoing incidents of religious persecution. In Chin state, the reported destruction of a Christian cross by Government troops and the coercion of Chin Christians to contribute money and labour for the construction of a Buddhist monastery are to be regretted. He remains very concerned about reports of ongoing discrimination against the Rohingya ethnic minority in northern Rakhine state, including the destruction of mosques by Government forces and the forced labour practice of ordering civilians to construct “model villages” to resettle Buddhists onto Muslim land.

80. He is concerned that the 1982 Citizenship Law, which recognizes the right to nationality for those defined as indigenous, excludes the Rohingya minority from citizenship, leaving them *de facto* stateless.

VII. Humanitarian situation

81. As long as there is conflict in Myanmar, livelihood prospects within the country will remain poor, and as long as the Government fails to protect human rights, there will be those who feel compelled to seek a better life elsewhere. Neighbouring countries will continue to bear the burden of those who have left Myanmar in search of safety, sustenance and freedom.

82. The ongoing armed conflict between Government forces and non-State armed groups of the various ethnic minority communities, combined with the perpetration of systematic and grave human rights violations have resulted in significant numbers of people fleeing their homes and becoming internally displaced persons and refugees. Many flee to the forests and remote areas, where there is inadequate food security and health care and no education for the children. Several thousand civilians have reportedly been displaced since the beginning of the year, particularly as a result of the counter-insurgency operations of the Government forces and/or their proxies.

83. It has been reported that as of the end of 2004, there were at least 526,000 internally displaced persons in eastern Myanmar alone, in Mon, Kayin, Kayah, southern Shan states and Tanintharyi and eastern Bago divisions. The Special Rapporteur is concerned about reports that allege that 365,000 people are in temporary settlements in ceasefire areas controlled by ethnic minority groups; 84,000 civilians are reportedly in hiding or temporary settlements, having been forcibly evicted from their homes; and a further 77,000 are understood to have been moved to relocation sites by Government troops. It is believed that at least 1 million people are internally displaced countrywide.

84. Reports state that relocation sites are in most cases empty tracts of land, where those who have been displaced are expected to provide their own shelter. Internally displaced persons face severe food shortages and inadequate access to safe drinking water, health and education services. Infant and maternal mortality rates are reportedly higher among the displaced. The lack of access for humanitarian agencies to border areas is believed to be exacerbating the problem.

85. Following the renunciation by the Shan State National Army of its ceasefire agreement in April 2005, there has been increased military activity and increased deployment of Government forces to restrict contact with the Shan State Army (South). As a result, it is understood that over 10,000 civilians have been displaced by conflict in southern Shan state between March and June 2005. During this period several villages were forcibly relocated, burnt or abandoned, allegedly as a result of the military strategy of Government forces and its adverse impact upon the civilian population.

86. In 2003 and 2004, the Special Rapporteur welcomed the fact that the flow of United Nations development assistance, especially in the area of health, had significantly increased, access for international organizations had improved and agreement had been reached on activities under the Global Fund for HIV/AIDS, Tuberculosis and Malaria. However, since October 2004, the situation has reverted to a more constrained operating environment for United Nations agencies. International agencies working inside Myanmar do not have sufficient access to

the zones of ongoing armed conflict or instability in the eastern part of the country, where protection and other humanitarian vulnerabilities are particularly acute. United Nations agencies are coming under increased scrutiny, with many of their operations subjected to increased governmental restrictions. In addition, in spite of concerns about deepening poverty and social vulnerability, restricted mandates of some United Nations agencies continue to affect their capacity to support Government programmes and capacity-building projects.

87. The Special Rapporteur regrets that international non-governmental organizations are reportedly also experiencing difficulties in carrying out their activities.

88. ICRC has continued to monitor the situation of the civilian population in conflict areas along the Thailand-Myanmar border. Its work in this region is of great benefit to all sides. However, the Special Rapporteur regrets to note that the access of ICRC has also been seriously curtailed in the eastern border areas.

89. While certain non-governmental organizations have some access to conflict areas, coverage is limited and will remain so until ceasefires in these areas are consolidated. There has been significant concern recently about reports of the forced return to Myanmar of refugees in Thailand to conflict areas.

90. The south coast of Myanmar was hit by the tsunami of 26 December 2004. The humanitarian community, led by the International Red Cross and Red Crescent Movement, assessed the affected areas and was able to confirm Government estimates of about 90 people killed and 10,000 to 15,000 people affected. The worst-hit areas were the coastal portions of the Ayeyarwardy Delta as well as Tanintharyi division and Rakhine state. The overall assessment was that the country had fortunately been spared a large-scale disaster. The Government of Myanmar responded to the situation by providing support to affected populations and sharing available information on the impact of the tsunami with the relief community. The United Nations agencies rapidly coordinated their response and provided emergency support for immediate needs.

VIII. Concluding observations

91. The Special Rapporteur believes that the Government can and should take steps to salvage the National Convention and the credibility of the Government both at home and internationally. Freedom of movement, assembly and association must be guaranteed, as they are basic requirements for national reconciliation and the path to democratization. The National Convention will continue to have its

credibility questioned as long as it fails to adequately represent the people of Myanmar. Democratic principles should govern all constitutional discussion and the entire political process.

92. One of the most relevant issues continues to be the definition of those who will draft the constitution, the third step of the road map. According to Government

declaration 1/90 of 27 July 1990, “the representatives elected by the people are those who have the responsibility to draw up the constitution of the future democratic State”, while, more recently, there have been reports that a group of “experts” from the Government or appointed by the National Convention would draft the constitution. For the time being, there are also no clear indications about the rules for the adoption of the constitution through a national referendum.

93. The transition to a full, participatory and democratic system can no longer be postponed. Political and constitutional dialogue must begin without delay. By instituting values of democracy and human rights, the Government will send a clear signal to the people of Myanmar and the international community that it is actively committed to facilitating the creation of a stable and democratic future for the country.

94. While the release of a large number of common-law prisoners and some political prisoners is to be welcomed, the constant arrests, detention and maltreatment of civilians and democracy advocates continues. The Special Rapporteur deplores the sentencing of five pro-democracy activists to life imprisonment on 13 June 2005, which contradicts the expressed commitment of the Government to implement the road map in good faith.

95. It is deeply regrettable that the General-Secretary of NLD, Daw Aung San Suu Kyi, celebrated her sixtieth birthday under house arrest. Her virtual solitary confinement and lack of access to her NLD colleagues run counter to the spirit of national reconciliation. Furthermore, ICRC has not been allowed to independently monitor her living conditions for the past two years.

96. The misuse of the machinery of law, order and justice by the Government of Myanmar to instigate systematic political repression rather than protect basic human rights and fundamental freedoms is to be regretted. The Special Rapporteur believes that judicial procedures must undergo serious and immediate reform to bring them into line with international standards and the rule of law. The lack of due process, particularly in political trials, and the abuse of the justice system to silence peaceful political dissent are of serious concern to the Special Rapporteur.

97. Throughout the country, civilians are unable to make complaints or obtain redress for human rights violations by State agents. It is deeply regrettable that when victims of human rights violations attempt to complain, they invariably find no avenue of redress available. Furthermore, they are frequently subjected to threats and reprisals.

98. The Special Rapporteur is dismayed that no action has yet been brought against the perpetrators of the fatal attacks on NLD supporters in a car convoy at Depayin in May 2003, or an investigation launched into the alleged systematic rape of Shan, Karen and other ethnic minority women by Government forces.

99. The Special Rapporteur deeply regrets to note the deaths of at least 11 people and the wounding of many others following the bomb attacks in Yangon on 7 May 2005.

100. The Special Rapporteur strongly believes that the United Nations and the international community are ready to work in partnership with the Government, the political parties and civil society organizations to effectively facilitate national reconciliation and the transition to democracy. By improving its human rights record and governance policies and strengthening its cooperation with international organizations, the Government can be assured of support for conflict resolution, political and economic reform, institution- and capacity-building, humanitarian assistance and human development.

IX. Recommendations

101. The Special Rapporteur believes that the Government of Myanmar needs to explicitly reaffirm and demonstrate its commitment to implement political and constitutional reform by guaranteeing the full and effective participation of all political actors, including NLD, political parties and ethnic leaders, in a meaningful and substantive dialogue.

102. The Government needs to clearly state the procedural steps it plans to take in drafting the constitution and in conducting the referendum and genuinely free and fair elections.

103. The Special Rapporteur calls on the Government to ensure the full and effective participation of all those political actors who are trying to build a free, open and just society throughout the political transition process. The constitution should prescribe a model of government that reflects and involves the diverse ethnic and political communities that make up the country.

104. The Special Rapporteur reiterates that the General-Secretary of NLD, Daw Aung San Suu Kyi, the Vice-Chairman of NLD, U Tin Oo, ethnic leaders such as Khun Htun Oo, Chairperson of SNLD, and elderly prisoners such as the poet and journalist U Win Tin, should be released. The immediate release of all 1,100 political prisoners would send a powerful signal to the people of Myanmar and the international community that the Government is seriously committed to a genuine process of reconciliation and to constituting a participatory democracy in Myanmar.

105. It would be most desirable to have an independent assessment of the conditions of detention of all persons detained, including Daw Aung San Suu Kyi, and all those under house arrest, by a neutral body such as ICRC.

106. The Special Rapporteur reiterates the pressing need for State institutions to receive and fully investigate all complaints of human rights abuses and to prosecute, where necessary, in accordance with international standards. The State must assume the responsibility to protect and promote the well-being of its people.

107. The Special Rapporteur calls on the Government of Myanmar to guarantee that all civil and political rights are protected and promoted. In particular, he reiterates the need for an environment to be created where freedom of expression, opinion and assembly are upheld, so as to enable meaningful progress to be made on the process of national reconciliation and the transition to democracy. In this connection, the arbitrary arrests, detention and imprisonment of civilians for engaging in peaceful political activity must end, as a matter of priority.

108. Laws that excessively restrict the peaceful exercise of civil and political rights should be immediately reviewed, amended or repealed. The 1962 Printers and Publishers Registration Act, the Unlawful Associations Act, the 1950 Emergency Provisions Act and the 1975 State Protection Law have been invoked to imprison many peaceful political activists and have seriously restricted the exercise of rights and freedoms. The Special Rapporteur calls on the Government to review and amend those laws and to repeal those provisions in the 1975 State Protection Law that allow detention by executive order without charge or trial.

109. The Special Rapporteur calls on the Government to immediately repeal Order 5/96, whose provisions allow for up to 20 years' imprisonment of anyone who drafts a constitution without official permission and otherwise criminalizes the right of freedom of expression and assembly.

110. The authorities should ensure that all judicial procedures conform to internationally recognized standards of fair trial, including the right to the presumption of innocence, the right to a public trial and the right to appeal to a higher tribunal. The judiciary must not be influenced by the military, either directly or indirectly; it should be permitted to determine each case without interference from the executive branch of the Government.

111. The authorities should ensure that disciplinary measures employed in prisons do not constitute torture or cruel, inhuman or degrading treatment. Should reports be received about the occurrence of such treatment, they should immediately be acted upon and a prompt, full and impartial investigation conducted. Those found to be the perpetrators should be prosecuted accordingly. All allegations of deaths in custody should be subject to an independent, prompt and impartial investigation to ascertain whether they occurred as a result of unlawful acts committed by officials, in which case the perpetrators should be brought to justice.

112. The Special Rapporteur calls on the Government of Myanmar to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The domestic laws that prohibit the use of torture should also be enforced. In ratifying this treaty and implementing the relevant domestic legislation, the Government will demonstrate its commitment to eradicating torture. All detainees and prisoners should be treated humanely and due respect shown for their inherent human dignity. Incommunicado detention, which itself often facilitates the perpetration of torture and can constitute a form of cruel, inhuman and degrading treatment, must be eliminated. In accordance with international standards, all steps must now be taken to ensure that all prisoners have immediate, confidential and frequent access to relatives and to legal and medical professionals.

113. The Special Rapporteur calls on the Government to ensure that the conditions in which prisoners are detained meet international standards in terms of adequate and hygienic accommodation, a healthy diet, adequate and timely health care, including specialist treatment if necessary, and access to reading and writing materials.

114. The Special Rapporteur calls on the Government to allow humanitarian access to ethnic minority areas, where the civilian population is suffering the ill effects of military operations, and to ensure that article 3 common to the four Geneva Conventions, of 12 August 1949, is fully implemented during the conduct of hostilities.

115. At the end of the fifth year of his mandate, the Special Rapporteur is convinced that there is an urgent need for the Government of Myanmar to initiate fundamental reforms with the assistance of the international community and multilateral organizations. These reforms are imperative if Myanmar is to be successfully integrated into international financial and economic structures.

116. He would like to reaffirm that there are several policy initiatives which could be launched simultaneously during the transition process, in consultation with economists, political parties, United Nations agencies and neighbouring countries, to create a favourable environment for democracy. Among them, the Government should consider civil service reform, environmental protection, reforms in the education sector, reform of the judiciary and the establishment of social safety nets for the most vulnerable groups, including poor persons, women, youth, the elderly and persons with disabilities (see E/CN.4/2005/36, para. 62).

117. As a matter of priority, the Government should ratify core international human rights instruments, including the International Covenant on Civil and Political Rights and its Optional Protocols, the International Covenant on Economic, Social and Cultural Rights, 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.

118. The Special Rapporteur stands ready to cooperate with the Government in its efforts to advance the rights and fundamental freedoms of the people of Myanmar and very much hopes that the Government will give favourable consideration to facilitating his mandate and allowing him to resume his visits to the country.

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Human rights questions: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in Myanmar

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly, the interim report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar, Paulo Sérgio Pinheiro, submitted in accordance with Commission resolution 2004/61 and Economic and Social Council decision 2004/266. * A/59/150.

Interim report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar

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. In that resolution, the Commission requested the Special Rapporteur to submit an interim report to the General Assembly at its fifty-ninth session. The present interim report is based upon information received by the Special Rapporteur up to 30 July 2004 and is to be read in conjunction with his last report to the Commission (E/CN.4/2004/33).

Since his last mission to Myanmar in November 2003 the Special Rapporteur has requested from the Government of Myanmar on several occasions its cooperation in returning to the country for a fact-finding mission. However, in spite of the

indication of agreement in principle to the Special Rapporteur's visit, no authorization to visit was received. The Special Rapporteur therefore provides in the present report short updates on the issues he examined during his last visit, based on information collected from other sources. The Special Rapporteur will continue seeking access to Myanmar so as to more fully discharge his mandate.

The National Convention was reconvened from 17 May to 9 July 2004. Reviving the National Convention constitutes the first step under the seven-point road map for national reconciliation and democratic transition presented by the Prime Minister, General Khin Nyunt, on 30 August 2003. It was announced by the authorities that the delegates to the new National Convention were expected to frame their suggestions in the context of the six objectives and the 104 principles already laid down during the 1993-1996 Convention.

The National Convention was reconvened without the involvement of the National League for Democracy (NLD) and other political parties that won the majority of seats in the 1990 elections. It was attended by 1,076 delegates, compared with the 702 participants at the previous Convention. This increase was largely made up of representatives of ethnic nationalities, including ceasefire groups that emerged in the new political environment created as a result of ceasefire agreements with 17 former armed groups. In terms of potential for conflict resolution, the 2004 National Convention may thus be a unique opportunity for ethnic minorities. The Special Rapporteur notes that the concerns regarding the National Convention process that he expressed in his last report to the Commission have not been addressed and that the necessary steps to ensure minimum democratic conditions for the reconvening of the National Convention have not been taken. The Special Rapporteur reiterates that if the Government wishes to promote a genuine process of political transition, fundamental human rights requirements have to be fulfilled.

The Special Rapporteur nevertheless hopes that the final outcome of the National Convention will bring some concrete solutions to the concerns of the entire population of Myanmar. Releasing Daw Aung San Suu Kyi and beginning a substantive dialogue with her and her party, as well as reaching an agreement with ceasefire groups that takes into account their suggestions would contribute to the advancement of the political process. In this respect, the Special Rapporteur appeals to the Government of Myanmar to recognize the role of the Special Envoy of the Secretary-General and the necessity of his return to the country as soon as possible to continue his facilitation efforts, in particular in the context of preparations for the next session of the National Convention.

The information received by the Special Rapporteur during the reporting period indicates that the situation with regard to the exercise of basic human rights and

fundamental freedoms in Myanmar has not substantially changed. The effects of the events of 30 May 2003 in Depayin have yet to be fully reversed. There remain large numbers of security detainees. The Special Rapporteur has received several reports of continuing arrests and harsh sentences for peaceful political activities; many of the reported cases were raised by the Special Rapporteur in his letters and urgent appeals addressed to the Government of Myanmar. The Special Rapporteur also remains concerned at the practice of administrative detention. There are still restrictions on political activity, with all NLD party offices remaining shut, except for its headquarters in Yangon which was allowed to reopen in April 2004. Despite the restrictions in place, according to recent reports, NLD has been able to conduct some activities.

While the extent to which NLD and other political parties will be allowed to conduct peaceful political activities without reprisals remains to be seen, the Special Rapporteur would like to reiterate the view, expressed during his last mission in November, that the implementation of the road map must be accompanied by tangible changes on the ground towards a genuinely free, transparent and inclusive process involving all political parties, ethnic nationalities and members of civil society. 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 proposed in his reports and letters to the Myanmar authorities would help create such an environment.

During the reporting period, the Special Rapporteur has received credible and detailed reports of human rights violations in certain counter-insurgency areas in Myanmar and hopes that he will be able to clarify those reports during his next mission. He recalls that his request for an independent assessment in Shan State has not yet been answered by the Myanmar authorities. The Special Rapporteur has taken note of the cooperation by the Government of Myanmar with the Committee on the Rights of the Child in the consideration of the second periodic report of Myanmar on the implementation of the Convention on the Rights of the Child.

The Special Rapporteur believes that there has been growing appreciation in recent years by the international community of an imperative for humanitarian assistance in Myanmar. In this regard, he welcomes the efforts of the United Nations Country Team in mapping out vulnerabilities in Myanmar with a view to developing a strategic framework for United Nations assistance.

In view of the prevailing situation in Myanmar, the conclusions and recommendations given in the previous reports of the Special Rapporteur remain valid.

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I. 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 (approved by the Economic and Social Council in its decision 2004/266). In its resolution, the Commission requested the Special Rapporteur to submit an interim report to the General Assembly at its fifty-ninth session. The present report is submitted in accordance with that request. It is based upon information received by the Special Rapporteur up to 30 July 2004 and is to be read in conjunction with his last report to the Commission on Human Rights (E/CN.4/2004/33).

II. Activities of the Special Rapporteur

2. The Special Rapporteur introduced his report to the Commission on Human Rights on 26 March 2004. While in Geneva on that and other occasions, and also later in London, he had meetings with senior representatives of the Government of Myanmar to discuss matters relating to the implementation of his mandate. In parallel, the Special Rapporteur maintained his consultations with representatives of Member States, civil society and the academic community.

3. 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 in returning to the country for a fact-finding mission. The Special Rapporteur proposed to travel to Myanmar in March 2004 in order to update his report to the Commission. However, in spite of the indication of agreement in principle to the Special Rapporteur's visit, the Government did not accept the proposed dates and suggested seeking other, mutually convenient dates. The Special Rapporteur suggested late May/early June 2004, so as to collect first-hand information for the present report, in particular in view of the recent developments relating to the National Convention process in the country. No authorization was received for those dates either. The Special Rapporteur wishes to note that the Special Envoy of the Secretary-General has also not had access to Myanmar since his last mission in March 2004 and that the Secretary-General has called on the State Peace and Development Council (SPDC) to allow his Special Envoy to return as soon as possible.

4. In the absence of missions to Myanmar during the reporting period, the Special Rapporteur provides in the present interim report short updates on the issues he examined during his last visit, based on information collected from other sources. The Special Rapporteur will continue to seek access to Myanmar so as to more fully discharge his mandate.

5. Taking the opportunity of a visit to Bangkok for another mandate, the Special Rapporteur held a press conference on 1 June 2004 at which he expressed his disappointment at the lack of cooperation on the part of the Government of Myanmar. While in Bangkok, the Special Rapporteur met with representatives of the Royal Thai Government, the diplomatic community, United Nations agencies and civil society as well as individuals knowledgeable about the situation of human rights in Myanmar.

6. During the reporting period, the Special Rapporteur has sent to the Government of Myanmar six urgent appeals and letters of allegation raising cases of alleged violations of human rights involving 68 persons.

III. Human rights-related developments

A. The National Convention

7. Reviving the National Convention constitutes the first step under the sevenpoint road map for national reconciliation and democratic transition presented by the Prime Minister, General Khin Nyunt, on 30 August 2003. It

should be recalled that the previous Convention, which began its work in 1993, was adjourned in 1996 after delegates from the National League for Democracy (NLD) walked out because of what NLD described as undemocratic procedures. There were also human rights abuses committed during its proceedings, which were documented by previous special rapporteurs (E/CN.4/2004/33, para. 33).

8. Preparations for the reconvening of the National Convention were handled by three bodies — the National Convention Convening Commission, the Work Committee and the Management Committee — specifically reconstituted for that purpose by SPDC (*ibid.*, paras. 29-30). They had their first joint work coordination meeting on 16 February 2004.

9. At their second meeting, on 19 April 2004, Lieutenant-General Thein Sein, Chairman of the National Convention Convening Commission and Secretary-2 of SPDC, announced the date of the National Convention and the parameters of its operation. It was made clear that the new Convention would be held in accordance with its previous objectives and procedures. The delegates were expected to frame their suggestions in the context of the “basic principles” and the 104 “detailed basic principles” already laid down during the 1993-1996 Convention. It was also declared that the list of delegates had been scrutinized and that invitations had been sent out beginning on 7 April 2004 to the delegates selected from the same eight social categories as at the previous Convention: political parties, representativeselect, national races, peasants, workers, intellectuals and intelligentsia, State service personnel and other invited delegates. Delegates were to register on 13 and 14 May 2004.

10. This announcement came three days after NLD released a statement that the situation would not be conducive to its participation in the National Convention if the latter continued to operate under the previous procedure and rules. The NLD position was that the National Convention must be held in accordance with democratic practices. Seven NLD Central Executive Committee (CEC) members who had already been invited to attend the Convention (the other two, Daw Aung San Suu Kyi and U Tin Oo, remained under house arrest and reportedly were not sent an invitation) stated that their participation would be officially decided only after they had discussed the matter with Daw Aung San Suu Kyi.

11. A meeting of the NLD CEC took place on 27 April 2004 at Daw Aung San Suu Kyi’s residence. All nine members of CEC were present, including U Tin Oo who was brought from house arrest to attend the meeting. From the reports that the Special Rapporteur saw, it appears that NLD was prepared and willing to attend the National Convention until it became clear that an agreement on the release of Daw Aung San Suu Kyi and the reopening of party offices would not be reached. The refusal of the NLD leadership to participate in the Convention was echoed by

some other ethnic nationality parties. Some ethnic groups also objected to the six “basic principles”, which include a guarantee that the military will have a significant role in any future government, and to the 104 “detailed basic principles” for the constitution that were laid down by the previous Convention and would guide the work of the new Convention.

12. On 14 May 2004, the Secretary-General urged all parties concerned to make every effort in the next two days to reach an agreement, taking into account suggestions made by NLD and by other political and ethnic nationality parties. He also reiterated his call for the lifting of all remaining restrictions imposed on Daw Aung San Suu Kyi and U Tin Oo and the reopening of NLD offices, so that the National Convention could be all-inclusive. Those conditions were essential for the National Convention to be recognized by the international community as a credible forum for democratization and national reconciliation in Myanmar.

13. The National Convention was reconvened from 17 May to 9 July 2004 without NLD and other political parties that won a majority of seats in the 1990 elections. The Special Rapporteur, in his press statement of 1 June, noted that the concerns regarding the National Convention process, which he expressed in his last report to the Commission (*ibid.*, para. 34) and subsequently reiterated in his speech to the Commission had not been addressed and that the necessary steps had not been taken to ensure that the National Convention would be reconvened under democratic conditions. He reiterated that fundamental human rights requirements had to be fulfilled if SPDC wished to promote a genuine process of political transition. In order to create an enabling environment conducive to a successful democratic transition, the rights to freedom of expression and assembly must be restored. All political prisoners (i.e. security detainees) must be released immediately and unconditionally, and no further arrests or punishment for peaceful political activities should take place. Moreover, Daw Aung San Suu Kyi and U Tin Oo must be freed from *de facto* house arrest and all NLD party offices should be reopened.

14. The reconvened National Convention was attended by 1,076 of the 1,088 invited delegates, i.e. more than 300 delegates more than the previous Convention, which had 702 participants. The increase was largely made up of representatives of ethnic nationalities, including ceasefire groups that had emerged in the new political environment created as a result of ceasefire agreements between the Government and 17 former armed groups. In terms of potential for conflict resolution, the 2004 National Convention may thus be a unique opportunity for ethnic minorities. This being said, the challenges should not be underestimated. The ceasefire groups, comprised of ethnic minority-based former armed opposition groups, were included in the “specially invited guests” category. Before it was convened, SPDC had requested the ceasefire groups to select a specified

number of delegates. During the initial session of the Convention, the ceasefire groups raised issues of local autonomy for the ethnic minority areas, and some substantive discussions with the authorities reportedly took place about these concerns. With regard to the United Nationalities Alliance (UNA), a grouping of some of the ethnic minority political parties, only the Shan Nationalities League for Democracy (SNLD) was reportedly invited to participate in the National Convention, but until now they have not done so.

15. The Special Rapporteur took note of the concerns regarding the proceedings and the general atmosphere at the National Convention, which he expressed in his earlier report (*ibid.*, para. 33), including in relation to Law No. 5/96 and other restrictive laws and procedures. The Special Rapporteur will address these during his next fact-finding mission to Myanmar.

16. While noting certain concerns about the current National Convention process, in particular with respect to inclusiveness and procedures governing its proceedings, the Special Rapporteur hopes that its final outcome will bring some concrete solutions benefiting the entire population of Myanmar. The Special Rapporteur believes that releasing Daw Aung San Suu Kyi and beginning a substantive dialogue with her and her party, as well as reaching an agreement with ceasefire groups that takes into account their suggestions, would contribute to the advancement of the political process. In this respect, the Special Rapporteur appeals to the Government of Myanmar to recognize the role of the Special Envoy of the Secretary-General and the need for his return to the country as soon as possible to continue his facilitation efforts, in particular, in the context of preparations for the next session of the National Convention which is expected to be convened sometime after the monsoon season, perhaps in November.

B. Update on civil and political rights

17. The information received by the Special Rapporteur during the reporting period suggests that the situation with regard to the exercise of basic human rights and fundamental freedoms in Myanmar has not substantially changed. The effects on human rights of the events of 30 May 2003 in Depayin have yet to be fully reversed (see A/58/219, paras. 10-17, 23-25; E/CN.4/2004/33, paras. 12-21).

18. There remain large numbers (over 1,300) of security detainees. The Special Rapporteur is concerned that so far there have been no indications of when Daw Aung San Suu Kyi will be released. The Special Rapporteur also regrets to note that despite his repeated appeals only a small number of detainees have been released during the reporting period. Among recent releases are NLD Chairman U

Aung Shwe and CEC member U Lwin, who had been under house arrest since 30 May 2003 and were released on 13 April; NLD member Tin Tun, who was sentenced to 20 years in prison in 1993 and released on 20 June; NLD member Ko Wanay Soe, who had been serving a 10-year prison sentence since 1999, and lawyer Tin Aye, who were freed on 24 June.

19. Since the beginning of this year, the Special Rapporteur has received several reports about continuing arrests and harsh sentences for peaceful political activities; many of the reported cases were raised by the Special Rapporteur in his letters and urgent appeals addressed to the Government of Myanmar. According to one report, 11 NLD members who had been arrested in connection with the 30 May 2003 incident in Depayin were sentenced on 9 April 2004 to prison terms ranging from 7 years to 22 years by a “special tribunal” set up inside a prison in Mandalay Division. They were accused of maintaining a relationship with illegal organizations and charged under article 5 (j) of the Emergency Provision Act and article 17 (1) of the Unlawful Organization Act, in a brief trial at which they were deprived of their right to legal counsel. These 11 persons, who are from Yangon, and their respective jail terms are: (1) U Hla Saw, 17 years; (2) U Myint Oo, 7 years; (3) Daw Nhin Pa Pa, 17 years; (4) Maung Aung Naing Thu, 12 years; (5) Ko Aung Aung, 7 years; (6) U Win Kyi, 22 years; (7) Ko Thay Lwin Oo, 7 years (they are all from Mandalay); and (8) U Than Win, 12 years; (9) Ko Ray Tun Min, 12 years; (10) U Tin Oo, 12 years; and (11) Ko Zaw Min Naing, 12 years. The Special Rapporteur notes that the International Committee of the Red Cross (ICRC) was able to continue carrying out its traditional protection activities in favour of detainees under the custody of the Prison Department, including repeated visits to persons still being detained in connection with the 30 May events. For his part, the Special Rapporteur will pursue further discussions on the Depayin incident (E/CN.4/2004/33, paras. 12-21) during his next mission to Myanmar.

20. It was also reported that on 7 May, five activists who had been arrested three months earlier were sentenced by a “special court” in Insein prison to lengthy prison terms for allegedly communicating illegally with banned political organizations. They are: Maung Maung Latt and Paw Lwin (12 years); Ne Min (15 years); Ye Thiha (7 years); and Ne Lin Aung, also known as Yan Naing (22 years). It was further reported that on 5 June, two NLD members — Than Than Tay, secretary of the women’s group of Magwe Division, and Tin Myint, secretary of Thingangyun township in Yangon — were arrested for allegedly communicating with illegal groups on the border. Their whereabouts appear to be unknown and they potentially face long-term imprisonment. The Government claimed that this was not indicative of a new clampdown on NLD.

21. The Special Rapporteur continues to be concerned about the practice of administrative detention under article 10 (A) of the Law to Safeguard the Nation Against the Danger of Subversive Elements. The Special Rapporteur is also disturbed at reports of the deaths of two former political prisoners. One of them, a 60-year-old poet Kyi Tin Oo, who was released from prison on 24 March 2004, died of a heart attack on 24 June. It is alleged that he had suffered from high blood pressure, a heart condition and other ailments as a result of torture he was subjected to at the time of his arrest and interrogation and the poor conditions in prison where he spent his last 10 years. The other is lawyer U Min Thu, a 50-year-old political prisoner who died on 12 June 2004 at Insein Township Hospital as a result of heart disease. He had been serving a seven-year sentence received in April 1998 for cooperating in compiling facts for the History of Students' Activities in Politics of Burma records.

22. The Special Rapporteur has received information that at least 50 political prisoners are currently in poor health. He appeals once again to the Government of Myanmar to release those prisoners on humanitarian grounds. He also renews his call for the immediate and unconditional release of all political prisoners through an amnesty process. Their continued detention contradicts the spirit and objectives of the democratic transition and national reconciliation announced in the road map by the Prime Minister.

23. There are still restrictions on political activity, with all NLD party offices remaining shut except for its headquarters in Yangon which was allowed to reopen in April 2004. Reportedly, phone lines to the NLD headquarters were cut when the National Convention started its proceedings on 17 May.

24. Despite the restrictions in place, according to recent reports, NLD has been able to conduct some activities. The party leaders and elected representatives started holding meetings during the month of July in preparation for their input to the NLD those preparatory meetings had been concluded in Yangon Division and Shan State. Similar meetings are planned throughout the country in the coming days. Following these meetings, party leaders from all divisions and states are expected to meet with their top leaders at the NLD headquarters in Yangon.

25. Reportedly, on 30 July NLD started a nationwide petition calling for the release of Daw Aung San Suu Kyi, U Tin Oo and other political prisoners and for the reopening of all party offices closed since 30 May 2003. Military Intelligence officials have allegedly warned the organizers against carrying on with the campaign, but as yet no action has been taken against them. In view of the peaceful nature of this campaign, the authorities should desist from putting pressure on the organizers.

26. While the extent to which NLD and other political parties will be allowed to conduct peaceful political activities without reprisals remains to be seen, the Special Rapporteur would like to reiterate his view, stated during his last mission in November, that the implementation of the road map must be accompanied by tangible changes on the ground towards a genuinely free, transparent and inclusive process involving all political parties, ethnic nationalities and members of civil society. 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 proposed in his reports and letters to the Myanmar authorities would help create such an environment.

C. Situation in the border areas

27. The resumption of peace talks between the Government of Myanmar and the Karen National Union (KNU), the largest armed opposition group, is a significant development. KNU deputy chairman and defence chief General Bo Mya led a delegation to Yangon for talks in January 2004, when a “gentleman’s agreement” on a ceasefire was agreed. The Special Rapporteur hopes that the remaining issues will be resolved by the two sides very soon. Reportedly, the two sides will meet again in August 2004 for the fourth round of negotiations aimed at ending more than a half century of armed conflict. Were human rights commitments to be built into an agreement, this process could significantly improve not only the human rights situation in ethnic minority areas, but also the political climate throughout Myanmar.

28. The Special Rapporteur has received credible and detailed reports of human rights violations in certain counter-insurgency areas in Myanmar and hopes that he will be able to clarify those reports during his next mission. He recalls that his request for an independent assessment in Shan State (E/CN.4/2003/41, paras. 35-41; A/58/219, paras. 27-36; and E/CN.4/2004/33, paras. 47-50) has not yet been answered by the Myanmar authorities.

29. The Special Rapporteur notes with satisfaction that SPDC has continued to allow ICRC to maintain its independent assessment of the security and living conditions of the population in the conflict-affected ethnic minority areas.

D. Child rights

30. The Committee on the Rights of the Child considered the second periodic report of Myanmar on the implementation of the Convention on the Rights of the

Child (CRC/C/70/Add.21) on 26 May 2004 and adopted its concluding observations (CRC/C/15/Add.237) on 4 June 2004. In preparation for that event, on 5 February 2004, the Special Rapporteur briefed the Committee members on the present situation in Myanmar during its pre-sessional working group meeting.

31. The Special Rapporteur notes that the Committee welcomed the adoption of rules and regulations relating to the Child Law in 2001; the creation of the National Human Rights Committee in 2000; the establishment of the Myanmar Women's Affairs Federation in 2003, whose mandate includes promotion and protection of the rights of children; the adoption of the National AIDS Programme and the development of the "Joint Programme for HIV/AIDS: Myanmar 2003-2005"; the adoption of the National Health Plan 1996-2001, which achieved high immunization coverage for a significant part of the population; and the adoption of the "Education for All" National Action Plan.

32. The Committee made comprehensive recommendations addressing areas of concern, which the Special Rapporteur fully endorses. Among some of the key recommendations are: raising to an internationally acceptable age the minimum age for criminal responsibility as well as the marriage age of girls; prohibiting corporal punishment and undertaking education campaigns to educate families and professionals on alternative forms of discipline; assessing the scope, nature and causes of violence against children, in particular sexual violence against girls, with a view to adopting a comprehensive strategy of effective measures and policies and to changing general attitudes; increasing efforts to prevent the spread of HIV/AIDS; improving the quality of the education system; introducing human rights, including children's rights, into the school curricula, starting at the primary level; making primary education free in practice by minimizing costs borne by parents; extending compulsory education beyond fourth grade to at least sixth grade; strengthening efforts to progressively ensure that girls as well as boys, from urban, rural and remote areas, and those children belonging to minority groups all have equal access to educational opportunities; adopting and implementing a comprehensive national plan of action to prevent and combat child labour; continuing to seek assistance from the International Labour Organization (ILO) for the elimination of forced labour; extending the protection from sexual exploitation and trafficking in all relevant legislation to all boys and girls below the age of 18 years; formulating a national plan of action to combat trafficking; demobilizing and reintegrating all combatants under the age of 18 years, ensuring that all military recruits are at least 18 and have enlisted voluntarily, and providing educational and other assistance to children affected by the conflict.

33. The Special Rapporteur is pleased to note that the Government of Myanmar has invited a delegation of the Committee on the Rights of the Child to visit Myanmar. The Government has announced that a national plan of action on child

rights will soon be drafted in response to the recommendations made by the Committee. The Special Rapporteur has also received information that the Curriculum Division of the Department of Educational Planning and Training started in June 2004 to elaborate lessons on human rights for the basic education, middle school and high school levels. The Special Rapporteur welcomes the Furthermore, the Special Rapporteur is encouraged to note that in July 2004, UNICEF and the Supreme Court — with the collaboration of the Juvenile Justice Inter-Agency Working Group — brought together senior policy makers in the Government (including, in addition to the Supreme Court, the Attorney-General's Office, the Ministry of Home Affairs and the Ministry of Social Welfare, the Myanmar Police Force and the Prison Department) and experts from the region for a workshop on juvenile justice to exchange information on how to improve the protection of children in conflict with the law in Myanmar.

34. The Special Rapporteur has taken note of the establishment of the Committee for the Prevention of the Recruitment of Child Soldiers on 5 January 2004. The Committee includes the Ministers for Foreign Affairs, Labour, and Social Welfare and the Home Minister, the Judge Advocate-General and two high-ranking military officials from the Ministry of Defence. A task force was established at the first meeting on 16 January 2004. The Committee recently held a second senior-level meeting under the chairmanship of Secretary-2 of SPDC. While the first meeting of the Committee was to adopt resolutions on prevention of the recruitment of minors for military service, the second was to discuss the implementation of the resolutions and the future programmes. These initiatives are welcome.

35. The Special Rapporteur has also taken note of the concerns expressed in the report of the Secretary-General on children and armed conflict to the Security Council (A/58/546-S/2003/1053 and A/58/546/Corr.1 and 2-S/2003/1053/Corr.1 and 2) and the references therein to Myanmar.

IV. Cooperation with the United Nations Country Team

36. The Special Rapporteur believes that there has been growing appreciation in recent years on the part of the international community of an imperative for humanitarian assistance in Myanmar. In this regard, the Special Rapporteur welcomes the efforts of the United Nations Country Team, which is currently comprised of 10 United Nations organizations present in the country, towards mapping out vulnerabilities in Myanmar with a view to developing a strategic framework for assistance by United Nations agencies. This is an important initiative as the United Nations, by virtue of its mandate, is in a unique position to

address the needs of vulnerable populations in the country. Moreover, at present the United Nations continues to be the largest multilateral source of humanitarian assistance and social support in Myanmar.

37. The bulk of the ongoing assistance is used for supporting grass-roots community-based activities. Significant additional assistance totalling US\$ 98.5 million from the Global Fund to Fight AIDS, Tuberculosis and Malaria is expected to be directed towards a major expansion of health-care resources in Myanmar in the next five years. The United Nations Development Programme, as the principal recipient of the Global Fund, is responsible for financial management as well as monitoring and evaluation systems. The Special Rapporteur is pleased to note that the first US\$ 35.6 million in approved grants from the Global Fund are expected to begin flowing into Myanmar in September 2004. Furthermore, the Special Rapporteur welcomes the willingness of the Government of Myanmar to provide full-country access for all sub-recipients of Global Fund money to ensure (US\$ 19.2 million) will support the campaign against AIDS. This aid is much needed and timely, particularly since it was revealed recently at the XV International AIDS Conference (Bangkok, 11-16 July 2004) that the number of people in Myanmar infected with HIV is estimated to have reached 620,000, thus placing Myanmar among the top three worst affected countries in the region.

38. The Special Rapporteur welcomes the agreement between the Government of Myanmar and the Office of the United Nations High Commissioner for Refugees (UNHCR), made earlier this year, to allow UNHCR access to the eastern part of the country, namely, Kayin and Mon States and Tanintharyi Division. Authorities at both the central and local levels have been cooperating with UNHCR which has been able to field six missions to these border areas so far. These missions are providing an important opportunity to assess humanitarian concerns in host communities and identify needs prior to any return of refugees and displaced populations. A UNHCR presence in these areas and its efforts to create conditions conducive to the return of refugees will also contribute to the national reconciliation process. However, it is obvious that a sustainable repatriation process is also linked to the establishment of a solid peace agreement between KNU and SPDC covering substantive issues, including mine clearance and the resettlement of ethnic Kayin displaced by fighting.

39. The Special Rapporteur would also like to note the positive cooperation between the Myanmar Human Rights Committee and UNHCR on human rights law training for officials in border areas. The training programme is ongoing, with five intensive workshops held so far in Yangon, Kayin and Mon States and Tanintharyi Division, at which 150 officials were trained. More such training is planned. Parallel to this, UNHCR is training the trainers (law professors from various Myanmar universities) at several institutions around the world.

40. UNICEF is also involved in substantial capacity-building and training in several areas, including, protection of children deprived of parental care (especially orphans and children in institutions), protection of children in conflict with the law, and protection and reintegration of exploited and neglected children. Moreover, UNICEF has been providing assistance to Kayin, Kayah, Mon and other States on the border with Thailand in primary health care, basic education, and water and sanitation for a number of years in agreement with the Government; more recently, assistance in child protection has also been initiated in several of these areas. UNICEF is in regular contact with relevant officials dealing with various protection issues, including child soldiers.

41. With regard to ILO, the implementation of the Plan of Action agreed by ILO and the Government of Myanmar could not yet be initiated in view of the prevailing climate in the country and, in particular, because of the cases involving nine persons sentenced to death for high treason (i.e. after the late discovery in March 2004 that three of the nine cases could have an ILO dimension). These cases were raised by the Special Rapporteur in his earlier report (E/CN.4/2004/33, para. 24) and they have not yet been fully resolved. Those nine persons were sentenced to death for allegedly conspiring to bomb government buildings, assassinate SPDC members, having contact with political groups in exile and disseminating “false information” about the authorities overseas, allegedly including through contacts with ILO. The Special Rapporteur is concerned that although on the first appeal the Supreme Court imprisonment for others), it failed to clarify this crucial point, despite the earlier assurances of the Government that contacts with ILO could not be considered illegal in Myanmar. The Special Rapporteur has been informed that a second appeal, to the full bench of the Supreme Court, was made by a lawyer for eight of the nine persons on 4 August 2004.

42. On a related matter, the Special Rapporteur took note of the conclusions of the special sitting of the Committee on the Application of Standards of the International Labour Conference (5 June 2004), which examined developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29). According to the Committee, in spite of the Government’s assurances of its good intentions, the measures taken have not been sufficient to enable agreement on the implementation of the joint Plan of Action. V. Concluding observations and recommendations

43. The conclusions and recommendations of the Special Rapporteur contained in the present report join those in his previous reports, which remain valid in view of the prevailing situation in Myanmar (see, for example, E/CN.4/2002/45, E/CN.4/2003/41 and E/CN.4/2004/33).

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**Human rights questions: human rights situations and reports of special
rapporteurs and representatives**

Situation of human rights in Myanmar

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly, the interim report prepared by Paulo Sergio Pinheiro, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar, in accordance with Commission resolution 2003/12 and Economic and Social Council decision 2003/___ (see E/2003/23 (part I), chap. I, sect. B, draft decision 2).

**Interim report of the Special Rapporteur of the Commission on Human
Rights on the situation of human rights in Myanmar**

Summary

The present report is based upon the findings of the Special Rapporteur's visit to Myanmar undertaken in March 2003 and information received by him up to 28 July 2003. The visit was curtailed by the Special Rapporteur when he discovered a functioning listening device in the room where he was conducting interviews with political prisoners.

During the visit, the Special Rapporteur noticed the lack of progress in the process of dialogue and detected some worrying signs of erosion of confidence between the Government and the National League for Democracy (NLD). Although he noted the urgency of addressing the evolving situation, the deadlock symptoms with regard to the dialogue and escalating political tensions contributed to setting the scene for the tragic events of the night of 30 May, followed by a significant deterioration of the human rights situation. On that day National League for Democracy members and supporters accompanying party General Secretary Daw Aung San Suu Kyi on her tour of Upper Myanmar were attacked by pro-Government protesters near Depayin (Sagaing Division). As a result, more than 100 NLD members and supporters, among them elected members of Parliament, monks and students, were arrested, killed, wounded and missing. Information from various sources received thus far by the Special Rapporteur seems to indicate an element of premeditation on the part of the protesters and part of a general pattern of growing harassment of National League for Democracy supporters, particularly during Daw Aung San Suu Kyi's countryside trips.

The Special Rapporteur has sent several communications to the Government expressing his grave concern about the alleged death, bodily harm, detention and disappearance of scores of individuals as a result of the 30 May events, and urging the immediate and unconditional release of all those detained in this connection, as well as all other political prisoners. Although the Government has announced some releases, the Special Rapporteur believes that over 100 persons are still missing or in detention in connection with those events. Among the remaining detentions are: Daw Aung San Suu Kyi, National League for Democracy Deputy Chairman U Tin Oo and other leaders of the party. A series of these new detentions took place against the backdrop of continuing arrests and imprisonment of National League for Democracy members and other political activists since the beginning of 2003.

Other recent negative human rights-related developments included the closure of most (and perhaps all) National League for Democracy offices, among them its headquarters in Yangon; increased surveillance of members and supporters of the party and other political organizations; tighter control of the press, with no free access to information, including news about the 30 May incident, and reportedly frequent summoning and threatening of former political prisoners by the military intelligence.

Overall, the 30 May-related developments have constituted a potentially terminal setback on the political front and for that matter for the human rights situation in the country: it could be argued that all the progress that had been achieved since the process of dialogue began in 2000 has been undone in one stroke. The Government's present posture has led to the freezing of diverse possibilities for cooperation with concerned States and international institutions, which had been ready to cooperate with Myanmar in the normalization of political and economic life. Thereby, the Government has put at serious risk the process of addressing urgently the existing precarious humanitarian situation, with all potential ramifications for the exercise of all human rights.

The Special Rapporteur has requested a visit to Myanmar as soon as possible, with a view to assess the present situation first-hand. He did so with the full support of the Office of the United Nations High Commissioner for Human Rights. This request remains to be officially answered by the Government.

With regard to allegations of human rights violations in ethnic areas, the Special Rapporteur is of the view that the credibility of his findings depends on his ability to establish facts in an objective and impartial manner. Consequently, he followed a two-pronged approach to his investigations: (a) conducting research based on independent interviews of refugees from those areas in Thailand and (b) making an independent assessment inside Myanmar by visiting some of the affected areas with a view to corroborating the results of his research and establishing facts about the alleged violations. While (a) had been completed, (b) has not yet taken place. The research conducted in Thailand in October-November 2002 documented such human rights abuses as forced labour, arbitrary taxation and extortion, forced relocations, torture, rape and extrajudicial executions, committed in parts of the States of Shan, Kayin, Kayah and Mon in Myanmar. At the time of writing, a reply from the Government was still outstanding regarding the proposed modalities of an independent assessment of the Special Rapporteur in Shan State.

In view of the prevailing situation in Myanmar, the Special Rapporteur's conclusions and recommendations contained in his previous reports (E/CN.4/2003/41 and E/CN.4/2002/45) remain valid. He is convinced that, if the Government wishes to renew its commitment to the process of political transition, it must start by immediately and unconditionally releasing Daw Aung San Suu Kyi, together with others detained in connection with the 30 May incident, as well as all other remaining political prisoners. Those responsible for the 30 May violence must be held accountable. In his view, the continuation of the present stalemate is a serious obstacle to the improvement in human rights of all the people of Myanmar, and he would support a recommendation that the situation in the country be brought to the attention of other instances in the United Nations.

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Annexes

I. List of persons interviewed by the Special Rapporteur during his visit to Insein prison

II. Independent assessment of allegations of human rights violations in Shan State by the Special Rapporteur on the situation of human rights in Myanmar

I. 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 of 3 March 1992 and extended most recently in resolution 2003/12 of 16 April 2003. In that 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 present report is based upon the findings of the Special Rapporteur's visit to Myanmar undertaken in March 2003 and information received by him up to 28 July 2003.

II. Visit to Myanmar and related activities

2. The Special Rapporteur visited Myanmar from 19 to 24 March 2003, with a view to updating his assessment of the human rights situation and to pursue discussions with Myanmar authorities regarding his proposal to assess allegations of human rights violations in ethnic minority areas, in particular Shan State. Since

this was to be a shorter mission than previous ones, he intended to work only in Yangon.

3. However, the visit had to be interrupted, owing to an incident involving the discovery by the Special Rapporteur of a functioning listening device placed under the table in the room where he was conducting interviews with political prisoners at Insein prison on 22 March. The incident constituted a breach of the standard operating procedures relating to the conduct of fact-finding missions by United Nations Special Rapporteurs. The Special Rapporteur protested strongly to the Government about the breach of confidentiality and non-interference with his proceedings contrary to the repeated assurances given to him by the Government and reiterated his *modus operandi* that all persons cooperating with him should be free from any form of intimidation, harassment or punishment before, during and after his missions. The Government presented its regrets and apologies and pledged to investigate the incident.

4. Activities during this short visit included meetings with the Secretary-1 of the State Peace and Development Council (SPDC), the Home Minister, the Labour Minister and the Deputy Foreign Minister. The Special Rapporteur also met with the General Secretary and members of the Central Executive Committee of NLD, the United Nations country team, the diplomatic community, international nongovernmental organizations and recently released political prisoners and journalists. At Insein prison, he interviewed 10 prisoners (see annex I). Finally, he visited the mausoleum of former Secretary-General, U Thant.

5. On the way to and from Yangon, the Special Rapporteur had consultations with the Special Envoy of the Secretary-General for Myanmar. He completed his mission with briefings in Bangkok for representatives of the diplomatic community and the media.

6. On 27 March, the Special Rapporteur wrote a letter to the Deputy Foreign Minister of Myanmar with an appeal to give serious consideration to renewed, visible and convincing human rights initiatives to undo the damage caused by the “microphone” incident and to redefine the cooperation of his Government with the Commission on Human Rights in a credible manner. Referring to his earlier calls and recommendations, the Special Rapporteur restated what those initiatives could be: immediate and unconditional release of all political prisoners; refraining from new arbitrary arrests; lifting of remaining restrictions on freedoms of expression, information, movement, assembly and association; initiating the reform of the system of administration of justice and of the legislation criminalizing the exercise of the most fundamental rights; and reviewing a policy relating to the paddy quota system exacted by the Government from rice farmers. He expressed the hope that

the authorities would give serious consideration to those initiatives and would also come forward with a full explanation about the “microphone” incident.

7. The Special Rapporteur presented his annual report, together with an oral update to the Commission on Human Rights, on 31 March. Both in Geneva on that occasion and later in New York and Washington D.C., the Special Rapporteur met with representatives of Myanmar and other Member States, non-governmental organizations and private individuals who shared their views and information on the situation of human rights in Myanmar.

8. In his reply to the Special Rapporteur dated 28 April, the Deputy Foreign Minister informed him about “a thorough inquiry” into the incident at Insein prison. A fuller account on the results of the inquiry was provided to the Special Rapporteur on 18 July by the Myanmar Ambassador in Geneva. The letter indicated that a Special Committee of Inquiry set up on 9 April had found that four working-level officials of Insein prison had installed a listening device on their own initiative, without the authorization and knowledge of higher authorities. Those officials had been subjected to disciplinary actions: (a) U Than Soe, Deputy Director, Officer-in-Charge of Insein prison, had been transferred to Mandalay prison and his probationary period for promotion extended to another six months; (b) U Maung Maung Gyi, Chief Warden, Officer-in-Charge of the main jail, had been reprimanded and his promotion suspended for six months; (c) U Ye Myint, Warden, Officer-in-Charge of the main entrance, had been reprimanded and transferred to Paungde prison; and (d) U Ne Win, Assistant Warden, Public Relations Officer, had been demoted and transferred to Pegu prison. Finally, the authorities also pledged to do their best to ensure that similar unfortunate incidents would not occur again and that the integrity of the Special Rapporteur and his freedom of contact would be strictly respected.

III. Human rights-related developments

9. The Special Rapporteur is of the view that there can be no real improvement in the human rights situation in Myanmar without genuine progress towards national reconciliation. During his March visit to the country, he noted the lack of further progress in the process of dialogue, despite the considerable optimism of the international community following the lifting of restrictions on Daw Aung San Suu Kyi’s movement on 6 May 2002. Moreover, he also detected some worrying signs of erosion of confidence between the Government and the NLD as both sides were giving signs of reciprocal distrust.

10. The Special Rapporteur noted the urgency of addressing the evolving situation in the meetings he had both during and after his visit. However, the deadlock symptoms with regard to the dialogue and escalating political tensions contributed to setting the scene for the tragic events of the night of 30 May, followed by a significant deterioration of the human rights situation. On that day, NLD members and supporters accompanying NLD General Secretary Daw Aung San Suu Kyi were attacked by pro-Government protesters near Depayin (Sagaing Division). As a result, more than 100 NLD members and supporters, among them elected members of Parliament, monks and students, were arrested, killed, wounded and missing. Among the confirmed detentions were the NLD General Secretary, NLD Deputy Chairman U Tin Oo and other NLD leaders, who were reported to have been taken into “protective custody” for their own safety. The incident occurred during Daw Aung San Suu Kyi’s tour of Kachin State and Sagaing Division (her eighth trip around the country since May 2002), which started on 6 May 2003 and was expected to end on 4 June.

11. The Special Rapporteur joined his voice with the wide international condemnation of SPDC. On 2 June, he issued a public statement with the Office of the United Nations High Commissioner for Human Rights and sent an urgent appeal to the Myanmar Government jointly with the Chairperson of the Working Group on Arbitrary Detention and the Special Rapporteur on the right to freedom of opinion and expression.

12. In reply to this urgent appeal, the Myanmar Ambassador in Geneva communicated on 27 June the results of an official inquest into the 30 May incident. Authorities claimed that NLD had incited the incident by breaching an agreement between the Government and NLD that the latter should not engage itself in any activity that could disrupt the existing peace and stability in the country. Members and supporters of NLD, joined by some monks, were said to have become lawless and had resorted to acts of violence, such as blocking public roads with disregard for traffic rules, using Buddhist monasteries for carrying out political activities and persuading people to come out into the streets in crowds and creating unrest. In the view of the authorities, such acts were “a far cry from the norms of democratic practices” and were “indeed acts of lawlessness, license and indiscipline”, which gave rise to clashes between NLD and the local populace. The Government further claimed that, just as there were people in favour of Daw Aung San Suu Kyi, there were also many people hurt by the absence of international assistance and investment who strongly resented her support for economic sanctions against the country. In his discussions with the Special Envoy of the Secretary-General and others, the Special Rapporteur also learned that the Government believed that a plot, involving members of the Communist Party of Burma, certain ethnic nationality groups, members of NLD and foreign instigators, designed to undermine the stability and the security of the State was under way in

Myanmar. Accordingly, the Government argued that it had been compelled to take certain temporary measures in order to ensure the safety of the General Secretary and some of the other NLD leaders. Finally, the Special Rapporteur was informed that four persons had died and 48 had been wounded in the incident, but he received assurances that the NLD General Secretary and Deputy Chairman had been unhurt.

13. Information from various sources received thus far by the Special Rapporteur seems to indicate an element of premeditation on the part of pro-Government protesters and part of a general pattern of growing harassment of NLD supporters, particularly during Daw Aung San Suu Kyi's countryside trips. As she had been received by large crowds, signs of renewed harassment and intimidation of NLD supporters had been becoming bolder, mainly on the part of the Union Solidarity and Development Association (USDA), a pro-Government mass organization. Thus, during her earlier trips to Rakhine State (16-24 December 2002) and to Chin State (3-13 April 2003), pamphlets denouncing and demeaning her and NLD had been reportedly distributed in various other localities, including Sagaing, Mandalay, Bago and Tanintharyi Divisions and Kayin State. The use of batons and fire engine hoses by the police, fire brigades and USDA members to disperse NLD supporters had been reported in December. Those activities appeared to be in reaction to the SPDC concern about the NLD General Secretary's return to an allegedly "confrontational posture", which was how NLD statements on Union Day and the Independence Day had been interpreted by SPDC. The reactivation of the Committee for the Representation of the People's Parliament would have been seen as provocative as well.

14. During Daw Aung San Suu Kyi's last trip prior to 30 May there had been several instances involving groups of USDA activists armed with knives obstructing vehicles of NLD leaders and a few cases of injuries of NLD members. Reports from unofficial sources suggest that there might have even been some form of military training provided for USDA members. According to testimonies of eyewitnesses, on 30 May, NLD members and supporters had been reportedly attacked by individuals believed to be USDA members with batons, clubs and iron bars. Unofficial reports suggest that at least eight persons are believed to be dead. Reportedly, a monk and two students were also killed on 31 May during clashes while protesting the previous day's incident.

15. In his letter to the Government on 1 July, the Special Rapporteur reiterated his grave concern about the alleged death, bodily harm, detention and disappearance of scores of individuals, including elected members of Parliament, in connection with the 30 May events. An annex to the letter listed the names of victims, including 51 persons held in various detention facilities, 6 elected members of Parliament under house arrest, 104 believed to have disappeared (among them 10

elected members of Parliament) and 8 reportedly dead. The Special Rapporteur urged the Government to clarify the cases in the most urgent and effective way and to release immediately all political prisoners. He also requested permission to visit Myanmar as soon as possible, with a view to assessing the situation first-hand. He made his request with the full support of the High Commissioner and his Deputy, (currently the Acting High Commissioner), both of whom had been following the situation in Myanmar with great concern. In his meeting with the Myanmar Ambassador in Geneva on 2 and 28 July, the Special Rapporteur repeated his request for an urgent visit. At the time of writing, the request remained to be officially answered.

16. The Special Rapporteur believes that, to date, there remain over 100 persons allegedly still missing or in detention in connection with the 30 May events. Many reportedly suffered injuries and have had no access to relatives or lawyers. With regard to reports of possible injuries suffered by the NLD General Secretary, during his last mission to Myanmar, the Special Envoy of the Secretary-General had brief access to her on 10 June in the presence of a military intelligence officer in an undisclosed location and, as far as he could see, she did not seem to have been injured. The International Committee of the Red Cross (ICRC) officials who also met with her on 28 July said that she was well and unhurt. According to ICRC which, since the end of June, had had access to some 30 newly detained persons, the NLD Deputy Chairman was also unhurt.

17. The Special Rapporteur echoes here the Secretary-General who, in his statement of 23 June, stated that the conditions under which Daw Aung San Suu Kyi was being held, that is, incommunicado and without charge, is truly deplorable. The Secretary-General was informed through his Special Envoy that Ms. _____ was being held under section 10-A of the 1975 State Protection Law designed to “safeguard the State against the dangers of subversive elements”. Her detention under section 10-A contradicts the SPDC statement that she is being held for her own safety. Under this law, anyone perceived to be a threat to State security can be detained without charge, trial or judicial appeal for up to five years. The Special Rapporteur, still gravely concerned about the continued detention of Daw Aung San Suu Kyi under such conditions, joins the appeal of the Secretary-General to SPDC to release her immediately and unconditionally and underlines its responsibility for her protection and safety. The Special Rapporteur also repeats his earlier calls for the release without delay of all other political prisoners.

18. A series of these new detentions took place against the backdrop of continuing arrests and imprisonment of NLD members and other political activists during the first five months of 2003. In January two nuns were arrested after staging a peaceful protest in front of the Yangon City Hall. In February, the following 12

political activists were arrested: Sai Nyunt Lwin, Secretary of Shan NLD; Thaung Kyi, North Okkalapa NLD; Thet Htwe, aka Nyein Lu; Thin Thin Oo; Ma Than Htay; Khin Win, Vice-Chairman of Kamayut NLD; Maung Maung Aye; Maung Maung Myint; Tun Yin, Dallah NLD; Tin San, Joint Secretary, Thanlyin NLD; Khin Soe, Kunyangon NLD; and Phoe Aye. To the Special Rapporteur's knowledge, the last seven of them received thereafter sentences ranging from five years to life imprisonment for their alleged involvement in anti-Government activities, including planting bombs, holding demonstrations and distributing leaflets.

19. In May, a group of NLD members was arrested in Sagaing Division for engaging in peaceful opposition political party activities: Ko Win Nyunt, Ko Bo Htay, Ko Kyaw Tin, Ko Tin Maung, Ko San Aung, Ko Than Min, U Win Maung, Treasurer; U Tin Hlaing, all from Min Swe Hnit and Pyan Kyah villages, and U Win Myint Aung, an MP-elect for Tabayin 2. The last three of them were reported to have each been sentenced to two years' imprisonment on 22 May in Monywa, in what appears to have been a summary trial just three days after their detention. It remains to be ascertained whether they had access to legal counsel, medical care or their families during their detention.

20. Arrests of NLD politicians continued to be reported during the month of July (more than four weeks after the 30 May incident). On 5 July, Than Tun, Kyaw Kyaw Lwin, Aung Than, Kyaw Kyaw, U Hnout Khan Hmwe and Win Naing were reportedly arrested for distributing leaflets related to the above-mentioned incident. U Khin Win, U Maung Maung, Ko Than Aung, three NLD organizers and Ko Aung Thein Myint, a NLD youth member from Magway Division, were also reportedly arrested on 6 and 8 July, in connection with a petition that had been written to SPDC requesting the release of NLD fellow members and supporters. In an urgent appeal to the Government dated 18 July, the Special Rapporteur raised these cases jointly with the Special Rapporteur on the question of torture and the Chairman of the Working Group on Arbitrary Detention.

21. There have been some releases of political prisoners during the reporting period, but not at the pace of last year. During his last meeting with the Myanmar Home Minister in March 2003, the Special Rapporteur was informed that the SPDC count as of 20 March 2003 was 515 during 2000-2003 (12 in 2000, 105 in 2001, 335 in 2002 and 63 since the beginning of 2003). The release of the largest batch of prisoners (115) announced on 21 November 2002 had been confirmed and a full list of persons released since the Special Rapporteur's visit in October 2002 was provided. Compared with the same period last year, the pace of releases had markedly decreased (with only 1 reported release in January, 14 in February and 48 in March, of which only 9 appeared to have been political prisoners). All 515 releases had been made under the provisions of section 401 (1) of the

Myanmar Code of Criminal Procedure, which conditioned the release on the prisoners' pledge not to undertake any activity detrimental to public order, despite the fact that many of those released had almost completed their sentences. At that time, five political prisoners were known to have refused the offer of such a conditional release. According to the Home Minister, there remained only 101 detainees (94 male and 7 female) who were members of political parties. Of those, 90 were said to be NLD members and the remainder were from six other political groups (named in government records as the Democratic Party for a New Society, the Student's Union, the Worker's Union, the National League, the National Democratic Organization and the Mon National Democratic Organization). At that time, the Special Rapporteur's estimate of remaining political prisoners was between 1,200 and 1,300.

22. According to publicly available reports, the releases in the past few months have included a number of prominent cases regarding which the Special Rapporteur had made representations to the Government: Shwe Saw Oo, Thar Tun Aung, and Khin Maung Gyi, Arakan League for Democracy members in April; 21 prisoners in May, among them U Sai Nyunt Lwin, Shan NLD leader, and Dr. Salai Tun Than. With regard to persons detained as a result of the 30 May events, the Special Rapporteur was informed by the Myanmar Mission in Geneva that, altogether, 96 persons had been freed thus far.

23. Other recent negative human rights-related developments included the closure of most (perhaps even all) NLD offices, among them its headquarters in Yangon; increased surveillance of members and supporters of NLD and other political organizations; tighter control of the press, with no free access to information, including news about the 30 May incident; and reportedly frequent summoning and threatening of former political prisoners by the military intelligence.

24. These are most regrettable developments, as they effectively not only cut off the limited political freedom that NLD had been allowed since Daw Aung San Suu Kyi's release in May 2002, but also envelope the country in the atmosphere of fear and repression. The Special Rapporteur presumes that activities of other political parties, which seem to have benefited somewhat from the temporary easiness in the political climate during the process of dialogue, will also be affected. Thus, according to news reports, the Shan NLD, which ranked the second in the 1990 elections in Myanmar, was able to hold a meeting of its Central Executive Committee in March in Yangon. Whether similar activities could be undertaken now remains to be seen.

25. Overall, the 30 May-related developments have constituted a potentially terminal setback on the political front and, for that matter, for the human rights situation in the country: it could be argued that the 30 May incident has undone in

one stroke all the progress that had been achieved since the process of dialogue began in 2000. Related to this, there has been wide international concern about the prevailing situation and the acute realization of the need to do something to effect a change in this country. A number of international bodies and Member States are assessing the scale and scope of their cooperation with the Myanmar Government. Of particular importance, Myanmar's friends and neighbours in the Association of South-East Asian Nations collectively called for the release of Daw Aung San Suu Kyi during their annual Foreign Ministers meeting in June.

26. The economic and humanitarian situation remains precarious. Massive inflation has pervaded the country as prices for commodities affecting the basic livelihood of people had jumped. Since the beginning of the year, public transportation fares (for airplanes, trains and buses) and telephone rates are reported to have increased at least three times. Late-year floods have also reportedly contributed to the increase in consumer prices for rice and other edible goods. No official announcement was made on the price hikes, nor have there been any reports on a pay adjustment for civil servants. As people have sought ways and means to cope with inflation, many have reportedly lost a substantial amount of their savings by investing in private companies lured by promises of high interest. These so-called "investment companies" have collapsed, taking with them the savings of local residents. As the Government has lost its credibility, owing to its track record, its attempts to restore confidence through any announcements are met with scepticism and further panic, exacerbated by a shortage of money and rumours of demonetization. This, in turn, has prompted a crisis of confidence in the private banking system, leading to a paralysis of the economy with significant consequences for the future prosperity of the country. Many businesses have suffered as a result. All of this throws into doubt the ability of the economy to generate the capital essential for the successful implementation of the new and to be welcomed liberalized market in paddy and rice.

IV. Proposed independent assessment of allegations of human rights violations in ethnic areas of Myanmar

A. Follow-up process

27. During the reporting period, the Special Rapporteur continued to pursue his efforts to obtain access to ethnic minority areas to investigate allegations of serious human rights violations (on earlier efforts, see E/CN.4/2003/41, paras. 35-46).

28. In response to his communications sent to the Myanmar authorities in November and December 2002, the Special Rapporteur received, on 22 January 2003, informal suggestions from the Myanmar Mission in Geneva regarding the possibility of the proposed independent assessment. It was suggested that the assessment be combined with his regular mission, that his team not comprise more than five experts and that he be present in the country throughout the whole duration of the assessment mission, which could be up to three weeks.

29. In his letter of 24 January, the Special Rapporteur advised the Myanmar Ambassador in Geneva that, owing to time constraints, in view of his other commitments, as well as operational considerations involving the need to agree on the detailed terms of reference for the mission, secure funding and logistics, and to identify and recruit the experts and interpreters, he would be unable to undertake a combined mission at such short notice in March 2003. The Special Rapporteur indicated that the most appropriate option would be to take the advantage of his visit before the next General Assembly in October-November 2003. He could then go with a team of five experts and would travel to ethnic areas, including Shan State, to make an independent assessment of the allegations. In view of the complexities involved in combining a general human rights assessment and the verification of specific allegations, his expert advice was that the process would take from three to five weeks. He would have preferred to carry out the proposed investigation earlier (in the summer when he is available), but the rainy season would not permit it until October.

30. In his letter of 20 February to the Special Rapporteur, the Myanmar Ambassador informed him that during his forthcoming visit to Myanmar in March (19 to 26), the Special Rapporteur would get an opportunity to pursue discussions on his proposal for the October visit and the independent assessment.

31. At a meeting on 21 March, the SPDC Secretary-1 invited the Special Rapporteur and his team to visit Shan State to collect information and to study the situation first-hand and pledged his support. He clarified that the exercise should be considered as an assessment with a purpose to establish the truth and not a criminal investigation. He acknowledged that in some cases allegations had been found to be true and that action had been taken against perpetrators. He invited the Special Rapporteur to work out the practical modalities of the exercise with Brigadier General Than Tun (Head of Department, Office of Military Intelligence), who was also present at the meeting.

32. The Special Rapporteur expressed his appreciation to the Secretary-1 and also welcomed the progress with regard to another related proposal that he made to SPDC, which was to consider allowing an adequate presence of ICRC in all conflict areas of the country, so that it could assess the humanitarian 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. Since last November, ICRC had been allowed to extend its presence in sensitive areas in Shan State and started visiting areas of concern. However, the Special Rapporteur is concerned with the reports alleging that SPDC had swept the areas before and after the ICRC visit in Shan State.

33. In view of the interruption of his last visit, the Special Rapporteur had followup discussions on the modalities for the assessment mission with the Myanmar Ambassador in Geneva during the fifty-ninth session of the Commission on Human Rights. On 16 April, the Special Rapporteur submitted the draft modalities of the assessment both to the Myanmar Ambassador and directly to the Deputy Foreign Minister (see annex II).

34. On 5 May, the Special Rapporteur wrote to the Deputy Foreign Minister seeking an early feedback on the proposed modalities. On 8 May, the Myanmar Ambassador suggested to the Special Rapporteur that he go ahead with preparations for the assessment mission, “while working out the details with the Deputy Foreign Minister”. While beginning preparatory work for the mission, the Special Rapporteur sent another letter to the Deputy Foreign Minister on 28 May, reiterating his request for feedback.

35. Following the very worrying developments in Myanmar after 30 May, the Special Rapporteur had consultations regarding the appropriateness and feasibility of the Shan assessment with key interlocutors during his stay in Geneva from 16 to 30 June, including the Secretary-General’s Special Envoy for Myanmar, the High Commissioner for Human Rights and his Deputy, currently the Acting High Commissioner, and some representatives of Member States and civil society. These discussions resonated with the Special Rapporteur’s view on the importance of pursuing his efforts for the Shan assessment.

36. In his letter to the Deputy Foreign Minister on 1 July, the Special Rapporteur made yet another attempt to obtain the agreement on the modalities. Regretting the delay, he made it clear that he would make public the findings of his research on the situation of human rights in ethnic areas of Myanmar conducted in Thailand in October and November 2002, should his efforts to carry out the assessment inside Myanmar prove to be unsuccessful. At the time of writing, a reply from the Government was still outstanding.

B. Research on the human rights situation in ethnic areas of Myanmar

37. While acknowledging that there are many outside Myanmar who disagree, the Special Rapporteur believes that the credibility of his findings relating to allegations of human rights violations in ethnic areas of Myanmar depends on his ability to establish facts in an objective and impartial manner. Consequently, the Special Rapporteur has followed a two-pronged approach in his investigations: (a) conducting research based on independent interviews of refugees from these areas in Thailand and (b) making an independent assessment inside Myanmar by visiting some of these affected areas with a view to corroborating the results of his research and establishing facts about the alleged violations. While (a) was completed, (b) has not yet taken place.

38. The Special Rapporteur and his team travelled to Thailand, including visits to border areas, following his missions to Myanmar in October 2001 and 2002. Furthermore, he commissioned research in Thailand from 10 October until 15 November, 2002. Its purpose was twofold: to gather directly first-hand testimonies from victims of, and witnesses to, human rights violations, and other persons who may have direct knowledge of circumstances or context of those violations, and to analyse the primary information thus collected by his team, with a view to providing a solid background with a focus on Shans, Kayins, Kayahs and Mons.

39. The exercise was not intended to duplicate the investigation carried out by other human rights groups or organizations. Rather, it was to enable the Special Rapporteur to assess their information, build up his own knowledge and understanding of the prevailing situation in those areas and to contribute to the preparation of his independent assessment on Myanmar.

40. The methodology of the research consisted in visiting areas in Thailand along the border with Myanmar to identify potential sources of information and to interview them thoroughly, separately and confidentially. Altogether, 118 interviews were conducted with recent victims of, or witnesses to, human rights violations in Myanmar (52 Shans, 44 Kayins, 13 Kayahs and 9 Mons, of which 70 were men and 48 women). Most of the interviewees were subsistence farmers and members of their families who had fled to Thailand. In addition, a large number of individuals and organizations with direct knowledge of circumstances and context of these violations were consulted. These included sources working on human rights issues or with refugees and internally displaced persons. International organizations working in refugee camps were also approached.

41. Special attention was paid to collecting information concerning the allegations of violence, including sexual violence, against Shan women. Therefore, meetings were held with the authors and researchers of the report entitled "License to Rape", published by the Shan Human Rights Foundation and the Shan Women's

Action Network in May 2002. Furthermore, a number of interviews were organized with victims of, and witnesses to, rape incidents.

42. For recent arrivals from Shan State, three different locations were chosen: Pieng Luang, Fang, and Mae Fah Luang. New arrivals from Kayin State were also interviewed in three places: opposite Ler Per Hur in a small village, Mae La (near Mae Sod) and Nu Po (near Umphang) camps. Because of the heavy rain and bad road conditions, no interviews could be done in Mae Ra Ma Luang and Mae Khong Kha camps. Kayah recent arrivals were all interviewed in Kayah Refugee Camp 2 in Mae Hong Son province. All Mon interviews were conducted in Mahachai, an area south of Bangkok.

43. Interviews and related research activities were conducted according to United Nations methods and standards. During those interviews, no other persons were present in the room, apart from a witness, a translator and a researcher. In rape cases, a female counsellor was also present. Witnesses were selected in cooperation with the translator and local organizations. Selection criteria included that witnesses arrived in Thailand no more than one year ago, came from different geographical areas and suffered different abuses. Apart from that, instructions were also given to ensure a fair gender, ethnic and religious balance in selecting the candidates.

44. The research documented widespread human rights abuses such as forced labour, arbitrary taxation and extortion, forced relocations, torture, rape and extrajudicial executions. Most of the abuses were allegedly committed by the Tatmadaw (Myanmar army) in the context of counter-insurgency operations against the Karen National Union (KNU) in Kayin State and Tanintharyi Division, the Shan State Army South in Shan State, and the Karenni National Progressive Party in Kayah State. In Mon State, human rights violations decreased after the main Mon armed opposition group, the New Mon State Party (NMSP), signed a ceasefire agreement with the Government in 1995. However, small-scale fighting resumed after a number of break-away groups from the NMSP took up arms again.

45. Main findings of the research (which cover the period until 15 November 2002) indicate the following patterns of human rights violations (presented below in the form of a summary in view of space limitations):

Forced relocations

46. In 2001 and 2002, there were no more reports of massive relocations in Shan and Kayah States on the same scale as those during 1996-1998. The forced relocations documented mainly took place in the south-east of Shan State (by the Tatmadaw and the United Wa State Army (UWSA)) and in Kayin State (by the

Tatmadaw, and in some cases by the Democratic Karen Buddhist Army (DKBA), a break-away group from KNU). There were no reports of new mass relocations in other parts of Shan or Kayah States, mainly because most areas where armed opposition groups were active at that time had already been relocated in previous years.

47. The forced relocations in the south-east of Shan State by the SPDC and the UWSA forces were reportedly directly related to a relocation programme of the UWSA to move down hundreds of Wa villagers from Wa regions down to the Thai border. Shan, Lahu and Akha villagers were often simply told that their land was confiscated and that they had to leave their houses.

48. The forced relocations in Kayin State were part of a campaign by the Tatmadaw against KNU to cut the link between the population and KNU and thus deny them any form of support from the local community. People were told by the Tatmadaw units that they had to move to another village within a few days. Often they were threatened that they would be shot if they refused to leave. The deserted villages were mostly burned down. Villagers who were discovered hiding in the jungle after a relocation order had their possessions destroyed, including all their food, to deny them the possibility to survive there.

49. Some forced relocations reportedly took place in Mon State, where villagers were forced to move closer to a road, or closer to a village centre.

Confiscation of land and property

50. The confiscation of land and property was another recurrent abuse. It was alleged that often the Tatmadaw units entering villages would just take whatever they wanted. None of the persons interviewed declared having received any compensation for the loss of land or property. Confiscation of property often went hand in hand with forced relocations. Some people had left because they had felt intimidated by large numbers of Wa people moving into their areas.

51. The main reason for this practice by the Tatmadaw would seem to be to deny people the possibility to survive in areas where they thought armed opposition groups were active. A number of people who had been forcibly relocated earlier said that they had stayed in hiding in the jungle until the Tatmadaw was gone. After that, they had built new houses and were able to survive there for a while, but when the Tatmadaw returned and again destroyed their houses and food, they had had no choice but to leave. These abuses seem to be related to the fact that the Tatmadaw units in the field lacked logistical support from their command. This could have led to an increase in the confiscation of land and property of villagers.

Forced labour and portering

52. Almost all of the interviewed persons had had to do forced labour for the Tatmadaw in 2002. The only exceptions were internally displaced persons, who had been living in hiding and thus managed to avoid the Tatmadaw troops. Forced labour demands had been especially high in villages near the Tatmadaw bases, in relocation sites and in villages located near a road. None of the persons interviewed had received payment for their work. Most of them had had to come and work at military camps of the Tatmadaw. Villagers had had to cut wood and bamboo and bring this to the camp. There they had had to build and repair barracks, make fences, dig trenches around the camp and build bunkers. Often, they had also had to provide water and firewood to the military camps on a regular basis. Many of them had had to perform forced labour at least once a month for a period of one to five days.

53. Those who had served as porters testified that they had had to carry loads consisting of food and rations, cooking utensils and clothes, but also arms and ammunition. Most of them complained that the loads were too heavy and that they had been given insufficient food and had received no medical help for injuries. Many porters had been beaten and kicked by soldiers because they could not keep up with the rest. Porters included men and women, even pregnant women in one case, or old persons. Some of the interviewees could not even remember how many times they had had to do portering. Many had had to go once a month, varying from 1-2 days to 10-15 days. In some cases, they had done periods of 1-2 months. Many of them complained that because they had had to do portering so often they had not had enough time to work in their fields or make a living.

54. Most of those ex-porters had either been caught in their villages or in their fields and forced to go with the Tatmadaw soldiers. In other cases, porters had been organized by a village headman, who, in turn, had been ordered by the Tatmadaw soldiers to provide a certain number of porters. In some cases, people could avoid portering by paying a fee, but many of them were poor and could not afford the fee.

55. In some cases, the Tatmadaw used prison convicts as porters. In an operation in Kayah State, for instance, the Tatmadaw had used 75 prisoners as porters on a patrol towards the Thai border, of whom five had been beaten to death because they could not continue carrying heavy loads.

Torture, arbitrary detention and extrajudicial killings or executions

56. The research also revealed cases of torture and arbitrary detention. There are indications that, in some cases, these practices were used as a warning to other people to make them follow orders of the Tatmadaw. In most other cases, people were tortured because they were accused of being supporters of insurgent groups. To cite one example, a 50-year-old Kayin man from Kawkareik Township in Kayin State said that four Kayin villagers had been accused of being Karen National Union soldiers. All the villagers had been called to see how the four men had been tied up and tortured (hit on their heads, even when they were bleeding; suffocated with a plastic sheet) at a place outside the village. The man said that the villagers had come because the Tatmadaw soldiers had told them to come. After seven days of such treatment, the four men had been taken to the military camp and never seen again. The man thought they had been executed. He said that they were only simple villagers. The incident reportedly took place in May 2002 [case 108].

57. The research documented a large number of extrajudicial executions committed by Tatmadaw units in 2002. The majority of those cases involved internally displaced persons who had been shot after they had been discovered by Tatmadaw soldiers. The worst cases, involving groups of individuals, took place in Shan and Kayin States. Some of the interviewed persons had testified regarding killings in Shan State at the beginning of the mass relocation programme in 1996-1997.

Rape

58. All documented cases of rape had reportedly been committed by the Tatmadaw soldiers. In most cases, victims could not identify a name or rank of perpetrators, or their unit number. In some cases, victims knew where the perpetrators were based. Information about names, ranks and unit numbers was mostly compiled afterwards with the help of other sources. Testimonies were received about 16 rape incidents, involving 25 women (19 Shan, 1 Akha, 1 Palaung and 4 Kayin women). Eight of these cases had taken place in 2002. In addition, one Shan girl testified that she had been forced to marry a Tatmadaw soldier. In seven cases (two of which had taken place in 2002), a source of information was a victim herself. In the remaining cases, the information came from friends or relatives. In some cases, people from another village had heard about the rape from the victims. There were eight cases in which a victim had been raped by more than one soldier.

59. In most of these cases, the victims had allegedly been captured by a group of Myanmar soldiers while they were working alone on their farms. In some cases, they had been caught, for instance, while taking a bath; in others, women had been

caught in their own village when the Tatmadaw troops had arrived and all the men had run away. In two separate cases, a young girl had been raped at an army base. In one case, a girl had been taken while she was doing forced labour and, in another, a young girl had been arrested together with 12 other villagers, all men, who had later been killed.

Arbitrary taxation and extortion

60. Among the interviewed persons were those who had been subjected to arbitrary taxation by the Myanmar army. Reasons for levying taxes were various, for instance, for passage through fields outside their villages, for road repair, for a state school, for patrolling their villages, a porter tax, a “rice quota” (now abolished), etc. For example, a Mon man from Myaik Mayaw Township in Mon State said that he had had to pay different taxes. A porter tax was 150 kyats per month. He had had to pay taxes for road repairing which would range from 2,000 and 5,000 kyats on one occasion. He said that these abuses had been committed not only by Myanmar soldiers, but also by a village headman and his secretary — both Mon as well — who would collect money and sometimes even beat and kick the villagers. In 2002, the man had also had to pay a tax to NMSP [case 115]. Use of landmines

61. The research revealed that all parties to the conflict used landmines. Some persons testified regarding the use of landmines by the Tatmadaw, among others, to protect their camp. A number of interviewees gave testimonies about the use of landmines by armed opposition groups, mainly to protect their small bases along the Thai border.

Violations by other armed groups

62. The research showed evidence of human rights abuses committed by armed opposition groups. Apart from abuses perpetrated by groups with official or unofficial agreement with Myanmar authorities, such as UWSA and DKBA, other armed groups, such as KNU, KNPP, Shan State Army South and NMSP, had also been involved in abuses against the civilian population. The abuses had taken place on both sides of the border.

63. The Special Rapporteur is aware that the findings of this research are based only on primary information collected in Thailand. As he has repeatedly stated to SPDC, the need for an assessment inside Myanmar is evident for rigorous and precise evaluation of the responsibility for the alleged violations of human rights in ethnic minority areas. The assessment would have permitted him to visit areas

referred to in the research and to hear from local communities, military authorities and Government about the alleged violations. Regrettably, this has not been enabled by SPDC. The Special Rapporteur hopes that the proposed independent assessment, should it eventually take place, will help to establish the truth.

V. Concluding observations and recommendations

64. The Special Rapporteur's conclusions and recommendations given in earlier sections of the present report, as well as his previous reports (E/CN.4/2003/41 and E/CN.4/2002/45), remain valid in view of the prevailing situation in Myanmar.

65. As the Special Rapporteur noted during his speech at the last session of the Commission on Human Rights, there had been some positive steps in the area of confidence-building with the international community, such as a visit to Myanmar by Amnesty International, human rights cooperation with the Government of Australia, promises to facilitate the operational environment of international non-governmental organizations working in Myanmar, cooperation with the International Committee of the Red Cross and United Nations agencies, notably with the Office of the United Nations High Commissioner for Refugees in Rakhine State with regard to the Muslim population, with the Office on Drugs and Crime of the Secretariat on drugs, with the Joint United Nations Programme on HIV/AIDS (UNAIDS) on fighting HIV/AIDS. However, these initiatives are no substitute for real advancement on substantial human rights issues where, instead of progress, there has been a serious setback. Without an immediate and concrete commitment of the Government to suggest otherwise, the "home grown" national reconciliation process begun in 2000 is now arguably, dangerously damaged. Without genuine progress towards national reconciliation there can be no real improvement in the human rights situation in Myanmar.

66. The Special Rapporteur sadly concludes that the grave events of 30 May and thereafter cast a dark shadow on the political and human rights developments that had been taking place since his appointment to this mandate in December 2000. Of course, nothing in politics is definitive and life is continually moving ahead and changing. However, in his view, which is shared by the Special Envoy of the Secretary-General, the rupture of the process of dialogue with the National League for Democracy in such a violent way has spoilt all the progress achieved in confidence-building and has shattered people's hope for political transition. This is a most unfortunate development: as the Secretary-General noted in a 2 June 2003 statement,¹ the people of Myanmar are "overwhelmingly in favour of change" and deserve to experience the same economic, social and political benefits as the

peoples in the rest of South-East Asia. This has also wasted all the efforts that had been put into encouragement and support for the process of national reconciliation by the international community, in particular the United Nations. The saddest yet perhaps most predictable consequence is that by keeping Daw Aung San Suu Kyi in detention, the State Peace and Development Council (SPDC) has completely paralysed the opposition movement that greatly depends on her leadership. It has effectively adjourned until an unforeseeable date the start of the political transition to democracy that it had repeatedly promised to its people and to the international community. This posture has led to the freezing of diverse possibilities for cooperation with concerned States and international institutions, which had been ready to cooperate with Myanmar in the normalization of political and economic life. Thereby, SPDC has put at serious risk the process of addressing urgently the existing precarious humanitarian situation, with all potential ramifications for the exercise of all human rights.

67. The Special Rapporteur is firmly convinced that if SPDC wishes to renew its commitment to the process of political transition, it must start by immediately and unconditionally releasing Daw Aung San Suu Kyi, together with others detained in connection with the 30 May incident, as well as all other remaining political prisoners. This is the order of the hour. Those responsible for the 30 May violence must be held accountable.

68. Daw Aung San Suu Kyi has made it clear that there will be no solution to the challenges which the Myanmar society faces without the participation of all sectors of society, including the Tatmadaw. The same is true for the National League for Democracy (NLD). There is no normalization of political life in the country nor any prospect of an effective political transition and democratization without its participation. The Special Rapporteur would like to stress that, by keeping Daw Aung San Suu Kyi prisoners and making accusations against her without any clear evidence, SPDC is hurting their necessary partnership in a future process of transition. The Special Rapporteur strongly recommends that SPDC return to dialogue with NLD and other political forces in the country, so that the Myanmar people can find solutions for the immense challenges ahead.

69. The Special Rapporteur hopes that SPDC will consider positively his request for an urgent visit to Myanmar to assess the post-30 May situation first-hand. If SPDC does not accept this request, or is unable to come forward with an accurate detailed explanation about the events, while at the same time releasing all political prisoners and reopening the dialogue, the Special Rapporteur will be ready to support a recommendation that the situation in Myanmar be brought to the attention of other instances in the United Nations. He is convinced that the continuation of the present stalemate is a serious obstacle to the improvement in human rights of all people in Myanmar. In his view, the current SPDC course of

political repression and interruption of dialogue is not in its own interests and would surely further exacerbate the terrible suffering of the people of Myanmar, who have made clear their overwhelming desire for, and have thus far been denied the benefits of, positive change.

Notes

1 UNIC/PressRelease/87-2003.

Annex I

List of persons interviewed by the Special Rapporteur during his visit to Insein prison

1. Ma Than Thay
2. Ma San San Maw
3. Ma Aye Yi Htay (incomplete)
4. Dr. May Win Myint
5. Sai Nyunt Lwin
6. Thet Naung Soe (incomplete)
7. U Thu Wai
8. Salai Tun Than
9. U Toe Po
10. Saw Naing Naing (incomplete)

Annex II

Independent assessment of allegations of human rights violations in Shan State by the Special Rapporteur on the situation of human rights in Myanmar

Draft modalities

Purpose

1. The purpose of the assessment will be to establish the truth about allegations of human rights violations in Shan State of Myanmar. The assessment will be of a fact-finding nature.

Focus

2. The assessment will seek to verify allegations of human rights violations against the civilian populations in Shan State by the armed forces and armed opposition groups operating in these areas, including allegations of violence against women, and establish facts, or credible evidence, about possible violations, their nature, root causes, mechanisms of production and responsibilities.

Geographic and temporal scopes

3. The assessment will mainly focus on the eastern and central areas of Shan State from where most of the allegations have been originating. Precise locations will be determined during the assessment.

4. The assessment will cover the period from the beginning of the functions of the Special Rapporteur (January 2001) up to the present, taking into account past events which are relevant to the present contextual circumstances. Duration

5. The assessment will be conducted over a period of four weeks inside Myanmar in November 2003.

Composition of the independent assessment team

6. The independent assessment team will comprise five researchers, one liaison or logistics officer, five interpreters and two secretaries. All team members will be identified and recruited by the Special Rapporteur on the basis of criteria of proven professional experience, competence, gender balance, independence, impartiality, integrity and discretion.

7. A liaison or logistics officer will liaise with authorities, Office of the United Nations High Commissioner for Human Rights headquarters and resident United Nations colleagues, as necessary, and deal with logistical aspects of the mission. Methodology and modus operandi

8. The team will be guided by, and strictly adhere to, the principles of fairness, independence, impartiality and objectivity. The proceedings will be guided by United Nations methodological standards applicable to international fact-finding activities, inter alia, the standard terms of reference for fact-finding missions by special rapporteur/representatives of the Commission on Human Rights (see E/CN.4/1998/45). Accordingly, the team members will be provided with full and unhindered access to all places relevant to the assessment. This may include villages, military camps and local detention facilities in these camps or outside them. Similarly, they will be granted free and unhindered access to all persons they wish to interview. It will also meet military officials concerned in the region.

9. The independent assessment team will be based in the most convenient localities in order to facilitate travelling and coordination. The precise locations will be determined at a later stage. From there the teams will be deployed in various localities relevant to their work.

10. Team members will be prepared to travel extensively by four-wheel drive vehicles wherever usable car tracks or roads exist, and sometimes by foot, to reach remote areas. They will be prepared to spend nights in villages where lodging and bathing facilities and food and water access may be rudimentary.

11. To ensure full independence and mobility of the team, especially given the landscape of areas to be covered by the assessment, travel by air will be necessary, for which arrangements will have to be made for hiring an aircraft (a small aircraft with few seats (similar to one hired by the high-level team of the International Labour Organization) or a helicopter, with preference for the latter, given its greater mobility).

12. Wherever such air travel may be necessary, the team will give prior notice to the local authorities. Other destinations requiring road travel or walking will be arranged locally and will not require prior notice, except if motivated by reasonable security concerns.

13. Prior briefings of local officials or villagers, intimidation to deter them from cooperating with the team, production of fake witnesses or testimonies, or other forms of negative intervention should be avoided. Confidentiality

14. Strict respect for the confidentiality of the proceedings and the information collected will be a key element of the success of the assessment. It will be equally binding on the team and the Myanmar authorities. Interviews with all sources of information will be confidential, with no one else present during the interviews, other than the relevant members of the team. The identification and selection of the persons to be interviewed will be the exclusive prerogative of the Special Rapporteur, who will also decide the modalities of the interviews.

15. Any hindrance and interference in the proceedings for the purpose of preventing the independent assessment team from accessing locations or sources of information relevant to its work, or aimed at preventing, deterring or discouraging persons from cooperating with the assessment, or that breaches confidentiality, will result in the immediate interruption of the assessment, the lodging of an official complaint with the Government, and possibly, the cancellation of the mission.

16. Following the assessment and the submission of its findings to the Government and the Commission on Human Rights, the Special Rapporteur will undertake a post-assessment mission to return to the locations where the assessment was carried out to verify that all the persons who cooperated with the assessment are safe and were not subsequently subjected to harassment, intimidation or reprisals. This postassessment is part of the witness protection methodology developed by the United Nations in the context of fact-finding missions and may coincide with the Special Rapporteur's next mission in February 2004.

Reporting

17. Internal: the independent assessment team will be answerable and report only to the Special Rapporteur. IAT members will not share their findings with outside parties nor will they be authorized to speak to the media. Their *devoir de réserve* vis-à-vis the sources and the information they collect during their work will continue after the completion of the assessment. The Special Rapporteur is the only spokesperson of the assessment.

18. To the Government: upon completion of the assessment, the Special Rapporteur will prepare a report describing his findings and proposing recommendations that may be considered for addressing issues relating to human rights protection in Shan State. The draft report will be submitted to the Government for comments. As with his other reports, the Special Rapporteur will be the sole author of this report and will take full responsibility for its contents.

19. To the Commission on Human Rights: the Special Rapporteur will decide when and how the report will be submitted to the Commission on Human Rights.

Security arrangements

20. It is the responsibility of the host Government to ensure the protection of the independent assessment team and its proceedings. A security briefing will be held with relevant Myanmar authorities at the outset of the mission. Security concerns should not be unnecessarily abusively invoked to restrain the freedom of movement and research of the team. While security conditions must be taken into account, they should be balanced against the requirements of the mission. The liaison/logistics officer will assess security conditions in close cooperation with local military and other authorities.

21. The assessment will be conducted in the same spirit of openness, dialogue, cooperation and transparency that has characterized the missions of the Special Rapporteur in Myanmar.

2002 (57th Session)

UNITED NATIONS

General Assembly

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A/57/150.

9 August 2002

Item 111 (c) of the provisional agenda*

Human rights questions: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in Myanmar

Note by the Secretary-General**

* A/57/150.

** The present report is being submitted on 9 August 2002 so as to include as much updated information as possible.

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report prepared by Paulo Sérgio Pinheiro, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar, in accordance with Commission resolution 2002/67 and Economic and Social Council decision 2002/269.

Interim report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar

Summary

The present report is based upon the findings of the Special Rapporteur's mission to Myanmar, undertaken in February 2002, and information received by him up to 1 July 2002.

A complex humanitarian situation continues to have an impact on the exercise of economic, social and cultural rights and the right to development in Myanmar. Poverty is widespread and the economy has continued to suffer the effects of a growing deficit, rising inflation, shortfalls in energy supplies and foreign exchange, poor education, HIV/AIDS and drug-related problems, with a greater degree of vulnerability among the poor, children and women, in particular in ethnic minority areas and zones of military operation. It is clear that real and sustainable progress in these areas cannot and will not be achieved without substantive progress in the process of national reconciliation and political transition presently under way in the country, although some economic reforms may precede political reforms. In the short run, well-targeted humanitarian assistance could alleviate the basic needs of the population, especially the most vulnerable; however, the cumulative effects of economic and social hardships can only be addressed through a process led by the Government in partnership with community-based organizations, all relevant political and ethnic groups and with the support of the international community, which in the long run should underpin

the transition strategy from humanitarian aid towards sustained economic growth and the development of human resources.

Human rights violations continue to be reported, especially in areas where military operations continue. In recent years, counter-insurgency operations have reportedly affected hundreds of villages in Shan and Karen States, where armed opposition groups are suspected to be operating from bases located along the Thai-Myanmar border. Numerous villages have also reportedly been relocated in eastern Kayah State, in northern Mon State and in Tenasserim Division. Most recently, populations have been forcibly transferred in Shan State. Asylum-seekers continue to move into Thailand, a symptom of a complex internal situation which is essentially man-made and whose roots are as economic as they are political.

There can be no credible democratic political transition in Myanmar without four fundamental conditions: the inclusion of all components of society in political dialogue in a spirit of participation, mutual respect, cooperation and equity; the release of all political prisoners; the lifting of the restrictions which continue to hamper the ability of political parties and groups having concluded ceasefires with the Government to meet, discuss, exchange and peacefully conduct their legitimate activities; and the explicit discussion of political democratization that cannot take place without free elections.

The release of the General Secretary of the National League for Democracy (NLD), Daw Aung San Suu Kyi, on 6 May 2002, after 19 months of de facto house arrest, is the most notable recent development in Myanmar and has opened a new phase which the Special Rapporteur calls testing confidence-building in action. The atmosphere surrounding her release is much better than in 1995. However, while she has been able to perform her functions as NLD leader, restrictions on NLD and other political parties reportedly continue to hamper their legitimate activities. Restrictions on the freedom of information, expression and the press have yet to be fully lifted and the remaining political prisoners have yet to be released.

In that context, the issue of reform of the system of administration of justice is crucial. The Government and civil society of Myanmar must work together to ensure that reform of the judicial institutions takes place in the context of the process of political transition. The Special Rapporteur is convinced that the United Nations and the international community will be ready to help and support these efforts. Initial areas of cooperation may involve technical assistance to assist in the implementation of the International Covenant on Economic, Social and Cultural Rights, which the Government intends to ratify; to review systematically prison conditions based on international standards for the treatment of prisoners, including as they relate to female prisoners and juveniles; to review penal

legislation, particularly regarding arrest, detention, investigation and other important areas of the administration of justice; to establish a legal information resource library for professionals involved in the administration of justice, other interested officials and students; and to examine with the judiciary and police areas where cooperation is felt to be most needed, such as training of relevant professionals. To this end, the international community should start thinking about options to strengthen contributions from various actors in the context of principled engagement with key players in the country: the State Peace and Development Council, ethnic and religious leaders, NLD, other political parties and local community-based organizations. The United Nations, in particular, should begin assessing the priorities for its engagement, including through the involvement of some of the executive boards of the agencies, funds and programmes, which could eventually lead to an enhanced or reoriented United Nations presence and role in some of the most vital areas.

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I. 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 of 3 March 1992 and extended most recently in its resolution 2002/67 of 25 April 2002. In paragraph 8 (*a*) of the latest resolution, 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. The present report is based upon the findings of his mission to Myanmar, undertaken in February 2002, and information received by him up to 1 July 2002.

II. Activities of the Special Rapporteur

2. The Special Rapporteur undertook his second fact-finding mission to Myanmar from 11 to 19 February 2002. On the way to Yangon on 9 February 2002, he met in Kuala Lumpur with the Special Envoy of the Secretary-General for Myanmar. In conducting this mission, the Special Rapporteur followed the methodology and operating principles established during his first fact-finding mission (see E/CN.4/2002/45, paras. 3-6). During this visit, he received the same level of full and unhindered cooperation on the part of the Government of Myanmar, for which he expresses once again his sincere appreciation. He was able to carry out his programme in its entirety and enjoyed freedom of movement and access to private persons and others of interest.

3. While in Yangon, the Special Rapporteur met with government officials, including Lieutenant General Khin Nyunt, Secretary-1 of the State Peace and Development Council (SPDC), the Foreign Minister and his Deputy, the Home Minister, the Attorney-General and Chairman of the Bar Council, the Minister of Labour, the Director-General of the Prison Department, the Police Director-General, members of the Human Rights Committee and the National Convention Convening Commission. At the meeting with the Secretary-1, the Special Rapporteur received repeated assurances of the full cooperation of SPDC. The Secretary-1 stated that he wanted to build on the success of the previous mission and noted the need to improve human rights. He reiterated his Government's commitment to improving the well-being of the people of Myanmar and stated that the need to move forward the process of political transition, national reconciliation and development, on the basis of the ceasefires that had been concluded in most parts of the country, was the order of the day. The Special Rapporteur also met with representatives of legal parties and leaders of ethnic groups that had entered into a ceasefire with the Government. He visited the Insein Central Prison and a prison hospital in Yangon, where he had confidential interviews with a dozen prisoners. He also had meetings with Daw Aung San Suu Kyi, General Secretary of the National League for Democracy (NLD), and members of its Central Executive Committee, representatives of ethnic nationality parties, the United Nations Resident Coordinator and the country team, and representatives of the diplomatic community and international civil society organizations.

4. The Special Rapporteur visited Myitkyina (Kachin State) from 13 to 15 February 2002, when he was received by local authorities and had meetings at the state court, lawyers' association and police office. He also met with representatives of local civil society organizations, religious and community leaders and United Nations project staff. He visited the offices of two ceasefire groups (i.e. groups that have agreed to a ceasefire with the Government), police lock-up No. 1 and Myitkyina prison, where he interviewed a dozen detainees. He spent a morning in a village near Myitkyina.
5. The Special Rapporteur followed his mission to Myanmar with a six-day visit to Thailand (20-25 February 2002), during which he had meetings with the Deputy Permanent Secretaries of the Ministries of Foreign Affairs and the Interior, the Deputy Secretary-General of the Office of the National Security Council, the Permanent Secretary of the Ministry of Labour and Social Welfare, the United Nations Resident Coordinator, representatives of the Office of the United Nations High Commissioner for Refugees, the Regional Representative of the Office of the United Nations High Commissioner for Human Rights (OHCHR), representatives of the diplomatic community and non-governmental organizations (NGOs). The Special Rapporteur's team also made field trips to Chiang Mai, Fang and Mae Sot.
6. On 18 and 19 March 2002, the Special Rapporteur visited London, where he met with members of the Foreign Office, NGOs and scholars. The Special Rapporteur also presented an oral report on his initial impressions and findings to the Commission on Human Rights on 28 March 2002, which provides a basis for the present report. Both in Geneva on that occasion and later in New York, he had meetings with representatives of the Myanmar and other Governments, NGOs and private individuals who shared their views and information on the situation of human rights in Myanmar.

III. Human rights-related developments

A. Economic, social and cultural rights and the right to development

7. A complex humanitarian situation continues to have an impact on the exercise of economic, social and cultural rights and the right to development in Myanmar. Poverty is widespread and the economy continues to show the effects of a growing budgetary deficit, rising inflation and shortages of energy supplies and foreign exchange. Among major concerns are health, food security, quality education, HIV/AIDS and drug-related problems, with a greater degree of

vulnerability among the poor, children and women, in particular in ethnic minority areas and zones of military operation (see A/56/312, paras. 67-69; E/CN.4/2002/45, paras. 79-94, 108).

8. It is clear that real and sustainable progress in these areas cannot and will not be achieved without substantive progress in the process of national reconciliation and political transition presently under way in the country, although some economic reforms may precede political reforms. In the short run, well-targeted humanitarian assistance could meet the basic needs of the population, especially the most vulnerable; however, the cumulative effects of economic and social hardships can only be addressed through a process led by the Government in partnership with community-based organizations and all relevant political and ethnic groups, and with the support of the international community, which in the long run should underpin the strategy for transition from humanitarian aid towards sustained economic growth and the development of human resources.

9. During his last mission, the Special Rapporteur witnessed a successful community development initiative in Labang Rosner village near Myitkyina. For the past two and a half years, this village, along with 53 others in Kachin State with a total population of 32,000 people, has benefited from a multisectoral participatory poverty-alleviation United Nations Development Programme project. The overall national counterpart is the Ministry of Progress of Border Areas and National Races Development, but the project is run locally. At an operational cost of US\$ 12,000, which went directly to the community, that village of 250 souls has been able to improve its food production, generate a surplus to be invested in further improvement of living conditions and means of subsistence, secure access to drinking water, create and maintain a safety net in the case of a food, health or other potential crisis, build a school and improve its access to medical care. Through its participatory approach, the project has successfully mobilized the villagers themselves in the shaping of the development of their community through the establishment and strengthening of local community-based self-help groups. Through these grass-roots organizations, the villagers have become involved in identifying and prioritizing their needs, identifying sustainable solutions, implementing activities, sharing benefits and monitoring and evaluating project activities. They are striving to make this project self-sustainable so as to eliminate the need for outside help.

10. In the view of the Special Rapporteur, this project is emblematic in many ways. First, this is essentially what human rights work at the grass-roots level is about. Secondly, it is a practical illustration of the concept of the right to development when it is well understood: it shows the extent to which beneficiaries, when they are allowed to become the prime actors in the development of their community, can improve their living conditions with

minimal outside support. Thirdly, it is a vibrant illustration of the interrelatedness of economic, social, cultural, civil and political rights. Fourthly, it demonstrates how international humanitarian and development resources can be intelligently invested in a manner that directly benefits the people themselves through their own administration and efficient monitoring of such investments. The Special Rapporteur recommends that this exemplary project be replicated and expanded throughout Myanmar, where so many people are living at the subsistence level, and that such small-scale grass-roots projects be linked with a national development policy to ensure the sustainability of the results across the country and not only in areas where ceasefires are in effect.

11. In this regard, the Special Rapporteur also recalls his recommendation to the Government of Myanmar to accede to the International Covenant on Economic, Social and Cultural Rights, which will open the way for constructive dialogue with the relevant treaty body and provide the opportunity to benefit from a rich depository of national experiences and policy recommendations on the ways to ensure the realization of these rights. The Special Rapporteur notes ongoing discussions, in particular in the governmental Committee on Human Rights, on the possible ratification of the Covenant and the plans to convene a national workshop in preparation for that event, and, in this regard, encourages the Government to consider requesting assistance from OHCHR.

12. Development efforts in Kachin State demonstrate that peace is a prerequisite for people to start building their lives. Following his mission in October 2001, the Special Rapporteur commended ceasefires as a significant development in this regard (see E/CN.4/2002/45, paras. 95-97). To bring him up to date on the issue, the Special Rapporteur met with 15 ceasefire groups in Yangon in February 2002 and visited the headquarters of the two ceasefire groups in Kachin State: the New Democratic Army (NDA) and the Kachin Independence Organization (KIO). Each has a separate ceasefire agreement with SPDC and all but one (with KIO) are “gentlemen’s agreements”. After decades of fear, insecurity and widespread violence, including many documented instances of killing, arbitrary arrest and detention, torture, and forced displacement and portering, the first dividend of the ceasefire agreements is peace and the second is some development. The extent of development work has varied from place to place and the lack thereof has allegedly been a factor in some splinter groups returning to the armed struggle (for instance in Mon State). The groups that have entered into these agreements understand them to be the first step in a political negotiation process leading to a permanent agreement reflecting the principles of mutual respect; equal status, rights and duties; and the sovereignty of the Union, all of which should be enshrined in the future constitution. In the meantime, each group retains its weapons, army and organization and cooperates with SPDC to develop the zones under the group’s control.

13. Positive steps have been taken on both sides to consolidate the initial agreements, including respect for broad autonomy of the ceasefire zones, financial and economic cooperation to develop local infrastructure (roads, schools, medical facilities) and teaching of Burmese and English in public schools. It is left to each group to teach its own history, religion, culture and language to its children and to issue national identity cards to the people living in its zone so that they can travel freely throughout Myanmar. For instance, in the areas controlled by NDA, development work is based on annual plans which specify the amount of funds to be provided by the Government and NDA, respectively. The main source of NDA revenue is profits from gold mining, of which it keeps 65 per cent. All of the main roads in the NDA area are paved, 37 schools have been built (20 by NDA and 17 by the Government) and the six ethnic groups in the area live together and issue religious publications in local languages. Depending on the terms of the ceasefire agreement, some groups enjoy greater integration with the national infrastructure. The NDA, for example, has opted to form special police forces instead of an army whose salaries and rations are provided by the Ministry of Home Affairs.

14. While these are important steps, ceasefire groups have expressed concern that political discussions have not progressed and that they are excluded from the current secret talks between SPDC and NLD. Nor have they been free to engage in political activities or dialogue with other ceasefire groups. The Special Rapporteur is convinced that sustainable peace in Myanmar requires the integration of all the peoples and components of society into the political dialogue that will shape their common future. This is precisely where the pledge — and the challenge — of democratic reform starts. It is encouraging that NLD has recently restated its commitment to build “a genuine democratic Union of Burma” with the participation of the ethnic nationalities and has resolved “to strive to bring about, as soon as possible, tripartite talks which will include the ethnic nationalities in accordance with the resolutions of the United Nations General Assembly”.¹ The Special Rapporteur hopes that SPDC and NLD will give further consideration to this important dimension, the ignoring of which has led to decades of conflict and may yet undermine the current progress.

15. In the meantime, the Special Rapporteur encourages international assistance actors to visit ceasefire zones and support development efforts there, especially in the fields of agriculture, education, access to safe water, income generation and health. In this regard, the pioneering work of UNDP in the remote townships of Kachin, Chin and Rakhine States should provide a useful source of inspiration. In his view, such support for development efforts is an effective way to promote the realization of all economic, social and cultural rights, with due attention given to the needs of the vulnerable segments of the population.

16. In this regard, the Special Rapporteur welcomes the recent initiatives of the governmental Committee on Human Rights aimed at raising awareness about the rights of children and women. The first international seminar on the rights of the child was held in Yangon in November 2001 in cooperation with the Centre for Humanitarian Dialogue and the International Institute for the Rights of the Child, based in Switzerland. The proceedings of the seminar have been published and there are plans to convene a follow-up seminar in 2002. In June 2002, the Government also submitted its second periodic report on the implementation of the Convention on the Rights of the Child. Preparations are under way for a workshop on the rights of women and efforts are being made to conduct other human rights awareness-raising activities. One example is a workshop on mine awareness held in February 2002 with support from the Government of Australia and the Mines Advisory Group based in the United Kingdom. In December 2001 and January 2002, human rights workshops were held in Yangon and Dawai, followed in March 2002 with similar workshops for law enforcement and military personnel. Such activities should continue.

17. Nevertheless, alleged human rights violations continue to be reported, especially in areas where military operations continue. The information on these violations, which comes from a variety of mostly independent sources, appears generally substantiated by credible evidence based on sound information collection and analysis methodology. It shows a great degree of coherence and consistency in terms of times and places. It is also fairly consistent with interviews of refugees conducted by the Special Rapporteur during his February visit to Thailand. The violations described allegedly occur in the context of the counter-insurgency policy that has been implemented for many years in zones of ethnic insurgency, aimed at destroying the armed opposition. They include forced relocation of rural populations from areas of suspected or real armed rebellion to areas under army control, thus depriving insurgents of all sources of support (combatants, food, money and intelligence). Villagers in target areas are usually given a few hours or days to pack up essential belongings and move. No compensation for lost property or material assistance is provided and those relocated have to start from scratch and survive as best they can. They are prohibited from returning to their villages and if caught are shot on sight.

18. In recent years, this policy has reportedly affected hundreds of villages in Shan and Karen States, where Shan and Karen armed opposition groups are suspected to be operating from rear bases located along the Thai-Myanmar border. Numerous villages have also reportedly been relocated in eastern Kayah State, in northern Mon State and in Tenasserim Division. Recently, populations have allegedly been forcibly transferred from north-eastern Shan State, adjacent to China, to designated areas of southern Shan State, mainly Wa farmers and

insurgents and their families, as well as several hundred Lahu families and ethnic Chinese.

19. The Special Rapporteur is also concerned about reports of abuses of civilians and refugees on the part of armed opposition groups, notably the Karenni National Liberation Army, which has been accused of forced conscription of male villagers, including under age youths, levying taxes in rice and money, laying mines and booby traps on forest footpaths, detention and forced labour of refugees suspected of drug trafficking and, in some cases, killing villagers.

20. The continued flow of asylum-seekers from Myanmar to Thailand is a symptom of a complex internal situation which is essentially man-made, whose roots are as economic as they are political. The Special Rapporteur believes that, particularly in rural areas where communities have been established for centuries, no one willingly leaves one's village, relatives, friends, community and country to become a refugee or an illegal immigrant unless there are compelling reasons to do so. It is when people are confronted with no viable alternative that they reluctantly take the road to exile. All the refugees whom he met who are not politically affiliated want to return home and should be allowed to do so when their safe and dignified return can be guaranteed by the Government of Myanmar.

B. Civil and political rights

21. The Special Rapporteur reiterates that there can be no credible democratic political transition in Myanmar without four fundamental conditions: the inclusion of all components of society in political dialogue in a spirit of participation, mutual respect, cooperation and equity; the release of all political prisoners; the lifting of the restrictions which continue to hamper the ability of political parties and ceasefire groups to meet, discuss, exchange and peacefully conduct their legitimate activities; and the explicit discussion of political democratization that cannot take place without free elections. This will open the necessary space for initiating reforms which Myanmar society direly needs in the political, legal, social and economic spheres, and which the Special Rapporteur hopes will inaugurate a new era of stability, development and prosperity in the country.

22. The release of Daw Aung San Suu Kyi on 6 May 2002, after 19 months of de facto house arrest, is the most notable recent development in Myanmar. The High Commissioner for Human Rights and the Special Rapporteur issued a joint statement on that day, joining their voices with all those who welcomed this event, which showed that the policy of principled engagement articulated by the Special Rapporteur in his statement to the Commission on Human Rights at its fifty-eighth

session has been effective in supporting the best interests of the Myanmar people. They also expressed their readiness to discuss with the Government possible cooperation that would enhance the promotion and protection of human rights.

23. Daw Aung San Suu Kyi commented on that occasion that it marked the end of the confidence-building phase of secret talks between herself and SPDC that were facilitated by the Special Envoy of the Secretary-General in September 2000. In fact, her release occurred following his seventh visit to Yangon.

24. On the day of her release, SPDC issued a statement entitled “Turning of a New Page”, which read:

“First — we have released nearly 600² detainees in recent months and shall continue to release those who will cause no harm to the community or threaten the existing peace, stability and unity of the nation. Second — we shall continue to work together with countries ... Third — we shall recommit ourselves to allowing all of our citizens to participate freely in the life of our political process, while giving priority to national unity, peace and stability of the country ...”

25. The Special Rapporteur wishes to refer to the present juncture as a new phase of testing confidence-building in action, as substantive talks on policy issues between Daw Aung San Suu Kyi and SPDC have yet to start. Issues to be resolved through policy discussion include the unconditional release of all political prisoners (possibly through amnesty); lifting restrictions on the operation of political parties; a new constitution; the pace and modalities of the transition to democracy; the results of the 1990 elections; foreign investment and aid; and the inclusion of ethnic nationalities in the talks on policy issues. Daw Aung San Suu Kyi maintains that NLD policy will remain unchanged until such time as a substantive political dialogue is in place. This position was reiterated in the NLD statement issued on the occasion of the twelfth anniversary of the 1990 elections.

26. The atmosphere surrounding Daw Aung San Suu Kyi’s release is reported to be much better than it was in 1995. So far she has been able to perform her functions as leader of NLD, including daily work in the NLD headquarters, visiting NLD offices in Yangon Division (five townships thus far), holding meetings with the diplomatic community, United Nations agencies and civil society organizations, and giving press briefings, interviews, public statements and speeches. A telephone line has been reconnected in her residence and the NLD headquarters. On 14 June 2002 she travelled outside Yangon for the first time since 1995 on a private religious visit to Karen State and from 22 June to 1 July 2002, she went to Mandalay, where she visited a number of towns and met party members. She was also able to visit a number of UNDP-supported projects in

Magwe, Kyaukpadaung and Chaung-U townships. These visits were purely for her own information purposes and had no connection with her political activities.

27. These developments complement the ones mentioned by the Special Rapporteur to the Commission after his last mission, and are welcome.

28. While Daw Aung San Suu Kyi's release is reportedly unconditional, restrictions on NLD and other political parties in the peaceful exercise of their fundamental rights to assemble, travel, express their opinions and produce and communicate information continue to hamper their legitimate activities (ibid., paras. 25-29). During his mission, the Special Rapporteur visited the headquarters of the National Unity Party (NUP), a successor to the former ruling socialist party, and the Union Solidarity and Development Association and observed that there are striking contrasts between their freedom to operate, on the one hand, and the limitations imposed on them, on the other. For example, the legal Shan National League for Democracy continues to be reluctant to open offices and meet supporters out of fear for their safety.

29. At the end of May 2002, NLD announced plans to start publishing a party newsletter and applied for permission to do so. For the time being, NUP is the only political party to have its own publication. Credible transition requires the restoration of complete freedom for political parties to conduct their legitimate activities, and this will be another test of the seriousness of the Government's announced commitments to allow all citizens to participate freely in the political process and to encourage the process of political transition and national reconciliation. Significant progress in this respect will improve the atmosphere, at home and internationally, and help normalize Myanmar's relations with the international community.

30. Restrictions on the freedoms of information, expression and the press have yet to be fully lifted. International radio stations remain the only sources of uncensored information available in Burmese. Although there have been few recent examples of a more positive attitude towards foreign correspondents, strict self-censorship of journalists in Myanmar remains the norm if one is to avoid detention. So far, except for the *Myanmar Times*, a pro-Government newspaper, there has been no word in the domestic press, radio or television on the latest political developments in the country, including the talks between SPDC and NLD and the release of Daw Aung San Suu Kyi. The Special Rapporteur has sought clarification from the Government concerning at least 16 journalists who allegedly remain in prison. There are also reports of continued sanctions against publications for questionable reasons: in June 2002, the magazines *Living Color*, *Mhyar Nat Maung Mingalar* and *Kyi pwar yee* were reportedly temporarily banned for such reasons as having printed an advertisement on a page "reserved" for SPDC,

printing an advertisement for a company perceived to be in conflict with the Minister of Sport, or mentioning the former name of Thailand.

31. As the Special Rapporteur has stated on numerous occasions, the release of all remaining political prisoners is an indispensable dimension of political transition. The release of all political prisoners is even more important now that confidence-building is being tested in action. They include several categories of persons. First, people have been detained merely for peacefully expressing their political opinions, such as Dr. Salai Tun Than, a senior academic who was arrested in November 2001 and is now serving a seven-year sentence in Insein prison, where the Special Rapporteur met him. Some of these prisoners have received additional sentences and punishments for having communicated human rights information to the previous Special Rapporteur or the United Nations. Second, there are prisoners who have completed their sentences but are still being held, making their detention both illegal and arbitrary. Third, there are persons who have never been charged or tried but who have been in prison for several years. Fourth, there are the old and/or sick, who should be released on humanitarian grounds. Fifth, there are persons who may have been accused of supporting violent opposition but who have not used violence themselves, as well as persons who were actually engaged in armed opposition, who have been tried by courts whose independence is questionable. A number of prisoners in any of these categories have in the past been held in solitary confinement for many years, which may have serious adverse consequences for their health. Others have been sent to prisons far away from their homes, making it difficult or impossible for their families to visit them, with the families often not being allowed to send any food, clothing or other supplies.

32. The Special Rapporteur reiterates his call for the unconditional and early release of all political prisoners. He further suggests an amnesty, or series of amnesties, in the belief that such a step would improve the situation in Myanmar in several regards (*ibid.*, paras. 41-47). The Special Rapporteur stands ready to work closely with SPDC to that end and has provided it with a copy of a study prepared on the subject of amnesty laws for the Subcommittee on the Promotion and Protection of Human Rights in 1985. Following his mission, the Special Rapporteur wrote to SPDC on 5 March 2002, stating the foregoing concerns and submitting the names of 104 political detainees who should be immediately released: 19 elected members of Parliament, 22 persons whose continued detention is related to an alleged attempt to communicate human rights information to the United Nations, 33 prisoners held beyond the term of their sentence, 9 persons detained for several years without charge or trial and 21 humanitarian cases. The Special Rapporteur welcomes the release of 56 persons since his mission, including a number of cases previously submitted by him.

33. Since the beginning of 2002, 83 political prisoners have been released, of whom 19 were freed since the release of Daw Aung San Suu Kyi on 6 May. This brings the total number of recent releases to about 302 in the last 18 months.

34. As far as the Special Rapporteur can ascertain, none of the persons whom he met and interviewed during his missions in Myanmar has been subject to any form of harassment or reprisal. The Special Rapporteur had sought and obtained guarantees with respect to the protection of the persons cooperating with his mandate from the Myanmar authorities and he notes that they have been respected.

35. The Special Rapporteur has repeatedly requested the authorities to release all those whose terms have been extended for having communicated human rights information on prison conditions to the United Nations. To his knowledge, 30 prisoners are in this situation, including a group of 24 prisoners detained in Insein prison since 1989. In Yangon General Hospital, the Special Rapporteur met U Win Tin, aged 72, a prominent journalist and secretary of NLD who was accused of drafting the report on prison conditions sent to his predecessor. The only crime of these prisoners, as far as the Special Rapporteur knows, is to have peacefully exercised their rights to freedom of expression and information in order to improve their conditions of detention after their arrest in 1991 and to have expressed their views in relation to participation in the National Convention. Several members of the group were hooded and tortured during interrogation, deprived of food and detained for prolonged periods in very small rooms used to keep police dogs. They were sentenced to 7 to 12 additional years in prison and dispersed to several different prisons (Myittha, Tharawaddy, Myingyan, Myingmya and Thayet).

36. The Special Rapporteur is not in a position to accept statements made by government sources in May 2002 that there were no more political prisoners in Myanmar. The release of political prisoners after that date would itself seem to suggest the contrary. Seventeen of the 19 detained members of Parliament (MPs) are still in prison, as are 87 women political prisoners. In addition to U Win Tin, the serious humanitarian cases include U Kyaw San (MP), U Aye Tha Aung (General Secretary of the Committee Representing the People's Parliament), Dr. Than Nyein (MP) and U Htwe Myint (Chairman of the Democracy Party), who were transferred from Yangon General Hospital to Insein Hospital between 20 May and 1 June 2002, where their health situation reportedly did not improve significantly. The Special Rapporteur cannot accept the view that all these political prisoners are common criminals. The very fact that these prisoners are held separately from common convicts clearly indicates that they are not.

37. The State Protection Act of 1975 is still used to justify continuing detention of persons who have served the maximum term of their sentences. The Special

Rapporteur has identified 32 persons in this situation. He heard reports that 10 political prisoners had their sentences extended for seven years in November 2001 and, more recently, that student leader Paw U Tun (Min Ko Naing), who in 1998 had completed his 10-year sentence for participating in a pro-democracy protest, continued to be held without new charges being brought against him.

38. The Special Rapporteur has received reports about several new arrests in 2002. Two Christian ministers, Reverend Htat Gyi/That Ci and his son-in-law, Pastor Lian Za Dal (Saya Tun Lin), were arrested on 5 April 2002 at their residence in Yangon, together with eight other extended family members, for failing to file guest registration. Eight Muslims were reportedly arrested on 3 February 2002 and sentenced to seven-year imprisonment four days thereafter in Rakhine State for travelling without permission to Yangon. (Muslim travellers are allegedly also being harassed in other parts of the country, including in Karen and Mon States.)

39. During the reporting period the Special Rapporteur has been able to update his knowledge on the situation in prisons and the treatment of prisoners, inter alia, through his visits to Myitkyina and Insein prisons in February 2002. Subsequent to visits by the International Committee of the Red Cross, some improvements were reported in certain aspects of prison life (see *ibid.*, paras. 49-63). However, the Special Rapporteur notes that there is much room for further improvements, especially given the evident commitment of the top leadership and the willingness to cooperate with the international community in this regard.

40. Among the remaining problems which the Special Rapporteur wishes to note is the apparent lack of proper medical treatment, including a severe shortage of medicines. For instance, in Myitkyina prison, a men's block serves as a hospital ward and a medical officer from the Myitkyina General Hospital visits once a week. Sick prisoners allegedly are only transferred to hospital if they can pay for it or if they are near death. The Special Rapporteur has received allegations that on some occasions very sick prisoners would have been removed from public view ahead of visits by humanitarian organizations. Prison staff and authorities, especially the military intelligence, allegedly would interfere with health-related decisions.

41. At the time of the visit, there were about 300 women in Myitkyina prison, including pregnant women and mothers with young children. The Special Rapporteur is pleased to note that since his visit, 318 women prisoners, all of them pregnant or mothers with young children, have been released on humanitarian grounds from various detention facilities, including Myitkyina prison. In his statement of 13 March 2002, he welcomed these releases as a sign that the

Government of Myanmar was addressing the issue of the most vulnerable groups in the prison population.

42. A central concern of the Special Rapporteur's mandate is the access to justice of the peoples of Myanmar. This question is at the heart of the transitional process to civilian rule. A justice system is one of the instruments at the disposal of societies to resolve disputes in a peaceful and fair manner according to acceptable rules. In every society, the development of a system of justice is an ongoing, evolving process, which requires sustained efforts, patience and determination. It requires grounding in, and guidance by, clear principles, a proper legal framework, competent institutions, educated and trained personnel and, crucially, budgetary resources, for justice is an expensive commodity. By effectively delivering justice, and being seen to do so, the justice system wins public confidence and support, and succeeds in its prime task of reducing violence in society.

43. During his second mission, the Special Rapporteur began to examine the justice system, in law and practice, from the perspective of the lawmakers, law-enforcement institutions, the judiciary and the end-users. He started collecting relevant pieces of legislation and meeting police officers, magistrates and lawyers, in the capital and elsewhere. From these initial insights, several salient features have emerged, which he will seek to describe in this first assessment. He also conducted confidential interviews in locations chosen by him with 26 detainees and former political prisoners.

44. The current legal system in Myanmar has been influenced by traditional customary law, British common law imposed during colonial rule (which forms the basis of the system) and the socialism introduced after the military takeover of 1962. A new Judiciary Law promulgated in 2000 intended to reform the justice system around several important principles, i.e. respect for the rule of the law, independence of the judiciary, presumption of innocence, right to be heard by a court and be afforded a fair and public trial by an impartial and competent court, right to a defence and to appeal, and the benefit of the doubt. The Law refers to other, more vaguely defined organizing principles, such as protecting the interests of the people, aiding in the restoration of law and order, peace and tranquillity, educating the people to understand and abide by the law and stressing the moral rehabilitation role of punishment. In the absence of a constitution,³ the Judiciary Law clarifies to some extent the penal and civil legislation currently in force in Myanmar. It refers to the Penal Code, the Code of Criminal Procedure, the Law on Evidence and "special laws" and procedures defining and punishing offences not prescribed by these codes. These "special laws" are not specified, but could include laws enacted since the mid-nineteenth century by successive regimes to maintain law and order.⁴ Many provisions in these laws need to reflect more fully

the fundamental human rights to freedom of conscience, opinion, expression, assembly, association, information and movement.

45. The Judiciary Law provides for a four-level court system (township, district, division, state) crowned by a Supreme Court with both “appellate and provisional powers”. Civil law is regulated by the Code of Civil Procedure, the Evidence Act and other civil legislation. Matters dealing with succession, inheritance and marriage are regulated by Buddhist, Islamic and Hindu customary laws.

46. Despite the initial clarifications in the Judiciary Law, the Special Rapporteur noted some confusion among law enforcement and judicial officials, not to mention the public, about what laws are currently in force, to what extent, and how conflicts are to be resolved in practice.

47. The Special Rapporteur’s second observation relates to the fundamental principle of the independence of the judiciary. While the concept was reintroduced in the Judiciary Law, it must be effectively respected and implemented. Every political transition always required sustained efforts to reinvigorate the notion, intellectually and in practice, particularly through the training of a new generation of legal professionals. The international community must go beyond pointing to problem areas in the administration of justice in Myanmar and demanding that the basic principles of the democratic rule of law be implemented; it should not wait to engage until the political transition is completed and should consider beginning to offer technical cooperation to improve the capacity of the existing elaborate legal system, inherited from the British and supplemented by traditional customary law, to operate fully in a future democratic setting.

48. A third feature that the Special Rapporteur has observed derives from the two preceding remarks. It relates to what appears to be a widespread subjective implementation of the law. While judicial decisions tend to conform to existing laws and procedures, an examination of the process as applied to political prisoners reveals a high degree of arbitrariness. Many, if not all, of the remaining cases of political detainees appear to be arbitrary violations of the most fundamental human rights principles and norms as well as the existing safeguards in Myanmar law to protect people against official abuse of power.

49. A detention is arbitrary in international human rights law when it violates the general principles set out in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Such arbitrariness constitutes an abuse of power, the victims of which are entitled to protection and redress, i.e. access to justice, fair treatment, restitution, compensation and any necessary rehabilitation assistance.

50. The Special Rapporteur has received many allegations that, in the past, many political prisoners in Myanmar had been arrested, detained, interrogated, tried, sentenced and imprisoned in an arbitrary manner. In this process, State agencies⁵ other than judicial authorities would have allegedly played some part in arrest, detention and investigation — and sometimes even in sentencing. He has also received credible reports that the places where some prisoners had been detained do not appear to be police custodial facilities or facilities indicated on the official lists of prison and detention camps that were made available to him. In those facilities, persons arrested allegedly were detained incommunicado for prolonged periods while investigations continued. They would have been denied contacts with outsiders, including relatives, lawyers and medical personnel. Judicial authorities were not informed or allowed to determine the legality of the arrest and detention. The Special Rapporteur is convinced that with the decrease in the number of political arrests during the period of his mandate, such allegations will cease. He expects that with the successful conclusion of the confidence-building phase, the Government of Myanmar will make more explicit to all its agencies the need to end those alleged past practices.

51. Myanmar penal law prohibits torture, makes it a criminal offence and punishes it with imprisonment for up to seven years. It also prohibits the use of confessions and other information obtained under duress as evidence in court. While the Special Rapporteur has not been able to collect recent testimony relating to torture during his two missions to Myanmar, its widespread use for four decades by security personnel against suspected political critics or civilians and prisoners in insurgency areas has been documented beyond reasonable doubt.

52. During his last mission, the Special Rapporteur raised with senior police officers the question of the many allegations of torture made against security personnel in Myanmar. He was surprised that acts of torture by police officers were acknowledged and that in a number of cases perpetrators had been tried and punished. Police authorities told him that one of the priorities of SPDC was to re-establish popular confidence in the police. He received annual statistical records showing disciplinary action taken since 1995 against police officers, including, he was told, for acts of torture. These records show that 3,646 policemen have been tried and imprisoned over the past seven years for misconduct or abuse of power, including torture. Thousands of others have either been dismissed, demoted or otherwise punished.

53. These are encouraging signals. If true, these developments may well be an important and commendable step towards building the rule of law in the country. Even before full electoral democracy, the discretion of State officials could be reduced and made increasingly subject to the law. The Special Rapporteur intends to pursue the dialogue with Myanmar police authorities during his next visit and

explore with them avenues for enhanced international cooperation in the area of policing in order to encourage and further develop current efforts. The ratification by Myanmar of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment would be an important step and would provide a useful normative and technical framework for action and international cooperation in eliminating torture.

54. The Special Rapporteur's next observation relates to the handling of political offences. Allegedly, political trials would be conducted by regular or special courts established for that purpose, such as the one that sits in the Insein prison compound. Trials by such courts have reportedly been held mostly in camera and defence lawyers have generally not been admitted, or only at the last stage of the trial, or under restrictions that were tantamount to a denial of the right to defence. Reportedly, verdicts would be prepared in advance and read out, often without the accused being present.

55. The Special Rapporteur hopes to be able to refine and further develop his preliminary impressions as he learns more about the system of the administration of justice. As he said earlier, these are matters of central concern to his mandate, as they should be to the international community. He hopes to be able to pursue the discussions he had with members of the judiciary in Myanmar and with all other relevant authorities. He also hopes that they will be able to take his comments as a constructive contribution to their work.

56. The administration of justice is a complex whole, which involves institutional, law enforcement, judicial, professional, educational and informational aspects. Its reform will take time and sustained efforts. It will require patience, determination and resources. The Special Rapporteur welcomes the initial efforts by SPDC to set the judiciary on this path. It will eventually require a systematic review of all existing legislation that criminalizes the exercise of the most fundamental internationally recognized human rights, with a view to amending it or bringing it into conformity with both the principles stated in the Judiciary Law and international human rights standards. Allegations of abuse of power should be investigated and the persons found responsible brought to trial. Special courts should be disbanded — as were military courts several years ago. Patient and steady work is ahead of the Government and the civil society of Myanmar in order to ensure that reform of the institutions involved in the administration of justice takes place in the context of the process of political transition.

57. The Special Rapporteur is convinced that the United Nations and the international community will be ready to help and support these efforts. In this regard, he would be happy to explore with the relevant authorities, during his next

mission, ways of laying the ground for United Nations cooperation. Initial areas of cooperation could involve technical assistance to assist in the implementation of the International Covenant on Economic, Social and Cultural Rights, which SPDC intends to ratify; to review systematically prison conditions based on international standards for the treatment of prisoners; to review, in close cooperation with the United Nations Children's Fund, on the basis of the Convention on the Rights of the Child, penal legislation applicable to juveniles; to examine, with United Nations partners, Myanmar's obligations under the Convention on the Elimination of All Forms of Discrimination against Women as they relate to female prisoners; to review legislation relating to arrest, detention, investigation and other important areas of the administration of justice; to establish a legal information resource library for professionals involved in the administration of justice, other interested officials and students; and to examine with the judiciary and police areas where cooperation is felt to be most needed, such as training of relevant officials.

IV. Conclusions

58. The Special Rapporteur believes that Myanmar society is at the threshold of great changes and is becoming more sensitive to the moral and practical need to move at a faster pace than heretofore towards a democratic, tolerant and peaceful future that attributes the highest value to the essential dignity of the individual.

59. In the Special Representative's view, recent mellowing on the political front has not and could not possibly bring about significant improvements to the complex human rights and humanitarian situation; this is only feasible in the context of a sustainable process of political transition and national reconciliation when tangible progress has been made in addressing policy issues. Notably, such issues include the unconditional release of all political prisoners (possibly through amnesty), lifting restrictions on the exercise of basic human rights and freedoms and on the operation of political parties, the establishment of a functioning system of the rule of law, expansion of talks to a tripartite dialogue including ethnic nationalities, making advances on constitutional and electoral issues and increasing the pace and modalities of transition to democracy.

60. The experience of political transitions in other countries suggests that the present delicate situation in Myanmar, presenting new prospects for reconciliation and democratization, needs to be handled with great care and generosity on the part of all who wish the people of Myanmar well. The Special Rapporteur is of the view that the international community should

start thinking about options to strengthen contributions from its various actors in the context of principled engagement with key players in the country: SPDC; ethnic and religious leaders; NLD; other political parties; and local community-based organizations. At the moment, it is essential to discourage international public opinion from accepting simplistic paradigms and viewing the complex process as a struggle between good and evil. In the present international struggle against terrorism, there is a tendency on the part of some nations to put human rights, the right to development and democracy in the back seat. The move from the confidence-building phase to the beginning of a dialogue on substantive political and constitutional issues in Myanmar must be supported by all means available.

61. The United Nations should, in particular, begin assessing the priorities for its engagement, including through the involvement of the executive boards of some of its agencies, funds and programmes, which could eventually lead to an enhanced or reoriented United Nations presence and role in some of the areas that could facilitate the transition process. For the time being, in spite of limited progress in certain areas, humanitarian assistance programmes continue to be affected by difficult operating conditions that limit and constrain their implementation, accountability, verification and access to the most vulnerable. The Government should make every effort to enable humanitarian assistance to be more effective in meeting needs through the involvement and representation of all stakeholders so that priorities can be ordered and agreed.

Notes

¹ NLD statement issued on 27 May 2002, on the occasion of the twelfth anniversary of the 1990 elections. Five ethnic nationality parties representing the Shan, Mon, Zomi (Chin), Karen and Arakanese ethnic minorities also issued a statement in mid-May 2002 calling for tripartite talks.

² This includes common criminals.

³ A National Convention was established by the military in 1993 to define the principles that would inform a new constitution, but political differences suspended its proceedings in 1996. The results of the proceedings, which took place from 1993 to 1996, are published by SPDC in the booklet “The basic principles and detailed basic principles laid down by the National Convention plenary sessions up to 30 March 1996”, Yangon, undated.

⁴ They may include the Emergency Provisions Act (1950), the Law to Safeguard the State against the Danger of Subversive Elements (1975), 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 (1996), the Law on Registration of Printers and Publishers (1962), the Press (Emergency Powers) Act (1931), the Unlawful Association Act (1908), the Public Order (Preservation) Act (1947), the Law Relating to the Forming of Organization (1988), the Television and Video Law (1996), the Arms Act (1878), the Public Property Protection Act (1947) and the Common Property Protection Law (1963).

⁵ Such as Military Intelligence and the Special Branch, which answers to the Police Directorate.

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Human rights questions: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in Myanmar

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly, the interim report prepared by Paulo Sergio Pinheiro, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar, in accordance with Commission resolution 2001/15 and Economic and Social Council decision 2001/251.

* A/56/150.

** In accordance with General Assembly resolution 54/248, sect. C, para. 1, this report is being submitted on 20 August 2001 so as to include as much updated information as possible.

Interim report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar

Summary

The present report is the first report of the present Special Rapporteur, appointed to this mandate on 28 December 2000. The report refers to his activities and developments relating to the situation of human rights in Myanmar between 1 January and 14 August 2001.

In view of the brevity and exploratory nature of the Special Rapporteur's initial visit to Myanmar in April and pending a proper fact-finding mission to take place at the end of September 2001, this report addresses only a limited number of areas. In the Special Rapporteur's assessment as presented in this report, political transition in Myanmar is a work in progress and, as in many countries, to move ahead incrementally will be a complex process.

In the human rights context, against the background of ongoing talks between the Government and the opposition, there have been some positive signals indicative of the Government's endeavour to make progress. Those include the dissemination of human rights standards for public officials, work of the governmental Committee on Human Rights, releases of political detainees, reopening of branches of the National League for Democracy (NLD), the main opposition party, the continued international monitoring of prison conditions, and cooperation with the Commission on Human Rights, inter alia, through the mandate of this Special Rapporteur and with the Special Envoy of the Secretary-General for Myanmar and the International Labour Organization.

Among the areas in most need of significant improvement is the situation of vulnerable groups, inter alia, children, women and ethnic minorities and, in particular, those among them who have become internally displaced in zones of military operations. Overall, there exists a complex humanitarian situation in Myanmar, which may decline unless it is properly addressed by all concerned.

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I. Introduction

1. The present report is submitted pursuant to Commission on Human Rights resolution 2001/15 of 18 April 2001. In paragraph 7 (a) thereof, the Commission decided to extend the mandate of the Special Rapporteur for one year and requested him to submit, inter alia, an interim report to the General Assembly at its fifty-sixth session.

2. This is the first report of the present Special Rapporteur, appointed to this mandate on 28 December 2000, following the resignation of Justice Rajsoomer Lallah in November last year. The Special Rapporteur takes this opportunity to honour the work done by his eminent predecessors, Professor Yozo Yokota and Justice Rajsoomer Lallah, for their impeccable dedication to this mandate, which he hopes to be able to follow.

3. The preparation of this report has been quite a challenge for a number of reasons. There have been some interesting dynamics in the political and social fabric of the country, some of which had implications for the human rights situation in the country. To some extent, this was observed by the Special Rapporteur during his first visit to Myanmar in April 2001. However, owing to the exploratory nature of the visit, there was not sufficient time to obtain comprehensive information for making an adequate assessment of the overall situation of human rights in the country.

4. Pending a fact-finding mission, to take place at the end of September 2001, which had been accepted by the Myanmar Government, the Special Rapporteur identified the areas where he felt he could offer some assessment now. As a result, there are, inevitably, matters that will not be addressed in this interim report. Overall, the Special Rapporteur has attempted to capture the main areas where he saw progress and where it has yet to be seen.

5. For the purpose of this report, the Special Rapporteur used many sources of information, including the Government of the Union of Myanmar, other Governments, various United Nations and other intergovernmental agencies, individuals, non-governmental organizations and the media. The report is based upon information received by the Special Rapporteur up to 14 August 2001.

II. The Special Rapporteur's activities

A. Terms of reference

6. Commission on Human Rights resolution 1992/58 of 3 March 1992, 1 which established the mandate of the Special Rapporteur on the situation of human rights in Myanmar, frames the following terms of reference: "to 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".

7. In the view of the Special Rapporteur, despite the clear nature of the fact-finding requirement of his mandate as applied to civil and political rights in the context of political transition, the foundation of that mandate is the universal human rights norms and, accordingly, the main purpose of his statements, initiatives, and activities is to advance the best interests and protection of the victims of all human rights violations and the promotion of all human rights in Myanmar.

8. In discharging his mandate, the Special Rapporteur has endeavoured not to be trapped by clichés and sought to act in full transparency. He articulated his approach to the mandate to various interlocutors he met and made it clear that he does not represent any group of interests and is accountable only to the Commission on Human Rights.

B. Initial activities

9. The Special Rapporteur decided to begin his activities by undertaking an exploratory visit to Myanmar to establish direct contact with the Government and the National League for Democracy (NLD), the main opposition party. To this end, during January, February and March 2001, he travelled to Geneva three times for initial consultations with senior officials from the Myanmar Government. During his stays in Geneva, the Special Rapporteur also met with representatives of the Office of the United Nations High Commissioner for Human Rights (OHCHR), various United Nations and non-governmental organizations, scholars and diplomatic missions, and received representations from interested persons concerning alleged human rights violations in Myanmar. He also visited United

Nations Headquarters for consultations with the Special Envoy of the Secretary-General for Myanmar, Ambassador Razali Ismail, other United Nations officials and diplomatic missions.

10. On 5 February 2001, the Special Rapporteur addressed a letter to the Government of Myanmar requesting permission to visit the country for a brief exploratory visit during the final week of March. In order to establish contacts and gather the necessary information, he requested audiences with high officials from the Government and meetings with a range of other persons knowledgeable on the situation of human rights in the country, including the Human Rights Committee established by the Government. He explained his intention of pursuing the path of close and open cooperation with the Government, including by means of exchange of information, direct contacts and ongoing consultations.

11. In preparation for the visit to Myanmar, the Special Rapporteur travelled to Japan, Malaysia and Thailand. The purpose of those visits was to learn and better understand the perspectives of those countries on the human rights and humanitarian situation in Myanmar and their corresponding national policies. The mission was fully accomplished through very fruitful discussions with government officials, civil society and members of the legislative bodies of those States. The Special Rapporteur is convinced that Myanmar's neighbours and the States members of the Association of Southeast Asian Nations (ASEAN) will play, and are already playing, a pivotal role in the course of political transition in Myanmar.

12. During his visit to Tokyo (25 and 26 March 2001), the Special Rapporteur met with Mr. Takasu, Director-General of the Multilateral Cooperation Department, and Ms. Taeko Takahashi, Director, First Southeast Asia Division, Asian and Oceanian Affairs Bureau, at the Ministry of Foreign Affairs. The Special Rapporteur took the opportunity to meet with his predecessor, the first Special Rapporteur on the situation of human rights in Myanmar, Professor Yozo Yokota. They exchanged views on the historical development of the mandate since its establishment in 1992, on the current human rights situation, and on the prospects for dialogue and national reconciliation in Myanmar. The Special Rapporteur also met with members of the legal profession and the Japanese civil society and with a member of the House of Councillors knowledgeable on the situation of human rights in Myanmar.

13. In the course of his visit to Kuala Lumpur (27 and 28 March 2001), the Special Rapporteur met with Ambassador Jasmi M. Yusoff, Under-Secretary, Multilateral Political Affairs, and Mr. M. Taufik M. Noor, Under-Secretary, Southeast Asia and South Pacific Division, Ministry of Foreign Affairs. The Special Rapporteur met with Ambassador Razali Ismail, the Special Envoy of the Secretary-General for Myanmar, with whom he agreed to coordinate future activities. With Dato'

Param Kumaraswamy, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur exchanged views on the current human rights situation in respect of his mandate and on prospects for the future. They also touched upon the work of the Working Group for an ASEAN Human Rights Mechanism and its activities in respect of the human rights situation in Myanmar. The Special Rapporteur was also in contact with members of the Malaysian civil society organizations and a member of Parliament familiar with human rights issues in Myanmar and the position of refugees and other migrants of Myanmar origin living in Malaysia.

14. During his visit to Bangkok (29 March-2 April 2001), the Special Rapporteur met with Mr. Nitya Pibulsonggram, Permanent Secretary, and Mr. Surapong Jayanama, Director-General, Department of East Asian Affairs, at the Ministry of Foreign Affairs. He also met with individuals and representatives of a number of Thailand-based and international civil society organizations and associations who are knowledgeable on the human rights situation in Myanmar. Finally, he took the opportunity to meet and exchange views with representatives of the following intergovernmental organizations: the United Nations Development Programme (UNDP), the Economic and Social Commission for Asia and the Pacific (ESCAP), the Food and Agriculture Organization of the United Nations (FAO), the International Bank for Reconstruction and Development (IBRD), the International Labour Organization (ILO), the International Telecommunication Union (ITU), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Population Fund (UNFPA), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), the United Nations Development Fund for Women (UNIFEM), the World Food Programme (WFP), the Office of the United Nations Resident Coordinator, and the Inter-Agency Support Unit.

C. Exploratory mission to Myanmar

15. The Special Rapporteur visited Myanmar from 3 to 5 April 2001. During his visit to Myanmar all of the Special Rapporteur's specific requests for meetings were met and his movements in the country were facilitated appropriately. The documentation and information requested were provided promptly and fully. The Special Rapporteur would therefore like to reiterate his appreciation to the Government of Myanmar for its cooperation in facilitating his exploratory visit to the country and in responding to his requests for cooperation on human rights issues.

16. In Yangon, the Special Rapporteur met with the following Government representatives: Lieutenant General Khin Nyunt, Secretary-1, State Peace and Development Council (SPDC); U Win Aung, Minister for Foreign Affairs; Colonel Tin Hlaing, Minister for Home Affairs and Chairman of the Human Rights Committee; Major General Tin Ngwe, Minister for Labour; Ambassador U Win Mra, Director-General of International Organizations and Economic Development, Ministry of Foreign Affairs, and Lieutenant Colonel Hla Min, Department of International Affairs, Office of Strategic Studies.

17. The Special Rapporteur also visited and met with Daw Aung San Suu Kyi, leader of NLD, and U Lwin, U Nyunt We, U That Tun, U Hla Pe, and U Soe Myint, members of the NLD Executive Committee

18. The Special Rapporteur met with representatives of the following national civil society organizations: Myanmar Red Cross Society, Myanmar National Committee for Women's Affairs, Myanmar Maternal and Child Welfare Association, Young Women's Christian Association, Young Men's Christian Association, Myanmar Council of Churches, and Myanmar Baptist Convention. In addition, the Special Rapporteur met with representatives of international civil society organizations working in the country and with leaders and representatives of the following so-called national races of Myanmar: Wa, Kachin, Karen, Pa O, and Pa Laung, who invited him to visit their ethnic areas.

19. Finally, the Special Rapporteur also had an opportunity to exchange views with the members of the diplomatic and business community resident in Yangon and with representatives of the following United Nations organizations: UNDP, UNICEF, FAO, WHO, UNHCR, the United Nations International Drug Control Programme (UNDCP), the Joint United Nations Programme on Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (UNAIDS), and WFP.

20. While the purpose of the visit was to establish direct contact with the Government and the people of Myanmar, including their political and civil society leaders, its exploratory nature and brevity necessarily limited its scope. It is hoped that future visits will offer an opportunity to develop further a constructive dialogue for the effective promotion and protection of human rights in the country. The following is a brief summary of selected meetings conducted during the visit.

Meeting with Secretary-1

21. On the morning of 3 April 2001, Secretary-1 of SPDC, Lieutenant General Khin Nyunt, received the Special Rapporteur at the Ministry of Defence. The Special Rapporteur thanked Secretary-1 for the invitation to visit Myanmar, and expressed trust that this was a genuine sign of the Government's desire to cooperate with the Commission on Human Rights. He briefly explained the terms of his mandate, and his open-minded and transparent approach to its implementation. The Special Rapporteur also explained that the purpose of his mission was to open channels of communication and establish dialogue with the Government and other relevant persons in the country, with a view to furthering the promotion and protection of human rights.

22. The Secretary-1 reflected on the history of the mandate of the Special Rapporteur on the situation of human rights in Myanmar as set out by the Commission on Human Rights, and the cooperation his Government had offered to the Special Rapporteur's predecessors. He underscored the need for respect and understanding of the heavy responsibility his Government had assumed to ensure peace and stability, to end insurgency, and to set up democratic systems of governance in the country. The challenges it is facing include weak economic performance, the need to ensure the return of all armed groups to the legal fold, and the combat against the production and trafficking of narcotics. Secretary-1 further stressed the necessity of maintaining a balance between the need to maintain peace and civility and the need for power-sharing in the country. He recognized the necessity and value of the political opposition and its potential constructive role in nation-building and the establishment of democratic systems in the country.

23. In response, the Special Rapporteur agreed with Secretary-1 that, while models of democracy might vary according to circumstances in a given country, the main objective for Myanmar must be the establishment of a compassionate democratic government. In this connection, he welcomed Secretary-1's remarks on the role played by the political opposition in the social development of Myanmar. He recognized the interconnectedness of economics and politics and made a reference to the universally recognized understanding that all rights - civil, political, economic, social and cultural, and the right to development - are indivisible and interconnected. In this connection, he assured Secretary-1 that he would take this into account while reflecting on the human rights situation in Myanmar in his reports to the Commission on Human Rights and the General Assembly.

Meetings with the Minister for Foreign Affairs

24. The Minister for Foreign Affairs, U Win Aung, received the Special Rapporteur on the morning of 3 April and the afternoon of 5 April 2001, during which various issues related to the mandate of the Special Rapporteur were discussed. The Foreign Minister assured the Special Rapporteur that his Government was ready to cooperate with him to further the interests of the people of Myanmar. Both agreed that there was a need to establish trust, conduct ongoing consultations, and work on concrete issues. The Foreign Minister further explained his Government's aim of moving towards the emergence of a democratic nation by pursuing the policy of non-confrontation.

25. The Special Rapporteur took note with satisfaction of the fact that the Government of Myanmar had released from detention a number of members of the opposition, some only days prior to his visit. He expressed the opinion that there was an urgent need to consider the release of the old, the mentally disturbed and those prisoners whose sentences had reportedly already expired. He received assurances that the Government had taken note of his position and that it would give it due consideration on a case-by-case basis.

Meeting with the Minister for Home Affairs and the Human Rights Committee

26. On the afternoon of 3 April 2001, the Special Rapporteur had an opportunity to meet with the Minister for Home Affairs and the Human Rights Committee, of which the Minister was a Chairman. The Committee is a 20-member body constituted in April 2000 by the Government of Myanmar under the patronage of Secretary-1 of SPDC. It has eight working groups dealing with issues ranging from international human rights law to health, education and labour. The meeting was an opportunity to exchange views on the human rights situation in Myanmar; on the role of the Special Rapporteur; on the strategies for the promotion and protection of human rights in the country; and on the role, in general terms, of national human rights institutions in the context of the international human rights system. The Special Rapporteur received a report on the Committee's activities to date and plans for the future, which he welcomed.

Meeting with the Minister for Labour

27. The Special Rapporteur met with the Minister for Labour on the afternoon of 3 April 2001. The Minister explained his Government's position on the issue of forced labour and measures taken in response to recommendations made by ILO's Technical Cooperation Mission. He emphasized the willingness of his

Government to cooperate in the eradication of this practice and pointed out that while government directives banning the practice and the procedures to receive complaints were already in place, no such complaints had been received to date.

28. The Special Rapporteur thanked the Minister for clarification, and expressed his sense of encouragement at the news of the resumption of a dialogue between ILO and the Government of Myanmar concerning forced labour. He also expressed hope that the authorities would be able to find a way to establish modalities for cooperation in an objective and fair assessment of the situation.

29. Upon his return to Geneva on 6 April 2001, the Special Rapporteur participated at the Commission on Human Rights in the course of the same day with a statement containing a brief summary of his activities

D. Proposed fact-finding mission

30. Since his April visit to Myanmar, the Special Rapporteur has maintained his regular contacts with senior officials from the Myanmar Government with a view to discussing his return to the country for a fact-finding mission. In parallel, he continued consultations with representatives of various United Nations, intergovernmental and non-governmental organizations, scholars and diplomatic missions. The Special Rapporteur undertook these activities during his visits to London (25 and 26 May) and Brussels (21 June) and his stays in New York (23-25 April) and Geneva (20 May-1 June, 17-22 June).

31. The Special Rapporteur made a formal request for undertaking a fact-finding mission to the country pursuant to his mandate in his letter to the Government of Myanmar dated 31 May 2001. He indicated that he looked forward to having a lengthier mission (from 10 days up to 2 weeks) starting in the last week of September 2001 and requested arrangements for his visit to several other locations, apart from the capital, including a ceasefire area, western border regions, and central areas. The Special Rapporteur expressed his interest in visiting universities, research institutes, schools, hospitals, returnee communities, and new life villages, as well as places of detention and labour camps where he could interact with detainees. He also conveyed his wish to assess developments in border areas and the life of ethnic populations. Further, the Special Rapporteur wrote that he would like to continue his dialogue with the Government's representatives and to have discussions with leaders and members of different political parties and with representatives of ethnic, religious, women's, student and youth groups.

32. On 27 June 2001, the Special Rapporteur received a letter from the Permanent Representative of Myanmar to the United Nations Office at Geneva, in which he communicated his Government's acceptance of the proposed visit by the Special Rapporteur, to take place in the final week of September 2001. The letter advised that arrangements would be made for the Special Rapporteur to meet "competent personnel and leaders of the national races" and that visits to border areas, universities, schools, research centres and "other interesting places" would also be included in the programme. It was proposed to work out the details of the programme at the next meeting of the Special Rapporteur with the Permanent Representative of Myanmar in Geneva in July 2001.

33. Taking the opportunity of his stay in Geneva for the session of the Subcommission on the Promotion and Protection of Human Rights from 30 July to 18 August 2001, the Special Rapporteur followed up with the Permanent Representative of Myanmar detailed arrangements for his fact-finding visit to the country.

III. Present dynamics of political transition

34. The Special Rapporteur believes that the country is about to enter a new phase which the international community must acknowledge and act upon. According to his observation, political transition is increasingly pressing on the Government of Myanmar as a necessary set-up to tackle more effectively and jointly with other political forces, in particular NLD and ethnic groups, the existing serious structural problems - poverty, malnutrition, a poor education and health system, decayed infrastructure, drugs and human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS) - accompanied by a disquieting human rights situation.

35. These problems represent formidable challenges that are present in Myanmar more than in many other countries. The most important tasks for leaders and parties will be creating a democratic power structure and broadening the domain of democratic prerogatives.² Given the current political configuration, it is most likely that political reforms will take place with the participation of the military.³ A change of the electoral system, inherited from British rule, to a proportional system may guarantee a better participation of all political forces. Among the requirements that will be necessary for a more dynamic activation of the transition process are the development of civil society organizations, a legal culture supportive of constitutionalism and the rule of law, a State bureaucracy capable of operating within professional norms and a well-institutionalized economic society.

36. Political transitions are very complex processes marked by the characteristics of particular contexts. Perhaps in the case of Myanmar, the most likely path for political reforms will be marked by an incremental approach to change, which has characterized many extrication processes from military regimes. This approach may eventually provide solid foundations for a future democratic polity.

37. The comments in this report, while bearing in mind the historical trends, refer to a contemporary period embracing, inter alia, the 1988 events, the 1990 elections and, in particular, the recent engagement of the Government with the Special Envoy of the Secretary-General for Myanmar and the beginning of talks with Daw Aung San Suu Kyi in October 2000. The main changes that marked this period, had been provoked by two major events, namely, the 1990 elections and a ceasefire movement in ethnic minority areas, which have contributed to the rearrangement of the socio-political environment in society.⁴ It is clear that the characteristics of the present dynamics will have profound implications for transition paths available and the tasks that Myanmar society is facing during the political transition process.

38. Since the 1990s, the society in Myanmar has been confronted by a slow and often painful pace of transition, with continuing unrest, political tensions, civil and political rights violations, a complex humanitarian situation and economic crisis. More than in any other transition process it will clearly become necessary to remember that, despite the sufferings and frustrations sometimes experienced by the society or the impatience of democratic forces and the international community, the polity in Myanmar is not immobile. In a political transition process each actor -the military, organized parties, ethnic groups, the civil society, and the international community - has an effect on the others, in the "field" of forces where they coexist. The meaning of this is that it may take some time yet for the Government and other political forces to arrive at a common ground for a road map to democracy; but the progressive diminishing of the isolation of Myanmar in its region and in the international community has started a probably irreversible process, despite the slow-motion timing and too many setbacks and reversals.

39. The transitional process in Myanmar, as in many contemporary liberalization processes, will probably pass through several phases: (a) dialogue and confidence-building; (b) reconciliation and (c) cooperation and joint action. According to the Special Rapporteur's observation, the process of political transition has already started. After those phases during which open elections and "power by the winner" will prevail, it would be possible to go towards democratic transition.

IV. Civil and political rights

A. General observations

40. The challenges for the promotion of civil and political rights in the process of orientation of the present regime towards democratic transition are immense. Overall, some positive movement is detectable in the area of civil and political rights and the trend is likely to continue. History suggests that when a society begins to appreciate the inherent quality and strength of a democratic, pluralist and transparent community, the positive changes are likely to become irreversible.

41. At the same time, the Special Rapporteur is aware, *inter alia*, through the reports of the thematic Special Rapporteurs to the fifty-seventh session of the Commission on Human Rights - the Special Rapporteurs on the question of torture, on extrajudicial, summary or arbitrary executions, on freedom of religion or belief, on the promotion and protection of the right to freedom of opinion and expression, on the independence of judges and lawyers, and on violence against women - that problems remain.

42. The Special Rapporteur has been following since his appointment the reports of international and regional non-governmental organizations and had the opportunity to benefit from their oral and written representations. The Special Rapporteur wishes to convey on this occasion the sincere expression of their concern for allegedly gross human rights violations in Myanmar and the plight of victims. He hopes that the Government of Myanmar will also be able to gain in future from a dialogue with many of those civil society organizations. The Special Rapporteur is aware that his mandate requires fact-finding and investigation of those allegations. At the same time, he believes that his work should go beyond the duplication of the excellent role of those organizations. He would therefore wish to develop fact-finding of his own by addressing those allegations with the interlocutors at the government level and other political actors during his next mission to Myanmar.

43. The Special Rapporteur is pleased to report that, since the ongoing transitional process began, there have been apparent some substantial signals indicative of the Government's inclination to engage in a constructive dialogue on human rights. Those include several initiatives, namely, the dissemination of human rights standards for public officials through a series of workshops with the support of the Australian Government, the establishment of the governmental Committee on Human Rights, releases of political detainees, reopening of NLD branches, the continued international monitoring of prison conditions, and the dialogue with the Commission on Human Rights, *inter alia*, through the mandate of this Special

Rapporteur, and with the Special Envoy of the Secretary-General for Myanmar and ILO.

B. Political prisoners

44. The issue of political prisoners has been at the top of the Special Rapporteur's agenda since his first contact with the officials of the Myanmar Government. He urged the release of political prisoners in all successive meetings with government interlocutors, including during his first visit to Myanmar.

45. On 2 July 2001, the Special Rapporteur sent a letter to the Government of Myanmar, referring to his previous discussions on the subject and reiterating his commitment to this important issue. While welcoming releases from detention of a number of members of the opposition, the Special Rapporteur recorded his particular concern about the continued detention and imprisonment of the members of the Parliament elect (MPs), especially when the Government was engaged in a dialogue with Daw Aung San Suu Kyi.

46. In annex 1 to his letter, the Special Rapporteur submitted a list of the following 12 MPs who had remained in detention without charge or trial in government "guest houses": 1. Saw Hlang Aka U Saw Hlaing, Indaw, Sagaing; 2. U Khin Maung Win, Okhtwin, Bago; 3. U Myo Win, Kawa, Bago; 4. U Tin Htut Oo, Laeway, Mandalay; 5. U Tin Shwe, Waw, Bago; 6. U Tun Kywe, Nyaunglebin, Bago; 7. U Aung Soe Myint, Taungngu, Bago; 8. U Hla Thein, Tamwe, Yangon; 9. U Thein Myint, Tamwe, Yangon; 10. U Thein Nyunt, Thingangyun, Yangon; 11. U Win Myint, Danubyu, Ayeryarwaddy; 12. Dr. Aung Moe, Phwint Phyu, Magway.

47. In Annex 2, the Special Rapporteur presented a list of another 31 MPs who allegedly remained imprisoned on account of their peaceful exercise of the rights to freedom of assembly, association and expression: 1. Chit Htwe, NLD Myothit 2, Magway; 2. Do Htaung Aka U Do Thawng, NLD Kalay, Sagaing; 3. Dr. Aye Kyu, NLD Latputta 2, Ayeyarwady; 4. Dr. Myint Naing Aka Than Chaung Aka Maung Than, NLD Kanbalu, Sagaing; 5. Dr. Zaw Myint Maung, alias Dr. Myint Aung, NLD Amarapura, Mandalay; 6. Dr. Aung Khin Sint, NLD Mingala Thaungnyunt, Yangon; 7. Dr. Than Nyein Aka U Than Nyein, NLD Kyauktan 1, Yangon; 8. Dr. Min Soe Lin, Mon National Democratic Party (MNDP) Ye 1, Mon State; 9. Dr. Myo Nyunt, NLD Dedaye 1, Ayeyarwady; 10. Duwa Zaw Aung, NLD Waingmaw, Kachin State; 11. Khin Maung Swe Aka Ye Kyaw, NLD Sanchaung, Yangon; 12. Khun Myint Tun, NLD Thaton, Mon State; 13. Kyaw Khin, NLD Taunggyi, Shan State; 14. Kyi Myint, NLD Latha, Yangon; 15. Kyi

Win, NLD Latputta, Ayeyarwady; 16. May Win Myint, NLD Mayangone, Yangon; 17. Min Kyi Win, MNDP Mudon, Mon State; 18. Nyunt Hlaing, NLD Myayde 1, Bago; 19. Ohn Kyaing Aka Aung Win, NLD Mandalay SE; 20. San San (F), NLD Seikkan, Yangon; 21. Saw Naing Naing, NLD Pazundaung, Yangon; 22. Sein Hla Oo, NLD Insein 2 Yangon; 23. Soe Myint, NLD Min Minby 1, Magway; 24. U Myint Naing, NLD Kantbalu 2, Sagaing; 25. U Saw Oo Reh, NLD Phruso, Kayah; 26. U Kyin Thein, NLD Kya In Sei Kyi, Kayin; 27. U Kyaw San, NLD Taze 1, Sagaing; 28. U Ohn Maung, NLD Nyaunglebin 1, Bago; 29. U Aung Myint, NLD Latpadan 1, Bago; 30. U Nyunt Aye, NLD Latpadan 2, Bago; 31. U Kyi Lwin, NLD Ngaphae, Magway.

48. In pursuance of the understanding he had reached with the Government during his April visit, the Special Rapporteur also requested the consideration of the release, on humanitarian grounds, of other persons imprisoned for political reasons whose cases fell within the categories of the old, the ill and those whose sentences had reportedly already expired. Annex 3 of his letter contained information regarding the following 5 individual cases:

Case 1: U Win Tin, journalist and one of the veterans of NLD. Arrested on 4 July 1989, currently serving his 20-year sentence in Insein prison, will be 78 years old when the sentence is completed. He has continuously suffered from poor health during his imprisonment owing to the harsh prison conditions. His case was also raised by the Special Rapporteur on the question of torture by letter dated 5 October 2000.

49. Case 2: Min Ko Naing, student activist and founder of the All Burma Federation of Student Unions (ABFSU), arrested on 24 March 1989 and sentenced to 20 years' imprisonment (later commuted to 10 years under a general amnesty), has been held in solitary confinement for most of his imprisonment, which resulted in poor physical and mental health. He is reportedly held in Sittway prison, Rakhine State, although he completed his sentence in March 1999. He was visited briefly by the Special Rapporteur on the situation of human rights in Myanmar in November 1994.

50. Case 3: Dr. Zaw Min, 41 years old, medical doctor and writer, arrested on 30 July 1989 for alleged contacts with the Burma Communist Party. Sentenced to 20 years' imprisonment (later commuted to 10 years), has been held in solitary confinement for significant lengths of time throughout his imprisonment, has consequently suffered major psychological damage, is currently held in Mandalay prison. He should have been released in 1999 on completion of his sentence.

51. Case 4: Daw San San Nwe, journalist and writer, mother of six children in mid-50s, reportedly arrested in August 1994 for allegedly passing on information

to foreign journalists, and sentenced to 10 years' imprisonment. She is said to be in poor health in Insein prison because of high blood pressure, heart problems and paralysis on the right side of her body. Her case was also raised by the Special Rapporteur on the question of torture by letter dated 5 October 2000.

52. Case 5: U Cho Aung Than, 54 years old, assistant (also cousin) to Daw Aung San Suu Kyi, arrested with his sister Khin Ma Than and her husband Shwe Myint Aung on 13 June 1997 in connection with alleged involvement in opposition activities. He is held in an Insein prison and is reportedly in poor health because of high blood pressure.

53. On 30 July 2001, the Special Rapporteur received a reply from the Permanent Representative of Myanmar to the United Nations Office at Geneva informing him that all politicians mentioned in annex 1 of his letter had been released and sent home by 13 July 2001 except U Khin Maung Win who was not in the category of politicians taken to the government guest houses for questioning. He was mentioned as serving his sentence for unlawful gambling and other criminal offences. Furthermore, the letter informed about the release on 2 July 2001 of U Aye Win (Daw Aung San Suu Kyi's cousin). With regard to the politicians referred to in annex 2 of the Special Rapporteur's letter, Dr. Aye Kyu, Dr. Aung Khin Sint, U Kyi Win and U Nyunt Hlaing were said to have been released on 18 July 2001. From the list of selected cases in annex 3, Daw San San Nwe (case 4 above) was released on 18 July, as were U Myint Swe and Daw Nge Ma Ma Than (a close relative of Daw Aung San Suu Kyi) (case 5 above) on 26 July. The letter noted that these politicians had been released before completion of the terms of their respective sentences and that some of the politicians mentioned in annexes 2 and 3 were serving their respective sentences not for political reasons but because of criminal offences. In this connection, it was called to the Special Rapporteur's attention that his request has been given careful consideration by the authorities and the above-mentioned cases were being reviewed on a case-by-case basis. Subsequently, the Special Rapporteur was informed of the release on 31 July 2001 of U Khin Maung Win, the only one having remained unreleased among those mentioned in annex 1 of his letter, together with three other MPs.

54. The Special Rapporteur acknowledges that the release of more than 160 prisoners from jails and guest houses since the beginning of the year is an important step in political transition. These included 84 in January, 16 in March, at least 27 in June in 5 batches (on 13, 14, 15, 21 and 28 June), another 40 in July in 6 batches (on 2, 6, 13, 18, 26 and 31 July), and 2 on 13 August. Most of those freed were NLD members, including all MPs detained without charge or trial, some since July 1998. Among those released were, for instance, 83-year-old Dr. Saw Mra Aung, leader of the Arakan League for Democracy and a leading member of the Committee Representing the People's Parliament; U Soe Thein,

editor and MP; and comedians U Pa Pa Lay and U Lu Zaw, known as "the Moustache Brothers".

55. The Special Rapporteur welcomes these releases but notes that there are many cases that he hopes the Government will consider in the near future. Among those, for instance, is that of a 71-year-old journalist and founding member of NLD, U Win Tin, who is one of 18 media professionals remaining in prison. Detained since July 1989, he is serving a 20-year sentence for peaceful political activities and is in very poor health. Reportedly, there are also 28 MPs, the majority being NLD members. Three NLD leaders -Daw Aung San Suu Kyi, U Tin Oo and Aung Shwe -remain under de facto house arrest since September 2000. It has been learned, however, from government sources that Daw Aung San Suu Kyi and her colleagues can perform social and religious activities and are doing so. Some foreigners have been given access to her. It has also been observed by the government authorities that this is an arrangement made in view of the present dialogue.

C. Political freedoms

56. Reportedly, a total of 24 MPs elect operate in exile, of whom 13 are NLD members and the remainder members of ethnic parties such as Chin National League for Democracy, Democratic Organization for Kayan National Unity, Shan Nationalities League for Democracy, Lahu National Development Party, Zomi National Congress, and Party for National Democracy.

57. In the country, since the start of secret talks with Suu Kyi, "the war of words" in the media has stopped and the activities of NLD and opposition parties are becoming more visible. In June 2001, 18 out of 40 NLD offices in eight townships of Yangon Division were permitted to reopen, of which 9 could put up their old party signboards. For the first time in many years, there has begun a regular communication between the NLD offices and their national leadership. Reports indicate that U Lwin and other Executive Committee members appear regularly at the NLD Head Office in Yangon. Another prominent NLD office in Mandalay Divisions is also said to have started functioning. However, whether members can move freely in their respective townships is not known as yet.

58. Further steps in this direction will contribute to achieving national reconciliation and peace and improving the human rights situation in the country, including, in particular, through full respect in law and practice for the rights to association, participation, and free expression. Civil society organizations, trade unions, and media are decisive for the promotion of both human rights and human

development. In many countries undergoing a gradual transition to democracy, civil society organizations can take a lead in advancing human rights. Several countries in Asia have experienced similar gains. For instance, Indonesia, despite serious setbacks and a somewhat complicated political landscape, and the Republic of Korea have become more open, recognizing the need to advance cooperation with society, thereby advancing the cause of human rights.⁵ The Government of Myanmar in the present juncture could also benefit immensely from supporting an environment that can promote grass-roots civil society organizations in all walks of life. The existence of 2,000 such organizations in Myanmar, with a leading role played by women, is a positive fact, but their main focus is limited to social welfare issues.

59. As noted by the Committee on the Application of Standards during the eighty-ninth session of the International Labour Conference (ILC) (June 2001), serious discrepancies persist between the national legislation and practice of Myanmar and the provisions of ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize, 1948⁶ (to which Myanmar has been a party since 1955). The Committee mentioned this case as one of continued failure to implement the Convention and once again strongly insisted that the Government adopt, as a matter of urgency, the measures and mechanisms necessary to guarantee to all workers and employers, the right to join organizations of their own choosing, without previous authorization, and the right of these organizations to affiliate with federations and international organizations, without interference from public authorities.

D. Conditions in prisons

60. A number of reports allege the continued prevalence of poor conditions in Myanmar prisons; therefore the Special Rapporteur intends to report more extensively on the conditions of the prisons in the country after his visit to Myanmar in September 2001. In the meantime, he is pleased to note that international monitoring of prisons and detention facilities continues to take place. Since the beginning of such monitoring in May 1999, the International Committee of the Red Cross (ICRC) has been given access to prisons, detention places known as guest houses, and labour camps. Currently, ICRC has visited - on one or more occasions - 49 places throughout the country. The Special Rapporteur takes this opportunity to express his respect for ICRC's strict rules of confidentiality.

E. Forced labour

61. During the period under review, ILO continued its engagement with the Government of Myanmar on the question of forced labour in application of the resolution adopted at the eighty-eighth session of ILC (June 2000). The Myanmar case was discussed at the two hundred eightieth session of the ILO Governing Body (March 2001). ILO sent a mission to Yangon (17-19 May 2001), which negotiated with the Government of Myanmar the terms of reference for a high-level ILO mission to visit the country later this year, with a view to carrying out an objective assessment of the practical implementation and actual impact of the framework of legislative, executive and administrative measures reported by the Government. The Committee on the Application of Standards examined the case of Myanmar at its special sitting (11 June 2001) during the eighty-ninth session of ILC. The main point at issue was the conditions under which the measures requested by ILC in its June 2000 resolution might be lifted.

62. The issue of forced labour in Myanmar was also addressed by the Economic and Social Council during its 2001 substantive session. On 25 July 2001, the Council adopted by consensus resolution 2001/20, in which it took note of the 2000 ILC resolution on action to secure compliance with the recommendations of the Commission of Inquiry established by ILO to examine the observance of Myanmar of its obligation in respect of the Forced Labour Convention, 1930 (No. 29), in which the Conference recommended the inclusion of the item in the agenda of the Council. The Council, in that resolution, also noted the conclusions adopted by ILC at its eighty-ninth session (2001); took note of the understanding concluded between the International Labour Office and the authorities of Myanmar regarding an objective assessment to be carried out by an ILO high-level mission with respect to the practical implementation and actual impact of the framework of legislative executive and administrative measures reported by Myanmar within the overall objective of the complete elimination of forced labour in law and practice, whose composition would be defined by the ILO Director-General and whose report would be examined by the November 2001 meeting of the ILO Governing Body; and requested the Secretary-General to keep the Council informed of further developments in that matter.

63. The Special Rapporteur welcomes the official ban on the practice of forced labour in Myanmar; however, he is fully cognizant of the extent of the problem. He intends to report more extensively on the matter after his visit to Myanmar in September 2001.

V. Vulnerable groups

A. Ethnic minorities

64. The Special Rapporteur has received reports about the disquieting situation of ethnic minorities, particularly those living in zones of counter-insurgency operations (mostly in Shan, Mon, Kayah and Kayin States). In those places, reportedly, the immediate and accumulated impacts of armed conflict, human rights abuses - including torture, arbitrary executions, deliberate killings, indiscriminate use of landmines, pressure to join military force exerted by both the government troops and armed opposition groups - and the combined effects of poverty, lack of basic social infrastructure and attitudes/practices of local authorities make people fearful for their lives, their families and their future. As a result, many of them seek refuge in neighbouring countries or hide in "displaced villages" in the forest. Protection and assistance concerns as a result of armed conflict should therefore include, in the first place, reaching vulnerable groups such as internally displaced women and children. In practice this will be possible when there is a humanitarian space, that is to say, a ceasefire for humanitarian purposes or, ideally, a nationwide ceasefire which will then also contribute to the process of national reconciliation.

65. According to several reports, which the Special Rapporteur hopes to be able to verify during his forthcoming mission, in some ethnic areas there have allegedly been indications of a pattern of "racially/ethnically motivated" discriminatory policies. The situation of Muslim and Hindu minorities in Arakan State (they number about 1 million) was brought to the attention of the Special Rapporteur. Reportedly, as non-citizens they are subjected to a rule according to which they are required to obtain authorization to travel outside their township. The implementation of this rule is said to have been tightened, especially after reported clashes between Rakhine Buddhists and Muslims in Sittwe, the State capital, in February 2001. The official fee for the application, depending on the distance of travel, could be anywhere between 25 and 50,000 kyats (US\$ 1000). Allegedly, at present only a few rich people can afford a travel authorization. Moreover, reportedly it would be easier to leave Sittwe, but very difficult to return to it, in particular from Maungdaw, Buthidaung and Rathedaung townships, which are predominantly Muslim and Hindu. Such restrictions would affect the livelihood of common Muslims and Hindus, compelling some of them eventually to leave the country.

66. The Special Rapporteur wishes to recall that under the international human rights law, limitations on the exercise of the right to freedom of movement are permissible provided they are based on clear legal grounds and meet the test of necessity and the requirements of proportionality. More importantly, the

permissible restrictions should be consistent with fundamental principles of equality and non-discrimination. 7

B. Children

67. Among the areas of concern that are relevant in the discussion of child rights in Myanmar, the Special Rapporteur wishes to mention, in particular, the problem of child soldiers, regarding which he intends to report in more detail after his visit to Myanmar in September 2001. In the view of the Special Rapporteur, there is a close nexus between this problem, which is a form of child labour, and poverty. At one level, child earnings are necessary for family survival and at another level when a household is able to forgo the child's income it cannot afford the direct costs of schooling.

68. Official figures of net enrolment and retention rates of school-age children reveal that only half of Myanmar children aged 5 to 15 years complete the primary cycle. Based on these figures, it is estimated that 25 per cent of children never enrol and, out of those who do, only one third are able to complete the full five-year cycle of primary schooling. Furthermore, approximately one quarter of the children in age group 10-14 (about 1.25 million children) are engaged in paid work and there is a growing number of street children concentrated in urban areas. This is further aggravated by the plight of thousands of children and women who have become internally displaced or illegal migrants in neighbouring countries.

69. Child health, tuberculosis and malaria remain major concerns in the country. Almost one quarter of Myanmar babies are born underweight, with long-term nutritional implications. By the time children reach age 5, 1 in 3 is moderately to severely malnourished. This is compounded by the fact that about 3.6 million children and 1.1 million pregnant women live in areas considered to be at high or moderate risk for malaria transmission. Furthermore, the country is estimated to have no less than 81,000 new cases of tuberculosis annually. To date, only a small section of the population has access to proper medical care.

VI. Current humanitarian situation

70. The Special Rapporteur agrees with the internal assessment of the humanitarian situation in Myanmar made by the United Nations agencies present in the country (UNDP, UNICEF, WFP, UNFPA, UNDCP, UNHCR, FAO, WHO and UNAIDS), as well as with the corresponding need to develop a consistent approach related to the mandates of the respective United Nations agencies.

71. The Special Rapporteur shares the view that the cost of delaying assistance will be substantially higher as the magnitude of problems escalates (for example, HIV/AIDS), human capital degenerates (for example, increasing illiteracy, low completion rates in primary school), natural resources diminish and disparities widen (for example, among geographical regions and among ethnic minorities). Delayed assistance may also have an escalating effect on the illicit narcotic business, resulting in negative social impact within Myanmar and in the region, as well as on other transitional problems, such as illegal migration and population displacements. The current peripheral or piecemeal assistance provided to Myanmar is not adequate to reverse or even slow down certain negative trends. Nor is it sufficient to decrease economic and social disparities, which pose a potential threat to internal and regional peace and security.

72. The fact that Myanmar has very limited access to official development assistance (ODA) from developed countries and multilateral financial institutions, was especially true in the past decade.⁸ The total annual ODA currently provided to Myanmar is about US\$ 1 per capita compared with US\$ 35 for Cambodia and US\$ 68 for the Lao People's Democratic Republic (1997 figures). As a result, the population's needs are only marginally addressed by restricted humanitarian assistance provided mostly through the United Nations system and a few international civil society organizations.

73. The United Nations organizations operating in Myanmar make the utmost effort to address the most crucial humanitarian concerns in a coordinated and collaborative manner, within the mandatory operational constraints that some of them may have. The Special Rapporteur welcomes the fact that the United Nations Country Team has selected HIV/AIDS, illicit drugs and food security as three priority areas for consultation and common action based on its assessment of the country situation.

74. The Special Rapporteur is convinced that humanitarian aid is essential and appropriate in Myanmar now. However, the Government is responsible for the creation of a positive environment whereby international assistance could be given and could effectively reach the most vulnerable sections of the population, in particular internally displaced women and children, persons affected by HIV/AIDS and the poor, especially in ethnic minority States. If aid was to be given with carefully designed monitoring, then the great chasm between central Myanmar and the ethnic States could be narrowed, and from the minority perspective, this will most definitely be a vital way to stabilize the peace and foster reconciliation. This will also constitute major support for a fragile development progress at this complex time of transition as Myanmar has moved from low development to medium human development in four years and ranked one

hundred eighteenth on the human development index of UNDP out of 162 countries.⁹

VII. Conclusions and recommendations

75. No country in the world can escape international human rights monitoring. Independent and objective scrutiny of human rights situations in the modern world has occurred everywhere. As Mr. Ayalla Lasso, the former United Nations High Commissioner for Human Rights, once said, "in terms of human rights, all countries are somewhat ill". In consequence of the evolution and universalization of human rights standards, every country in every region of the world, North and South, developed and underdeveloped, faces human rights issues that are waiting to be addressed. Accordingly, observations presented in this interim report must be understood as a contribution to a constructive dialogue on human rights with the Government of Myanmar.

76. The main challenge for all sides in Myanmar is to find ways to contribute to the restoration of optimum human conditions for all people, which lies through the path of respect for human rights, human security and humanitarian principles. Instead of polarization, partisanship and the demonization of the adversary, weight must be given to a shared ground and a mutually beneficial dialogue, conducive to genuine reconciliation. Government, political parties and ethnic groups may not share common views on everything, but perhaps common goals in a few fundamental areas could be (and probably are being) identified. In this regard, it is appropriate to recall at this moment a verse from Buddha's teaching, Vivadam Khemato, that "all disputes and conflicts are settled by conference and discussion".

77. Every Government must express compassion for the sufferings of its own people. The Buddha, instructing his five disciples at Isipatana, the deer sanctuary, immediately after his enlightenment, urged them "to wander through the land as teachers of compassion for the pain-ridden world, for the good of many, for the welfare and happiness of many".¹⁰ A compassionate Government promotes social policies that meet the basic needs of the people. More than ever it is required that the Government of Myanmar adopt a more "pro-people" stance. The Special Rapporteur is convinced that a breakthrough that guarantees this course will require at the same time a new flexibility on the part of the military Government, Western democratic countries and the international community as a whole.

78. The Special Rapporteur is convinced that the present juncture in Myanmar seems to favour a consistent strategy that may allow different actors in and outside the country to work together or towards the same goals. More than ever it is

necessary that all States, especially those with responsibilities at present because of their role in the past and those in the region, put a serious emphasis on continuous dialogue and negotiation with the Government of Myanmar. The Special Reporter also believes that it would be most beneficial if the international community could renounce for the time being any aggravation of economic sanctions and, on the contrary, try to evaluate the effect of sanctions on the most vulnerable groups of the Myanmar population.

79. The Special Rapporteur is of the view that already at this stage, all players could start working together on non-political/social issues - one being, for instance, that of HIV/AIDS prevention. This may well become a focal point for humanitarian assistance, which may also develop into a clinic, comprising building a consultative process at the local level, bringing together the government, opposition, ethnic players and the local community, and creating an atmosphere of mutual trust.

80. The Special Rapporteur joins his voice to several other voices in the United Nations, as well as in the academic and international arenas, which declare that a serious humanitarian situation exists in Myanmar, particularly affecting the common people. It is not fair to human rights and humanitarian law principles to defer an adequate humanitarian assistance until the end of transition, thereby denying cooperation for promoting human development and fighting poverty. It would also be a mistake that will have serious consequences by weakening and delaying the process of building social capital, developing leadership capacity, and encouraging a more dynamic civil society which will contribute to laying the foundations for democratic processes. Finally, it must be clear that to make coordinated efforts to alleviate the humanitarian situation does not require or imply renouncing the long-term objective of helping democratic transition: there is no permanent solution for the pressing needs of the Myanmar peoples outside the framework of a process of transition to democratic constitutionalism.

81. It is now a good moment to initiate a thorough assessment of the complex and urgent humanitarian situation in Myanmar. The Special Rapporteur thinks that diverse proposals made by academics and observers must be taken into account in adjusting the framework of humanitarian relief and development. Among those, he highlights the formation of an international consortium or consultative group of international non-governmental organizations interested in channelling donor Governments' co-financing and committed to implementing a package of grass-roots initiatives in Myanmar. If any international organization could initiate that process, then the United Nations system could act as an intermediary with the Government.

82. As a sizeable number of political prisoners still remain in prisons, with many of them serving long terms, the Special Rapporteur stresses once more that only the full release of all political prisoners will pave the way to national reconciliation and the establishment of the rule of law leading towards the democratization process. No transitional process can be effective without the release of all political prisoners.

83. As part of national preparation for and follow-up to the special session of the General Assembly on children in September 2001, especially in view of the magnitude of the existing problem in Myanmar, the Special Rapporteur calls on the Government to give priority to the ratification of the Optional Protocol 11 to the Convention on the Rights of the Child 12 on the involvement of children in armed conflict. Even if national legislation providing for 18 years as the minimum age for compulsory recruitment in the armed forces already exists in Myanmar, the Optional Protocol will add value, as it calls on States to raise the minimum age from 15 years set in the Convention for voluntary recruitment in governmental forces.

84. The Special Rapporteur welcomes the cooperation of the Myanmar Government with ILO on the issue of forced labour and commends as well the ILO commitment to keep up its engagement with the Myanmar authorities. He hopes that this expression of good will by the Myanmar Government will soon lead to a greater compliance of Myanmar with international labour/human rights standards.

85. Priority must also be given to the ratification of the core human rights instruments including the International Covenant on Economic, Social, and Cultural Rights 13 and the International Covenant on Civil and Political Rights,¹⁴ together with the Optional Protocols thereto,¹⁵ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,¹⁶ the International Convention on the Elimination of All Forms of Racial Discrimination 17 and the Convention on the Elimination of All Forms of Discrimination against Women.¹⁸

Notes

1 See Official Records of the Economic and Social Council, 1992, Supplement No. 2 (E/1992/22), chap. II, sect. A.

2 Juan Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation* (Baltimore, Maryland, and London, Johns Hopkins University Press, 1996), pp. 67-68.

3 Robert Taylor, "The constitutional future of Myanmar in comparative perspective", in *Burma: The Challenge of Change in a Divided Society*, Peter Carey, ed. (London, McMillan Press, 1997), p. 65.

4 Martin Smith, "Ethnic conflict and the challenge of civil society in Burma", in *Strengthening Civil Society in Burma*, Burma Center Netherlands Transnational Institute, ed. (Chiang Mai, Thailand, Silkworm Books, 1999), pp. 15-54.

5 UNDP, *Human Development Report, 2000* (New York, Oxford University Press, 2000), box 3.7.

6 See ILO, *International Labour Conventions and Recommendations, 1919-1951*, vol. I (Geneva, International Labour Office, 1996), sect. I, Conventions.

7 See General Comment No. 27 (67) concerning article 12 (freedom of movement) of the International Covenant on Civil and Political Rights, Official Records of the General Assembly, Fifty-fifth session, Supplement No. 40 (A/55/40), paras. 11-18 ("Restrictions").

8 Country presentation by Myanmar, Third United Nations Conference on the Least Developed Countries (2001) (A/CONF.191/CP/3), p. 23.

9 UNDP, *Human Development Report, 2001* (New York, Oxford University Press, 2001), Human development indicators, table 1, Human development index.

10 Gustaaf Houtman, *Mental Culture in Burmese Crisis Politics*, Monograph Series (Tokyo, Institute for the Study of Languages and Cultures of Asia and Africa, 1999), p. 220.

11 General Assembly resolution 54/263, annex I.

12 General Assembly resolution 44/25, annex.

13 See General Assembly resolution 2200 A (XXI), annex.

14 Ibid. 15 Ibid.; and General Assembly resolution 44/128 (Second Optional Protocol aiming at the abolition of the death penalty).

16 General Assembly resolution 39/46, annex.

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report prepared by Rajsoomer Lallah, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar, in accordance with Commission resolution 2000/23 and Economic and Social Council decision 2000/255.

* A/55/150 and Corr.1 and 2.

** In accordance with General Assembly resolution 54/248, sect. C, para. 1, the present report is being submitted on 22 August 2000 so as to include as much updated information as possible.

Interim report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar

Summary

The present interim report takes account of the situation as of 31 July 2000 and should be read together with the report of the Special Rapporteur submitted to the Commission on Human Rights at its fifty-sixth session (E/CN.4/2000/38). The Special Rapporteur has not so far been authorized to visit Myanmar.

The suppression of the exercise of political rights, freedom of thought, expression, association and movement continues unabated and is especially targeted against the National League for Democracy and other opposition minority groups.

Torture and other forms of inhuman treatment, including arbitrary detention and long terms of imprisonment of political opponents, continue.

The International Committee of the Red Cross is able to visit a number of prisons and places of detention.

The administration of justice is marked by a lack of judicial independence, the absence of security of tenure of judges, the non-observance of basic due process guarantees, trials in camera, the absence of access to legal representation and the routine application of repressive laws which are themselves violative of international norms.

The economy is in a very weak state, characterized by extreme poverty, lack of food security, especially in rural areas, and unsatisfactorily low levels of budgetary allocation in the areas of health, education and welfare of women and children.

No satisfactory measures have to date been taken to outlaw forced labour and its practice. It is feared that the International Labour Organization may take measures involving sanctions if the situation is not remedied.

Forced relocation in the minority areas still continues, entailing violence, including killings, rape, torture and inhuman treatment of civilians in the implementation of a counter-insurgency strategy.

The Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child have welcomed the cooperation of Myanmar in submitting the reports required under the two related Conventions and in engaging in a dialogue with these Committees. A number of concerns in various areas affecting the lives and well- being of women and children have been identified by these Committees and recommendations have been made, which remain to be implemented.

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I. Introduction

1. The present interim report is submitted pursuant to paragraph 10 (a) of Commission on Human Rights resolution 2000/23 of 18 April 2000.
2. In that resolution, the Commission on Human Rights has once again urged the Government of Myanmar to cooperate fully and without further delay with the Special Rapporteur to allow him urgently, without preconditions, to conduct a field mission and to establish direct contacts with the Government and all other relevant sectors of society.
3. The Special Rapporteur regrets that, despite the repeated requests of the General Assembly and the Commission on Human Rights in this regard and the frequent indications of the Government to give serious consideration to a visit of the Special Rapporteur, no authorization has so far been given by the Government for such a visit. The Special Rapporteur expresses the hope that the Government will take concrete steps towards establishing cooperation with him in the discharge of his mandate.
4. The Special Rapporteur welcomes the appointment of the Secretary-General's Special Envoy to Myanmar and expresses the hope that the Government will cooperate fully with him in the discharge of his functions.
5. The present interim report concerns information received by the Special Rapporteur as of 31 July 2000 and should be read in conjunction with his most recent report to the Commission, dated 24 January 2000 (E/CN.4/2000/38).

II. Exercise of civil and political rights

A. Measures adversely affecting democratic governance

6. In his report to the Commission on Human Rights at its fifty-sixth session, the Special Rapporteur continued to examine the Myanmar Government's treatment of opposition political parties and their members. He took note of the intensive

harassment and intimidation campaign against members of the National League for Democracy (NLD), aimed at coercing individual members to tender their resignations. He further noted the restrictions and close surveillance of the NLD leadership and various measures taken to hamper the party's proper functioning, including forcible closures of a number of its branches. In addition to actions taken against NLD, the Special Rapporteur observed a similar pattern of restrictions and pressure against ethnic opposition parties, such as the Mon National Democratic Front, the Zomi National Congress and the Shan National League for Democracy.

7. The Special Rapporteur continues to receive persistent reports of Government policies and directives aimed at the elimination of NLD through intimidation, threats, coercion and charges of a political character against its members, particularly since April 2000. Members of the Parliament elected in 1990 continue to be arrested, detained or sentenced under an arsenal of laws, such as the Emergency Provision Act, the State Protection Act, the Official Secrets Act, the Printers and Publishers Registration Act and the Unlawful Associations Act, all designed to implement a campaign of political oppression. Arbitrary arrests and detention of NLD members and sympathizers, combined with the extension of prison terms for those who have already served their sentence, make up a general and consistent pattern of the suppression of fundamental rights to democratic governance pursuant to universal norms.

8. Local military intelligence units, military-backed organizations and similar authorities reportedly persecute members of NLD and continue to be resorted to in order to obtain their resignation as members of their party. The Union Solidarity and Development Association, a government-run organization, has reportedly engaged in attacks, particularly on NLD members. According to reports received by the Special Rapporteur, a directive was issued in March 2000 to all police units to use all means necessary to eliminate NLD by the end of the year. Similar systematic efforts have already been reported upon in previous years.

9. According to information received, the authorities continue to organize meetings, mass rallies and petitions forcing citizens to denounce elected members of Parliament or to call for the dissolution of NLD. The state-controlled media participate in these campaigns by publicizing resignations of NLD members and engaging in the campaign of hostility particularly towards NLD and its leadership.

10. The authorities are reported to continue limiting or else prohibiting public assembly; NLD offices continue to be shut down and meetings held in support of NLD or its leadership continue to be consistently banned.

11. Between April and May 2000, some 500 members of NLD, including its Youth Wing, are reported to have been arrested and imprisoned. In several

instances, it was not clear whether the detainees had been formally charged or whether their families were given access to them.

12. The Special Rapporteur wishes to observe that the political opposition has shown itself over the years to be a movement of peace, overwhelmingly legitimized by the generality of the people in Myanmar in the general elections of 1990. In this connection, he wishes to recall the observation made in paragraph 15 of his last report (E/CN.4/2000/38) to the Commission on Human Rights, namely, that the Government should seek to redeem the pledge it made in Declaration 1/1990 (see A/51/466, paras. 23-29 and annex) by engaging in a dialogue with the opposition that is meaningful and representative of all ethnic groups. In this way, the Government would best respond to the wishes of the General Assembly and the Commission, bring to an end the hostile policy it has so far adopted against its own people, achieve national reconciliation and enable Myanmar to fulfil its obligations under the Charter towards the community of nations, in particular towards all its neighbours in the region, some of whom are burdened with a flow of refugees and other displaced persons when they are themselves facing difficult times.

B. Torture and other forms of inhuman treatment

13. The Special Rapporteur has received information that torture and other forms of ill-treatment of detainees occur in a systematic and widespread manner in Military Intelligence interrogation centres and certain prisons. Torture or other forms of inhuman treatment of political detainees are believed to be routine, especially during initial interrogation. Convicted prisoners are also reported to be subjected to torture and to other forms of cruel, inhuman or degrading treatment for breaches of prison regulations.

14. The Special Rapporteur continues to receive information that torture takes place within the context of counter-insurgency activities against armed ethnic minority opposition groups. Ethnic minority civilians are reportedly at particular risk of torture by the military, which associates them automatically with insurgents. Forcible relocations accompanied by grave human rights violations, including rape and torture, are part of counter-insurgency activities, particularly in Kayin, Kayah and Shan states.

15. Women, particularly members of ethnic minorities, continue to be subject to torture, rape or inhuman treatment by the military, especially in the context of forcible relocations and forced labour. The perpetrators are reported to benefit from impunity.

16. The Special Rapporteur has received detailed information concerning the case of Ko Thein Lwin, member of the NLD Youth Wing, who was reportedly tortured for some 15 days during his detention in a Navy Military Intelligence office following his arrest on 6 September 1999 because of his alleged involvement in the so-called 9999 operation, although no formal charges appear to have been made. He is reported to have been subjected to continuous physical abuse by his interrogators, such as kicks and fist blows, as well as other forms of ill-treatment and torture, including the dropping of hot candle wax on his back. He was reportedly transferred to Insein prison on 21 September 1999 and then to an unidentified location, before being released on 5 June 2000.

C. Arbitrary detention

17. The Special Rapporteur has received allegations about a number of cases of arbitrary detention, including that of U Kaythara, arrested in 1996, who was reportedly sentenced to seven years' imprisonment on 15 August 1996 for displaying a poster calling for political discussion between the State Peace and Development Council (SPDC) and NLD, but it is not known under which legislation he was charged.

18. U Than Chaun, of Shwe-Goo Township in Kachin state, was reportedly arrested on 18 December 1999, allegedly for tuning his radio to a Voice Of America programme. On 19 January 2000, he was apparently sentenced to two years' imprisonment under article 505(B) of the criminal code of Myanmar, following a trial during which he reportedly had no access to legal representation. He is also believed to have a potentially life-threatening medical condition. The Working Group on Arbitrary Detention has transmitted urgent appeals to the Government of Myanmar concerning a number of cases, none of which have been answered to date.

19. James Mawdsley, a British and Australian citizen, was arrested in Tachilek on 31 August 1999, reportedly without an arrest warrant. He was denied access to legal advice or representation during the trial that was held within hours of arrest. He was sentenced to 12 years' imprisonment. An earlier sentence of five years resulting from a previous conviction was subsequently reinstated, bringing the total to 17 years. He is currently believed to be held in solitary confinement at Kengtung Prison.

20. Kyaw Aung, Kyaw Min Htun, Pyo Wai and Maung Saw were reportedly arrested by Military Intelligence officers at their homes in Pegu on 2 August 1999, allegedly in connection with their political activities. It is not known whether they

were formally charged with a criminal offence, whether they had access to members of their family or to any legal representation.

D. Prison conditions

21. The International Committee of the Red Cross (ICRC) continues to have access to a number of places of detention in Myanmar, including jails, so-called "guest houses" and labour camps. It is a matter of satisfaction that SPDC cooperation with ICRC has resumed and that ICRC is able to operate in accordance with its own procedures. It is to be hoped that ICRC, which works independently, will be able to intensify its efforts throughout the country, including so-called Military Intelligence centres, where systematic physical and psychological abuse, including torture, have often been reported.

22. As is well known, ICRC operates under rules of confidentiality which the Special Rapporteur must strictly respect. Consequently, the Special Rapporteur has relied on other reports in connection with all the cases mentioned below.

23. According to several reports, harsh conditions of detention in several prisons and other places of detention continue to exist. Examples of harsh conditions of detention include cruel and degrading treatment, lack of medical assistance, inadequate diet, extended solitary confinement and detention in tiny cells meant for dogs.

24. Daw San San Nwe, a journalist and writer arrested in August 1994, allegedly for passing information to foreign journalists, was sentenced to 10 years' imprisonment and is reported to be currently held in Insein Prison. She is said to be in very poor health, suffering from high blood pressure, heart problems and paralysis on the right side of the body. U Myo Htun, a businessman arrested for his contribution to a written history of the student movement and sentenced to 10 years' imprisonment in March 1998, is reported to have been severely beaten and is being held in Myingyan Prison in poor health.

25. Ma Khin Khin Leh, born in 1966, who was referred to in the Special Rapporteur's last interim report to the General Assembly (see A/54/440, para. 8), was reportedly arrested in Bago in July 1999 and sentenced to life imprisonment on 3 December 1999, allegedly in connection with her husband's political activities. She was allegedly tortured during interrogation, and is believed to be suffering from a lung disease. After several initial transfers, she was moved from Insein Prison to an unknown location in January 2000. Moe Kalayar Oo was arrested on 20 February 1995 along with more than 50 other people who had

attended the funeral of former Prime Minister U Nu, and was sentenced to seven years' imprisonment. She was initially detained and held in solitary confinement in Insein Prison for complaining about the denial of medication. She is believed to be currently detained in Thayawaddy Prison, Bago division, in poor health. Khin Zaw Win, arrested in 1994, was allegedly severely tortured in early 1996. He is believed to be currently held in poor health in Myitkyian Prison.

26. Detention conditions remain a matter of concern, particularly in the case of political prisoners, who appear to be subjected to the harshest prison regime.

E. Administration of justice

27. In his report to the Commission on Human Rights at its fifty-sixth session (see E/CN.4/2000/38, paras. 18-29), the Special Rapporteur analysed the law and practice governing the administration of justice. He noted that the administration of justice is greatly marked by legal and factual constraints inconsistent with judicial independence. Not only are the courts not independent but they are also powerless in protecting the rights of victims of violations of their basic rights. The lack of full respect for due process, judicial control over detention or absence of an effective remedy and a culture of impunity for transgressions by officials are some of the effects of a judicial system which is effectively used as an instrument of oppression.

28. The Special Rapporteur has received no information to suggest that the administration of justice has improved or that repressive laws inherited from colonial times are no longer resorted to, and they remain part of the legal armoury devised over the last decade to suppress public freedoms of expression, movement associations on the exercise of democratic rights. These rights are taken for granted in a free society in accordance with generally accepted international norms consecrated in the Universal Declaration of Human Rights and more specifically spelt out in the International Covenant on Civil and Political Rights.

29. Procedural problems in the administration of justice include entire cases of proceedings being conducted in camera, keeping the family and the counsel of the accused ignorant of the sentence passed or failing to inform the accused of the provisions of the law under which they have been charged. Arbitrary sentencing by the military intelligence at the time of arrest remains an alarming phenomenon.

III. Exercise of economic, social and cultural rights

A. Right to health

30. The Special Rapporteur wishes to draw particular attention to chapter III of his latest report to the Commission on Human Rights (E/CN.4/2000/38), which dealt with the situation in Myanmar affecting economic, social and cultural rights. In particular, he highlighted problems arising from poverty, lack of food security, the human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS) epidemic, education and forced labour. The Special Rapporteur only wishes to add some relevant information affecting, in particular, the last three aspects of the problem.

31. As reflected in the Special Rapporteur's previous report, some of the major causes adversely affecting health involve insufficient allocation of public resources (0.2 per cent of gross domestic product (GDP) according to the Human Development Report 2000), lack of initiative in prevention work and a history of non-recognition of major threats to health, such as the spread of HIV infection and intravenous drug use.

32. The World Health Organization (WHO) World Health Report 2000: Health Systems - Improving Performance ranks Myanmar's overall performance at second-to-last: 190th out of 191 States. In general, the report reveals the link between good governance and the health of populations, by pointing out government responsibility for stewardship of national resources for the benefit of their people, noting that stewardship in health is the very essence of good government since it means establishing the best and the fairest health system possible, and includes exerting influence through regulation and advocacy, and collecting and using information.

33. The Government's policies in health still appear to be indecisive and inadequate. Whereas the representative of the Government, introducing the initial report to the Committee on the Elimination of Discrimination against Women in January 2000, claimed that the fight against AIDS and the spreading of HIV infection was a top priority, Lieutenant General Khin Nyunt, speaking in the same month, would appear to have claimed otherwise. He is reported to have stated that traditional cultural values and moderation were sufficient measures, and to have dismissed the idea of an AIDS pandemic as politically motivated dissident propaganda. Another area of significant inadequacy relates to universal health care. According to WHO, publicly funded medical care is approximately one third to one fourth the size of private medical care in terms of financing, clearly indicating wide inequality of access to adequate health care, both preventive and curative.

34. As noted in the Special Rapporteur's most recent report to the Commission on Human Rights, conservative Joint United Nations Programme on HIV/AIDS estimates put the number of adults and children living with HIV/AIDS at the end of 1999 at 530,000, up 20 per cent from 440,000 two years earlier; 180,000 of those infected are said to be women and 14,000 children. The estimated percentage of infected adults is 1.99. Very little work is said to be done on prevention and raising awareness among the segments of population who are most at risk (sex and migrant workers, drug users). Worse still, according to various credible sources, the Government exerts pressure on the health service to under-report the number of cases of HIV infections and AIDS-related illnesses. As in the case of the right to food, not only does such denial and suppression of accurate information reveal the regime's insensitivity in the allocation of resources in the area of health, in the face of countless deaths and unnecessary suffering among the population, but also certain government policies, such as the de facto criminalization of the possession of hypodermic needles or of condoms by women, appear to countermand efforts to introduce safe practices for the prevention of HIV infection.

35. According to various credible reports, Myanmar is the world's second largest producer of heroin and one of the major producers of other narcotics. One study published in the January 2000 edition of AIDS, the International AIDS Society journal, links the outbreaks of injecting drug use and consequent HIV infection to major overland drug trafficking routes in Myanmar and neighbouring countries. The study calls for a coordinated regional narcotic and HIV suppression programme, and a change in policies that hamper prevention and treatment work.

B. Right to education

36. According to the UNDP Human Development Report 2000, Myanmar spends only 1.2 per cent of its GDP on education, one of only 11 countries in the world to spend less than 2 per cent. Although nominally available to all, public education is costly in terms of school fees, books and classroom facilities. Parents are often required to build or maintain school buildings. Moreover, widespread reports allege that bribery is frequently required to be paid to school authorities. Fees for the annual attendance of ordinary schools are said to range from three to five months' salary. Universities and the better schools are only accessible to the wealthy ruling elite. According to the 1999 World Bank report, Myanmar: An Economic and Social Assessment, most children from poor families drop out of school before completing the compulsory five-year cycle for lack of funds or to look for work (36 and 27 per cent, respectively). The Committee on the Rights of the Child expressed its concern in 1997 about the high dropout and repetition

rates, as well as about the lack of resources in vocational training. However, one encouraging development is that a project launched by the United Nations Children's Fund (UNICEF) together with the Department of Basic Education appears to have yielded some improvement in child attendance and a fall in dropout rates.

37. The under-funded education system is also reported to be under severe ideological pressure by the military regime. The Special Rapporteur has received credible reports that teachers and other civil servants are subjected to a compulsory 33-question test, the aim of which is to determine their political leanings and by extension their prospects in the service. Students are reportedly under pressure to join the government-controlled Union Solidarity and Development Association.

38. Higher schools and universities have been closed for substantive periods of time since 1990. However, most recent reports indicate that about 30 universities, which had been closed since 1996, are to be opened imminently for up to 60,000 students in relocated university campuses which have been dispersed around Yangon's suburbs to prevent the organization of dissent and public protest.

C. Forced labour

39. In previous reports to the General Assembly and the Commission on Human Rights, the Special Rapporteur gave an account of developments following the International Labour Organization (ILO) Commission of Inquiry report of July 1998. It will be recalled that the report concluded that the obligation to suppress the use of forced or compulsory labour is violated in Myanmar in national law as well as in actual practice in a widespread and systematic manner, with total disregard for the human dignity, safety, health and basic needs of the people. At its 276th session, held in November 1999, the ILO Governing Body, discussed measures to secure compliance by the Government of Myanmar with the recommendations of the Commission of Inquiry established to examine the observance of the 1930 Forced Labour Convention, and decided to pursue the matter at the June 2000 International Labour Conference.

40. An ILO technical cooperation mission was conducted between 22 and 27 May 2000 in order to secure the implementation of the Commission of Inquiry's recommendations by means of changes in the legislation and the establishment of a credible follow-up mechanism. Its aim was also to subsequently report to the Conference on the measures that the Government intended to take in that respect. In its concluding remarks, the report of the mission stated that first, the mission

believed that the Commission of Inquiry's recommendations could be satisfied in a coherent and practical way if a comprehensive framework of legislative, executive, and administrative measures were adopted:

(a) Rendering all practices constituting forced labour in the sense of ILO Convention No. 29 illegal under national law, and ensuring that all legislative provisions in force that permitted the imposition of forced labour were repealed or appropriately amended;

(b) Giving specific instructions to the state authorities, notably to the responsible military authorities, regarding the consequences to be drawn from the above as regards the various forms of work mentioned in the Commission's report, and monitoring their application, so that in practice no forced or compulsory labour was imposed by any authority;

(c) Informing the entire population adequately and completely about the above measures as well as the penalties applicable pursuant to section 374 of the Penal Code to all those imposing forced labour, and taking concrete action to ensure that those penalties were strictly applied in practice.

Second, as the Myanmar authorities were informed by the mission, the ILO could certainly help formulate and implement such a framework if the Government's commitment to take expeditious action to this effect was made sufficiently clear in the eyes of the International Labour Conference.

41. In a letter to members of the technical cooperation mission, dated 27 May 2000, Myanmar's Minister of Labour, Major General Tin Ngwe, wrote that the Government had taken and was taking the necessary measures to ensure that there were no instances of forced labour in Myanmar. He also wrote that Myanmar would take into consideration appropriate measures, including administrative, executive and legislative measures, to ensure the prevention of such occurrences in the future.

42. On 14 June 2000, considering that the factual situation concerning forced labour had remained unchanged, the International Labour Conference resolved to take action to bring about Myanmar's compliance with ILO Convention No. 29 on forced labour.

43. Under the terms of the resolution, a series of measures would take effect on 30 November 2000 unless, before that date, the Governing Body of the ILO is satisfied that the intentions expressed by the Minister of Labour have been translated into a framework of legislative, executive and administrative measures that are sufficiently concrete and detailed to demonstrate that the

recommendations of the Commission of Inquiry have been satisfied. The measures include recommending to ILO members that they review their relations with the Government of Myanmar and ensure that it cannot take advantage of such relations to continue the practice of forced labour; calling on international organizations cooperating with the ILO to review any cooperation they may have with the Government of Myanmar and to cease any activity which could directly or indirectly abet the practice of forced labour; and calling on the Economic and Social Council and the General Assembly to make similar recommendations to Governments and specialized agencies.

44. The ILO Director-General has indicated that he is hopeful that Myanmar will grasp the opportunity offered by the Conference decision. The Special Rapporteur joins him in this hope.

IV. Vulnerable groups

A. Women

45. In his previous report, the Special Rapporteur reviewed the status of women, especially in respect of sexual violence, torture, arbitrary detention, forced labour and trafficking in persons. Those violations not only affect the lives of individual women victims of violence and abuse but also have a detrimental effect on their children, families and communities. The fact that much of this violence frequently goes unreported, unpunished and unacknowledged by the Myanmar authorities also effectively perpetuates the culture of violence, lawlessness and impunity, especially in the ethnic areas.

46. Myanmar ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1987, established a national committee on women's affairs and initiated the drafting of a national plan of action for the advancement of women in the same year. It presented its initial report to the Committee on the Elimination of Discrimination against Women, and the Committee considered it in January 2000. The Committee expressed its appreciation to the Government for engaging in a constructive dialogue. It expressed its concerns in a number of specific areas, however, including the lack of funding of the national committee, the violation of the rights of women members of ethnic groups, violations by military personnel, the plight of women in custody (particularly in respect of sexual and other custodial violence), the lack of measures to ensure the equal participation of women in open and pluralistic society, and restricted access to certain courses in higher education. The Committee called on the Government to prosecute perpetrators of violations of

human rights of women and to provide gender-sensitization training to the military. It further recommended that the provisions of the Convention be incorporated in domestic law and include a definition of "sex discrimination".

47. The Special Rapporteur on violence against women, its causes and consequences, in her 1999 report to the Commission on Human Rights (E/CN.4/1999/68), expressed her regret that the Government appeared to deny that domestic violence was a problem in the country, and that there was no indication of specific measures to address the issue. She concluded that official denial of the existence of the problem might serve as an obstacle to victims reporting of such violence, which in turn might perpetuate the culture of denial. She has not yet received the Government's response regarding the cases of Naw May Oo Paw, the wives of Bo Pha Palaw Pho and Bo Kyaw Hair, or Nam Nu and Mugha Lwee Paw, all of whom were referred to in paragraph 56 of the above-mentioned report.

B. Children

48. Myanmar became a State party to the Convention on the Rights of the Child on 15 July 1991, and its second periodic report has now been overdue for two years. The Committee on the Rights of the Child, in its 1997 concluding observations on Myanmar, had expressed concern about the compatibility of Myanmar's domestic legislation with the Convention. The principal concerns of the Committee related to the Citizenship Act, the Village and Towns Acts, and the Whipping Act, regarding the laws relating to freedom of expression and association, child labour and juvenile justice. It also found that the age of criminal responsibility, at seven years of age, was too low, and that torture was not clearly prohibited by existing legislation. The Committee has not yet received information from the Government whether any of the recommendations have been implemented in national legislation.

49. Myanmar is reportedly a State with one of the highest numbers of child soldiers in the world. Both the national army and non-state ethnic and other armed groups are believed to be involved in often-coerced recruitment of children. Street children, orphans and children belonging to ethnic minorities are believed to be the most vulnerable. Unofficial estimates put the number of child soldiers at some 50,000, the highest in any country in the world.

50. Violence against children is reportedly on the increase, especially in rural ethnic minority areas. The Special Rapporteur continues to receive information on incidents of wilful killing, torture, trafficking and forced labour of children.

51. Food deprivation, repeated illness, lack or absence of health care, and death or forced relocation of parents appear to be some of the major causes of the phenomenon of the stunted growth of children. According to the UNICEF report, The Progress of Nations 2000, 45 per cent of Myanmar children under five are stunted in growth, and according to WHO 39 per cent are underweight; according to UNICEF, 1.7 per cent of girls and 1 per cent of boys between the ages of 15 and 24 are HIV positive.

C. Displaced persons and refugees

52. As pointed out in the Special Rapporteur's earlier reports, one of Myanmar's key indicators of the grave human rights situation is the number of its refugees and internally displaced persons. Some 500,000 refugees or other displaced persons of Myanmar origin are believed to be seeking temporary protection in neighbouring countries, such as India, Bangladesh and Thailand. Between 500,000 and one million are also reportedly displaced internally. Independent monitoring or assistance to internally displaced persons has not so far been authorized. It is hoped that the Government will build upon its May 1999 agreement with the International Committee of the Red Cross to allow greater access in the field.

D. Ethnic minorities

53. Among the minority groups, the Shan, Karen, Karenni and Rohingya in particular continue to be the target of indiscriminate violence whether they are civilians or insurgents. The most frequently observed human rights violations involve extortion, rape, torture and other forms of ill-treatment, forced labour and portering, arbitrary arrests and long-term imprisonment, forcible relocation and in some cases, extrajudicial executions - all perpetrated by the military authorities within the context of counter-insurgency activities against armed ethnic minority opposition groups. No visible improvement was observed in the period under review despite repeated calls to the Government to take meaningful steps to improve the situation.

54. The Military Intelligence units appear to use torture and arbitrary detention, as well as sexual violence against women, in the course of their work. Regular military units are frequently reported to perpetrate extrajudicial executions, especially within the context of forced portering. The widespread campaign of forcible relocations continues in the Kayin, Kayah and Shan states. Once relocated, the people are reportedly forced to remain on the relocation sites in

often health-threatening conditions, which include overcrowding and lack of food, sanitation and safe drinking water. The military also often restrict residents' freedom of movement to a set radius outside the camp. The relocated population is threatened not to leave the radius or return to their places of origin on pain of execution. Relocations are often accompanied by violence, especially against women, looting and extortion by the military. The observed pattern of forced relocations amounts to a premeditated destruction of a way of life, and is condemned in the strongest terms.

55. The Special Rapporteur has received a number of convergent credible reports of a series of massacres in Kunhing township (Shan state) in which over 100 Shan and hill tribes people were killed in the months of January, February and May of 2000, including 19 people who had returned to their deserted village and were reportedly killed by troops of Infantry Battalion 66 at Kaeng Kham village on 30 January. On 23 May, Infantry Battalion 246 reportedly shot 64 Shan and hill tribe villagers dead while they were working in the fields near Kunhing town. In another case, Lung Ti, a 40-year-old rice farmer, Su Nan Ta, his 11-year-old son, and Ei Su, his 18-year-old daughter, were reportedly killed by troops from Kunhing Township after returning clandestinely to their former village of Nong Hai. The farmer was reportedly shot dead in his hut and the children were found decapitated.

56. The Special Rapporteur has at the last moment also received reports of, among other complaints, a number of killings, rapes, disappearances, forced labour, forced relocation and extortion by members of the border security force (Na Sa Ka) and SPDC soldiers in Arakan state. The Special Rapporteur will follow this up in his next report to the Commission on Human Rights.

V. Conclusions and recommendations

57. The Special Rapporteur has noted the submission of Myanmar's initial report pursuant to its obligations under the Convention on the Elimination of All Forms of Discrimination against Women. He wishes to renew his recommendation to the Government to consider adopting other international instruments and to incorporate them in domestic law. He also encourages the repeal of discriminatory provisions in the Citizenship Act, and the repeal of all decrees and orders criminalizing the exercise of freedom of thought and expression, freedom of association and movement, and freedom to exercise political and democratic rights in accordance with international norms.

59. The Special Rapporteur notes with deep concern the continuing deterioration of the human rights situation in Myanmar since his last report. The suppression of all opposition political activity, inhuman treatment towards members of the opposition and ethnic minorities, and the absence of respect and protection for the liberty, health, education and human development of its population remain matters of grave concern, and urgent and meaningful measures to halt and reverse the downward spiral of this situation are called for. In this connection, the Special Rapporteur wishes to draw attention to the recommendations made in paragraphs 80 to 83 of his 1999 report to the Commission on Human Rights (E/CN.4/1999/35) and paragraphs 50 to 55 of his last interim report to the General Assembly (A/54/440).

Fifty-fourth session
Agenda item 116 (c)

Human rights questions: human rights situations and reports of special rapporteurs and representatives Situation of human rights in Myanmar

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report prepared by Rajsoomer Lallah, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar, in accordance with Commission resolution 1999/17 of 23 April 1999 and Economic and Social Council decision 1999/231 of 27 July 1999.

Annex

Interim report on the situation of human rights in Myanmar prepared by the Special Rapporteur of the Commission on Human Rights in accordance with Economic and Social Council decision 1999/231 of 27 July 1999

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I. Introduction

1. The present interim report is submitted pursuant to paragraph 8 (a) of Commission on Human Rights resolution 1999/17 of 23 April 1999.
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 Myanmar. In its latest resolution on the human rights situation in Myanmar, the Commission on Human Rights urged the Government of Myanmar to cooperate fully, and without further delay, with the Special Rapporteur, to allow him, without preconditions, to conduct a field mission and to establish direct contacts with the Government and all other relevant sectors of society, and thus to enable him fully to discharge his mandate. The Special Rapporteur regrets that the Government of Myanmar is still unwilling to establish a constructive dialogue with the human rights mechanisms established by the United Nations for the effective promotion and protection of human rights.
3. The present interim report is based upon information received by the Special Rapporteur up to 30 August 1999 and is to be read in conjunction with the Special Rapporteur's last report to the Commission on Human Rights (E/CN.4/1999/35).

II. The exercise of civil and political rights

A. Measures adversely affecting democratic governance

4. Many reports indicate that political parties in opposition continue to be subject to intense and constant monitoring by the regime, aimed at restricting their activities and prohibiting members of political parties from leaving their localities. Existing orders and directives from the State Peace and Development Council (SPDC) prohibit members of political parties from leaving their localities or even their houses without prior permission from the authorities; those violating the orders risk arrest and interrogation by the police or military intelligence agents. The aim of these directives is said to be to exert pressure and to intimidate. They have in fact led the members of the National League for Democracy (NLD) to resign. For instance, it was reported that in Kachin State, membership in NLD has dwindled from over 4,000 to about 30. A number of NLD working committees throughout the country were dismantled by the authorities and their offices forcibly shut down.

5. As a result of widespread rumours of a planned mass uprising on 9 September 1999, also known as 9-9-9-9, it was reported that more than 100 persons have been arrested in the past three months in Yangon and others in the provinces.

6. On 9 September 1999, the regime is reported to have obstructed a meeting organized by NLD in Yangon to mark the anniversary of the formation by the opposition of a committee to represent the persons elected in the May 1990 general elections. The streets leading to the party headquarters were reported to have been blocked by police, who allowed only party members through. Journalists and the public were barred. Other measures to disrupt the meeting included preventing people from outside Yangon from attending, and detaining non-party members involved in the preparations for the meeting.

7. Between 19 and 24 July 1999, in Bago, central Myanmar, a group of 19 persons were reportedly arrested by State authorities, allegedly in connection with the planning of a march on 19 July commemorating the fifty-second anniversary of the assassination of General Aung San. From 16 to 18 July, pamphlets had reportedly been distributed and walls spray-painted to announce the march which was planned to demonstrate support for NLD, the lowering of food prices and a revision of the salaries of civil servants. A three-year-old child, Thaint Wunna Khin, daughter of activist Kyaw Wunna, was with her mother, one of the group of 19, when she was arrested. On 30 July, Thaint Wunna Khin was released; however, her mother, Ma Khin Khin Leh, and 17 other prisoners remain in detention, 6 of them members of Kyaw Wunna's family.

8. On 28 July 1999, the Special Rapporteur on the question of torture of the Commission on Human Rights and the Commission's Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent a joint communication to the Government of Myanmar on behalf of the members of the group, namely, Ma Khin Khin Leh (age 33) and her daughter, Aye Swe (age 55), Daw Tin Tin (age 50), Kyaw Kyaw Oo (age 33), Zaw Myint (age 49), Daw Tin Tin (age 47), Ko Zaw Zaw Latt (age 20), Ba Chit (age 48), Ye Tint (age 45), Win Myint (age 45), Dr. Shwe Bo (age 45), Ma Thida Htway (age 20), Ko Lwin Moe Myint (age 27), Ko Myint Oo (age 30), Ko Ah Thay Lay (age 21), Ko Hla Win (age 23) and two unnamed female physicians in their mid-forties, expressing fears for the safety of the detainees during their interrogation at various detention centres by a local Military Intelligence branch (MI3), including concern that they would be exposed to the risk of torture and other forms of ill treatment.

9. Regarding the above-mentioned case, it has been noted that, while political dissidents appear to be the main targets, in order to intimidate and eliminate all opposition activities, their families are targeted as well. Military Intelligence (MI)

reportedly arrested his wife and daughter because they could not find Kyaw Wunna.

10. In a governmental information sheet dated 29 July 1999, the authorities categorically rejected the allegation that a three-year-old child had been detained. The sheet stated that people had been called in for questioning in Bago because pamphlets printed by an armed terrorist group calling for civil unrest on 9-9-9-9 had been found hidden at Kyaw Wunna's house and some other places on 17 July; it was only because of their activities, connection and involvement with the outlawed armed terrorist group that the people involved had been called in for questioning.

11. The Special Rapporteur notes that no information has so far been given as to whether the individuals concerned have been formally charged with a criminal offence, or whether members of their families or legal representatives have been granted access to them.

12. It was also reported that on 2 August 1999, Kyaw Aung (age 23, trader), Kyaw Min Htun (age 20, student), Pyo Wai (age 19, student) and Maung Saw (age 18, student) were arrested at their home in Bago by military intelligence and are currently being detained at the MI3 interrogation centre in Bago. It was reported that these arrests were part of actions taken by the regime against a series of small demonstrations and other protests in Bago, reflecting widespread discontent at the country's political situation. As a result of the activities of their children, the fathers of two of the above-mentioned individuals are said to have been dismissed from their jobs. The two families are also said to be in danger of losing their homes, which are part of a housing complex for civil servants.

13. On 16 August 1999, the Working Group on Arbitrary Detention of the Commission on Human Rights sent a communication to the Government of Myanmar on behalf of the above individuals. The Working Group is still waiting for a reply.

14. Nine military officers as well as two rank-and-file soldiers were reportedly arrested on 27 August 1999 in Papun township, Karen State, for allegedly circulating pro-democracy pamphlets, posters and stickers and trying to organize fellow military personnel to participate in the pro-democracy movement led by NLD. They are reportedly being detained and interrogated by military intelligence. The names of those arrested, as received by the Special Rapporteur, are of the following individuals:

Lieutenant Kyaw Thura; Lieutenant Maung Aung; Lieutenant Aung Htay Lwin; Lieutenant Okkar Myint; Lieutenant Myint Zaw; Lieutenant Kyaw Zaya;

Lieutenant Than Win; Second Corporal Sein Thaung; and Second Corporal Myint Kyu.

15. The Special Rapporteur has also received information about several students arrested in the autumn of last year for their participation in demonstrations to recover their civil and political rights. As the Special Rapporteur had occasion to point out, numerous executive orders criminalize many aspects of normal civilian conduct, prescribe grossly disproportionate penalties and authorize arrest and detention without judicial supervision or review. This inevitably leads to the conclusion that a significant number of all arrests and detentions are arbitrary when measured by international standards. Below are two examples of the violation of the right of students, whose names were given to the Special Rapporteur, to protection from arbitrary arrest and detention, to a fair trial and to protection from ill treatment and disproportionate punishment.

16. Thet Win Aung attended Basic Education High School No. 5, Tamwe township, where his family lives. He was dismissed from school in 1991 for his so-called political activities and in September of that year was detained for nine months during which time he was reportedly badly tortured. Following student protests between June and September 1998, when students staged small demonstrations to protest against the poor quality of education and the human rights situation, he was arrested and reportedly sentenced to 52 years' imprisonment. It was further reported that the sentence was subsequently increased by another seven years.

17. Reports indicate that the current whereabouts of Thet Win Aung are unknown. According to reports received, Thet Win Aung was initially detained in Insein prison in Yangon, in solitary confinement. However, in April and May 1999 the military authorities reportedly transferred hundreds of political prisoners from Insein prison to remote prisons elsewhere in the country. Thet Win Aung was reportedly moved, as part of this operation, to Myitkyina prison. There is serious concern about his current state of health in custody, given the reports that he had already been tortured during his earlier term of imprisonment in 1991.

18. Myo Min Zaw was a second-year English student. He was arrested, with about 300 other students, during the demonstrations of June-September 1998. Myo Min Zaw was arrested in the street on 14 September 1998 and accused of agitating unrest. He was reportedly sentenced to 38 years' imprisonment, subsequently increased to 52 years. Myo Min Zaw is now being held in Patheingyi/Bassein prison, having been transferred there in April/May 1999 along with other prisoners.

B. Prison conditions

19. The Special Rapporteur has noted with satisfaction that the International Committee of the Red Cross (ICRC) has reached a verbal agreement with SPDC that allows staff to have access to all places of detention in Myanmar. The visits are to take place in accordance with ICRC's standard procedures. Accordingly, on 6 May 1999, ICRC began visiting detainees and prisoners held at Insein prison.

20. On 3 September 1999, ICRC announced that for the first time in Myanmar ICRC teams had visited more than 18,000 detainees and registered over 600 security detainees. Since the ICRC visits began in May, delegates had been to nine places of detention, including Insein prison and the central prison in Mandalay, and to three places of administrative internment. According to the same statement, each visit had been conducted according to the ICRC's standard working procedures and included an initial discussion with the authorities administering the facility, a complete inspection of the premises, access to all the detainees and private interviews with security detainees, who were given the opportunity to write Red Cross messages to their families. The delegates had a meeting after each visit with the authorities in charge, putting forward recommendations regarding the situation they had observed. Confidential written reports were then handed to the relevant Myanmar authorities. ICRC and the country's authorities have agreed that delegates would be able to return on a regular basis to all the places visited. The programme will gradually be extended to all detention facilities in Myanmar.

III. Forced labour

21. In his last report to the General Assembly (A/53/364, annex), the Special Rapporteur referred in detail to the work of the Commission of Inquiry established by the International Labour Organization (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).

22. According to the report issued by the Commission of Inquiry on 20 August 1998, the obligation to suppress the use of forced or compulsory labour was violated in Myanmar in national law, as well as in actual practice, in a widespread and systematic manner, with total disregard for the human dignity, safety and health and basic needs of the people.

23. In its conclusions on the substance of the case, the Commission stated that there was abundant evidence of the pervasive use of forced labour, imposed on the civilian population throughout Myanmar by the authorities and the military, for

portering; the construction, maintenance and servicing of military camps; the construction and maintenance of roads, railways and bridges; other infrastructure work; other work in support of the military; and work in agriculture, logging and other projects undertaken by the authorities or the military, sometimes for the profit of private individuals.

24. At its 274th Session, held in March 1999, the members of the Governing Body of the International Labour Office called upon the Government of Myanmar to make all the necessary changes in the laws to bring them into compliance with the Convention by 1 May 1999. It also requested the Director-General of ILO to submit a report by 21 May 1999 concerning the measures that the Government had taken to comply with the recommendations of the Commission of Inquiry.

25. On 21 May 1999, the Director-General of ILO submitted his report. It contained new documentation substantiating the conclusions of the Commission of Inquiry that a variety of forms of forced labour were prevalent throughout the country. It provided further evidence of the continued use of forced labour in virtually every ethnic State of the country as part of the campaign to repress ethnic minorities. It also contained evidence of the continued use of forced labour in the Burman areas. The Director-General concluded that there was no indication that the recommendations of the Commission of Inquiry had been implemented. The Village Act and the Towns Act had not been amended; the practice of forced and compulsory labour continued to be widespread; and no action appeared to have been taken under section 374 of the Penal Code to punish those exacting forced labour.

26. At the 87th Session of the International Labour Conference, held in June 1999, the application by Myanmar of the Forced Labour Convention, 1930 (No. 29) was discussed in the Conference Committee on the Application of Standards. The Committee noted the written and oral information supplied by the Government and the discussion that had followed. It noted in particular the Government's position that the findings of the Commission of Inquiry and the ILO Committee of Experts for the Application of Conventions and Recommendations had no basis, and that the report of the Director-General of 21 May 1999 was based on false and misleading information. The Committee also noted the issuance of order No. 1/99 of 14 May 1999, directing that the power to requisition forced labour under the Towns Act, 1907, and the Village Act, 1907, not be exercised.

27. The Committee recalled the long history of the case and the series of actions taken by the ILO supervisory bodies, including the recommendations of the Commission of Inquiry. It considered that the explanations provided by the Government did not respond to the detailed and well-substantiated findings and recommendations of the Commission of Inquiry and the Committee of Experts. It

noted with deep concern the findings of the Commission of Inquiry that there was convincing information available that the imposition of forced and compulsory labour on a very large scale still occurred in Myanmar. The Committee regretted that the Government had not allowed the Commission of Inquiry to visit the country to verify the situation for itself. That could also have been the occasion for the Government to present its own position before the Commission in a very objective and impartial manner. It regretted that the Government had shown no inclination to cooperate with ILO in this respect.

28. The Selection Committee submitted an "urgent resolution" on Myanmar to the Plenary of the Conference. In the resolution on the widespread use of forced labour in Myanmar, the International Labour Conference deeply deplored that:

"(a) The Government has failed to take the necessary steps to bring the relevant legislative texts, in particular the Village Act and Towns Act, into line with the Forced Labour Convention, 1930 (No. 29), by 1 May 1999, as recommended by the Commission of Inquiry;

"(b) At the end of the twentieth century, the State Peace and Development Council (SPDC) has continued to inflict the practice of forced labour - nothing but a contemporary form of slavery - on the people of Myanmar, despite repeated calls from ILO and from the wider international community for the past 30 years;

"(c) There is no credible evidence that those exacting forced labour in Myanmar have been punished under section 374 of the Penal Code;" and resolved:

"(a) That the attitude and behaviour of the Government of Myanmar are grossly incompatible with the conditions and principles governing membership of the Organization;

"(b) That the Government of Myanmar should cease to benefit from any technical cooperation or assistance from ILO, except for the purpose of direct assistance to implement immediately the recommendations of the Commission of Inquiry, until such time as it has implemented the said recommendations;

"(c) That the Government of Myanmar should henceforth not receive any invitation to attend meetings, symposia and seminars organized by ILO, except such meetings that have the sole purpose of securing immediate and full compliance with the said recommendations, until such time as it has implemented the recommendations of the Commission of Inquiry."

29. The Special Rapporteur fully endorses the substantiated conclusions and recommendations of the Commission of Inquiry, as well as the observations made

in the Director-General's report. He also fully supports the recommendations contained in the resolution adopted by the International Conference.

30. The Special Rapporteur notes that the practice of unpaid and forced labour in Myanmar has been documented for over a decade. Reports received in 1999 include the construction of the temple in Kunhing using forced labourers, among whom were children from 8 to 15 years of age, who accounted for about 10 per cent of the workforce at any one time. Furthermore, there have been persistent complaints of the use of forced portering for the military, the porters being held for days, often without nourishment and often beaten if they are unable to keep up with the military column. They are forced to carry heavy loads of equipment and food across difficult terrain without pay. Reported cases include a 23-year-old woman from Murngnai who in January 1999 was made to carry out portering duties four times, while still nursing her baby. She was beaten during her portering duty. The woman finally fled to Thailand. Another example involved a 33-year-old farmer from Murngnai township who in February 1999 was part of a group made to carry chickens and dried meat for Military Unit 54 from Murngtong. There reportedly were 40-50 porters, all belonging to the Shan ethnic minority; 5-7 were women and about 10 were children from 12 to 15 years of age. The porters slept on the ground, tied up with a yoke. The women, however, were kept separate and might have been harmed, as the farmer heard them screaming. The porters were reportedly neither fed nor paid by the soldiers. Upon reaching the villages, the headman was asked to feed the porters. The farmer further reported being beaten with a rifle butt on the upper arm, shoulders and neck.

IV. Situation in the ethnic minority States

31. In his last report to the Commission on Human Rights, the Special Rapporteur extensively addressed the situation in the ethnic minority States. His concerns and conclusions unfortunately remain valid.

32. The Special Rapporteur is deeply concerned at the ongoing generalized human rights violations committed against the ethnic groups and other minorities in the eastern part of Myanmar, particularly Shan and Karen States. The violations have been thoroughly documented by human rights organizations and newly arrived refugees in Thailand describing the same stories of widespread human rights violations committed by the military, including summary executions, rape, torture, ill treatment during forced labour, portering, forcible relocation of villages and dispossession of land and other property.

33. According to information received by the Special Rapporteur, Saw Sing, from Kengkham village, Kunhing township, had been forcibly relocated to Kunhing town in 1996. In January 1999, he received permission from local authorities to return to his village to collect his cattle. He spent the night in Kengkham where he was caught and shot dead the following day by troops from Unit 513 based in Loilem. Further reported cases include killings in Papun district in early 1999 by forces of SPDC and the Democratic Kayin Buddhist Army (DKBA). Saw Pha Blaw, a 16-year-old boy and Naw Htoo Paw, an 18-year-old woman, both Seventh Day Adventists, were reportedly shot dead when troops opened fire on a group of students after the troops had entered the village demanding 20 porters.

34. The Special Rapporteur received information about at least 29 Karen villagers, including a baby and two children, age 2 and age 8, who were allegedly slaughtered recently by Myanmar troops. It was further reported that on 26 July 1999, a column from Infantry Battalion 101, commanded by Lieutenant Colonel Soe Win, entered Kawei and Hpway Plaw villages 11 miles north of Taninthayi town, Mergui district, Tenasserim division. The next day, the soldiers reportedly massacred at least 22 villagers. Some villagers are reportedly still missing. The victims were reportedly beaten to death or stabbed; others had their arms and legs broken first and were killed later while still others were placed inside empty rice sacks and pounded with a rice husker until they died. A 19-year-old woman, Naw Nall Naw, was allegedly gang-raped by the soldiers before she was killed.

35. It has also been reported that soldiers looted whatever they found useful and destroyed the rest of the villagers' property completely. More than 200 cattle were taken away by the troops to the army camp at Ta Hpo Hta village, which also serves as a relocation site. Many other villagers from the area have fled and about 137 people are reported to have reached a safer location. An estimated 400 villagers were desperately trying to reach safety and have been pursued by Myanmar soldiers from Infantry Battalions 101 and 103.

36. The Special Rapporteur has also received information that, on 31 July 1999, a group of 43 soldiers led by company commander Mo Kyaw and his assistant, Ka Htay, from Fourth Company, Infantry Battalion 101, went to Ta Hpo Hkee, a village near the Kawei and Hpway Plaw massacre sites, where they captured a group of seven Karen civilians, including a nine-year-old girl and a pregnant woman, and killed them. Both single women and the nine-year-old girl were reported to have been gang-raped by the soldiers before they were slaughtered. The pregnant woman was killed by a shot fired at the abdominal region. Earlier, on 24 July, Myanmar soldiers from Infantry Battalion 101 had burnt and destroyed the villagers' property, including food stores and crops, at Ta Hpo Kee village.

37. The Special Rapporteur continues to receive reports indicating that there is a constant flow of new refugees into Thailand. It is reported that thousands of persons have arrived since the last visit of the Special Rapporteur to the region in December 1998. The rate of new arrivals in Maela, for example, is still about 60 families (300 people) per month. However, there are still, according to many reports, a large number of internally displaced persons - over 500,000 - inside Myanmar who are living in abject conditions in the jungle and at relocation sites, with little food and subject to exposure to all sorts of diseases.

V. United Nations programmes in Myanmar

38. Bearing in mind the recommendation made in paragraph 82 of his report to the Commission on Human Rights (E/CN.4/1999/35) and paragraphs 7 (a) and 8 (e) of Commission resolution 1999/17, the Special Rapporteur has sought full information from a number of agencies of the United Nations system regarding their ongoing programmes in Myanmar. The following paragraphs indicate the substance of the information provided to the Special Rapporteur by these agencies.

Office of the United Nations High Commissioner for Refugees

39. Since 1994, the Office of the United Nations High Commissioner for Refugees (UNHCR) has been operational in northern Rakhine State, around the areas of Maungdaw, Rathedaung and Buthidaung. UNHCR's activities are focused on assisting refugee repatriates from Bangladesh in reintegrating into their villages of origin and on efforts to create conditions that would stabilize the local Muslim population and enhance possibilities for their self-sufficiency.

40. Between 1994 and 1997, some 230,000 Muslim refugees from Myanmar in Bangladesh returned to northern Rakhine State in Myanmar. The repatriation process was suspended in August 1997 and resumed in November 1998. However, only some 300 persons have returned since then owing to various procedural difficulties. A residual caseload of some 22,000 refugees remain in two camps in Bangladesh.

41. The objective of UNHCR's operation in Myanmar is to facilitate the reintegration of returnees and stabilize the Muslim population (about 800,000) through community-based assistance and infrastructure support in areas such as improvements to roads, water supplies, sanitation, health-care and educational facilities. Income-generation and skills training activities are also undertaken. In

1999, UNHCR has placed particular emphasis on promoting food security for extremely vulnerable families through the introduction of high-yield seeds and double cropping.

42. UNHCR works in cooperation with the World Food Programme (WFP), the United Nations Office for Project Services (UNOPS), the Food and Agriculture Organization of the United Nations (FAO) and the United Nations Children's Fund (UNICEF). In addition, five non-governmental organization partners assist in the implementation of programme activities.

43. UNHCR also actively supports the participation of women in its assistance activities in order to increase their self-confidence and strengthen peer support mechanisms. These efforts have been articulated and implemented in activities such as the UNHCR/Magsaysay Centres for Women, the Women's Literacy Training Programme, the provision of food supplements for female pupils, and training and income-generating activities for female heads of household. Similarly, UNHCR caters for special needs of children and adolescents by improving their access to the education system through child and adolescent literacy training programmes. UNHCR also works closely with UNICEF in the promotion of children's rights in Myanmar.

World Food Programme

44. The operational involvement of the World Food Programme (WFP) in Myanmar commenced in May 1994 following the launching of a joint UNHCR/WFP appeal to assist the resettlement and reintegration process of returnees who had fled to Bangladesh in 1991-1992. Additional support is also being provided towards improving the economic conditions in the remote villages of north Rakhine State in order to reduce the chances of a future exodus to Bangladesh.

45. Since its initial involvement, WFP has provided food assistance to about 175,000 returnees. In addition, some 30,000 annually benefit from food-for-work programmes (road construction, water harvesting, school feeding and so forth) while about 10,000 benefit from WFP's relief assistance, specifically targeted at vulnerable households.

United Nations International Drug Control Programme

46. Myanmar is one of the largest opium and heroin producers in the world. The production of amphetamine-type stimulants has increased dramatically in recent years, and the country has also been struck by widespread drug abuse in both rural and urban areas. United Nations International Drug Control Programme (UNDCP) programmes are designed to address these problems through a balanced approach, which was recognized as being required to overcome the drug problem by the General Assembly at its twentieth special session on the world drug problem held in June 1998. The approach, balanced between demand and supply reduction, is effectively reflected in the UNDCP Country Programme and Subregional Action Plan for South-East Asia which includes Cambodia, China, the Lao People's Democratic Republic, Myanmar, Thailand and Viet Nam.

47. In the field of demand reduction, UNDCP is working in partnership with international governmental organizations and local communities. Ongoing UNDCP-funded projects in this sector demonstrate community-based drug treatment and rehabilitation models (Kachin and northern Shan States) and aim at reducing the prevalence of injecting among drug users (Kachin State).

48. The most significant UNDCP project in Myanmar is in the field of supply reduction. The Drug Control and Development Project in the Wa region of the Shan States is a five-year alternative development project with a budget of US\$ 15.5 million. The project features development activities and monitoring of opium poppy cultivation. Development activities include community-based interventions on public health, education, infrastructure (access roads, irrigation, water supply, electrification), resource management, alternative livelihood (income-generation, livestock and agriculture, agroforestry).

49. A constraint in Myanmar is that most opium-producing areas have not historically been under government administration. Since 1989, ceasefire agreements with the ethnic groups that control these areas have brought more stability, and the local authorities have agreed progressively to phase out opium poppy cultivation. It is in this improved context that the Wa alternative development project is being implemented at the grass-roots level with the opium-producing communities, in coordination with the Government of Myanmar and the local ethnic authorities.

VI. Conclusions and recommendations

50. The Special Rapporteur welcomes the resumption of its valuable work by ICRC and the cooperation of the Government in this regard. It is to be hoped that

this cooperation will continue and be extended to all prisons and other places of detention throughout the country. The cooperation of the Government is indicative of its recognition of the fundamental norms, namely, that persons who are deprived of their liberty have a right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment and must be treated with humanity and respect for their inherent human dignity, as proclaimed in article 5 of the Universal Declaration of Human Rights and further explicitly described in articles 7 and 10 of the International Covenant on Civil and Political Rights.

51. The efforts of the agencies of the United Nations system conducting operational activities in Myanmar can indeed prove most valuable in the provision of humanitarian assistance. These efforts should be intensified, should focus on programmes at the grass-roots level and should be developed from the perspective of those who most need their basic human rights protected, such as the internally displaced, women and children and other vulnerable groups. These programmes should focus also on such problem sectors as health and education. There is a need, however, for the maintenance of systematic consultation and coordination among the agencies to ensure that assistance activities focus on humanitarian assistance and basic human rights protection and promotion and that the resolutions adopted by the General Assembly and the Commission on Human Rights are taken fully into account.

52. Except for the developments highlighted in the above two paragraphs, there has been no progress in the situation of human rights in Myanmar. If anything, the situation is worsening. Repression of civil and political rights continues and intensifies whenever there is any form of public protest or any form of public political activity. Repressive laws are still used to prohibit and punish any exercise of the basic rights of freedom of thought, expression, assembly and association, in particular in connection with the exercise of legitimate political rights. This regime of repression puts the right to life, liberty and physical integrity - when it is not simply violated - permanently at risk. The rule of law cannot be said to exist and function, as the judicial system is subject to a military regime and serves only as handmaiden to a policy of repression.

53. No effective measures have been taken to restrain forced labour amounting to no less than a contemporary form of slavery, in spite of freely assumed international obligations; and the practice still continues in the name of tradition, or else of economic development.

54. In the ethnic areas, the policy of establishing absolute political and administrative control brings out the worst in the military, and results in killings, brutality, rape and other human rights violations which do not spare the old, women, children or the weak.

55. For all these reasons, the Special Rapporteur must unfortunately renew the recommendations he made in his last report to the General Assembly.

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**Human rights questions: human rights situations and reports of special
rapporteurs and representatives**

Situation of human rights in Myanmar

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on the situation of human rights in Myanmar, prepared by Rajsoomer Lallah, Special Rapporteur of the Commission on Human Rights, in accordance with Economic and Social Council decision 1998/261 of 30 July 1998.

*A/53/150

Annex

Interim report on the situation of human rights in Myanmar prepared by the Special Rapporteur of the Commission on Human Rights in accordance with Economic and Social Council decision 1998/261 of 30 July 1998

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I. 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) and to the Commission on Human Rights.(b) The mandate, initially articulated by the Commission in its resolution 1992/58 of 3 March 1992 and extended most recently

in resolution 1998/63 of 21 April 1998 (approved by the Economic and Social Council in its decision 1998/26 of 30 July 1998), 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 1998/63, the Commission called upon the Government of Myanmar to cooperate fully and unreservedly with the relevant mechanisms of the Commission, in particular the Special Rapporteur, and to ensure his access to Myanmar, in order to establish direct contact with the Government and with any person in the country whom he might deem appropriate, to allow him fully to discharge his mandate; requested the Secretary-General to continue to give all necessary assistance to the Special Rapporteur to enable him to discharge his mandate fully and to pursue all efforts to ensure that the Special Rapporteur was authorized to visit Myanmar.

3. The main 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 1998/63, which are the most recent. The major concerns may be summarized, in substance, 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 a democratic order in the light of those elections;

(b) Many political leaders, in particular, elected representatives from the National League for Democracy (NLD), 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) Forced relocation and other violations of the rights of persons belonging to

minorities, resulting in a flow of refugees to neighbouring countries, and continuing attacks by the military on ethnic groups, resulting in death, destruction and displacement.

II. Methods of work

4. With a view to establishing direct contact with the Government and people of Myanmar, as requested by both the General Assembly and the Commission, the Special Rapporteur has written on several occasions to the Government of Myanmar seeking its cooperation and requesting its authorization to visit the country. The Government has on more than one occasion indicated that such a visit would be possible at an appropriate time, but so far no authorization has been forthcoming. In the absence of cooperation on the part of the Government, the Special Rapporteur has continued to rely on information from governmental, intergovernmental and non-governmental sources. He has also received several well-documented information from individuals connected in one way or another with the situation in Myanmar. He has further 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 serious 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.

5. The present interim report is based upon information received by the Special Rapporteur up to 30 August 1998 and is to be read in conjunction with the Special Rapporteur's last report to the Commission on Human Rights (E/CN.4/1998/63).

III. The exercise of civil and political rights

A. The impact of Myanmar law on human rights

6. The Special Rapporteur has already commented on how, in Myanmar, several laws criminalize or adversely affect freedom of thought, information, expression, association and assembly through fear of arrest, imprisonment and other sanctions. The most commonly employed laws banning the enjoyment of civil and political rights and suppressing dissent against the regime have been the 1923 Official Secrets Act, the 1950 Emergency Provisions Act, the 1957 Unlawful Associations Act, the 1962 Printers' and Publishers' Registration Law, the 1975 State Protection Law (Law to Safeguard the State Against the Dangers of Destructive Elements)

and Law No. 5/96 Protecting the Stable, Peaceful and Systematic Transfer of State Responsibility and the Successful Implementation of National Convention Tasks Free from Disruption and Opposition.

7. The 1950 Emergency Provisions Act 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 or behaviour of a group of people.

8. The 1975 Law to Safeguard the State Against the Dangers of Destructive Elements is also used by the regime to carry out indiscriminate and arbitrary arrests and detention of political opponents. Under this law, the Council of Ministers is authorized to pass an order, as may be necessary, restricting any fundamental right of a person if there are reasons to believe that any citizen 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. The same Law further provides for the detention to continue for a period not exceeding one year at a time up to a total of five years.

9. Further, numerous Executive Orders, criminalizing many aspects of normal civilian conduct, prescribing grossly disproportionate penalties and authorizing arrest and detention without judicial review, lead to the conclusion that a significant number of all arrests and detentions are arbitrary when measured by international standards. The examples below demonstrate the circumstances in which those laws continue to be used:

(a) In March 1998, the student leader Aung Tun, 30 years old, a Central Executive Committee member of the All Burma Federation of Students Unions, was sentenced to 15 years imprisonment for writing a history of the Burmese student movement. Arrested early in the year, he was charged under the 1962 Printing and Publishing Act and section 5(j) of the Emergency Provision Act 1950;

(b) In early April, Thakhin Ohn Myint, 80 years old, was sentenced to seven years prison for his part in assisting in the writing of the history of the student movement. He had been detained in February but was released in late March. However, he was rearrested the following day by military intelligence officers and was later sentenced;

(c) In April 1998, Daw San San was sentenced to 25 years imprisonment. She was arrested on 28 October 1997 after she had conducted an interview with the British Broadcasting Corporation on 26 June 1997, in which she had been critical of the military regime. She was arrested under section 10(a) of the 1975 State Protection

Act, but in April she was charged under the 1923 Official Secrets Act and sentenced to 25 years. Daw San San, 58 years old, was initially detained along with seven members of Parliament from the NLD, including Dr. Than Nyein and Dr. May Win Myint. All were initially sentenced to six years imprisonment, but Daw San San's term of imprisonment was increased to 25 years after she refused to end her political activities. Daw San San had previously been arrested in November 1990 and had been sentenced to 20 years under Penal Code 122 for high treason. She was however, released on 1 May 1992 during an amnesty. Since that detention, the authorities dismissed her as a Member of Parliament and banned her from contesting any future elections.

B. Rights pertaining to democratic governance

10. Many reports indicate that in Myanmar political parties in opposition continue to be subject to intense and constant monitoring by the regime, aimed at restricting their activities and prohibiting members of political parties from leaving their localities. Existing orders from the State Law and Order Restoration Council (SLORC), including the 1961 Habitual Offenders Restrictions Act, preclude members of political parties from leaving their localities or their houses without prior permission from the authorities; otherwise they risk arrest and interrogation by the police or military intelligence agents.

11. The cases reported below have been brought to the attention of the Working Group on Arbitrary Detention and the Special Rapporteur on the situation of human rights in Myanmar:

(a) A number of NLD elected representatives, including U Tun Win, Dr. Kyi Min, U Hlaing Aye, U Myint Aung, U Aung Soe, U Kyaw Myint, U Thein Kyi, U Than Naing, U Myint Thein, U Aung Myint Thein, U Tha Aung, U Aung San Myint, U Aung Naing and U Tar have been arrested or charged either under the Criminal Code or the Habitual Offenders Restriction Act. It is contended that the authorities have used the Act to restrict the activities of NLD-elected representatives in a number of the country's divisions, excluding Yangon Division. A restraining order has been issued against all elected NLD representatives, who are required to stay within the confines of their respective municipalities for a year. They are said to have to report to the local police stations at least twice a day. Ward authorities have been ordered to visit the home of a representative who reports sick to verify whether the claim is true. Those refusing to comply with the restraining order are threatened with arrest;

(b) As to the general background of implementation of these restraining orders, it is also contended that starting in the night of 25 June 1998, NLD-elected members of parliament in different parts of Myanmar, excluding Yangon, have been restrained by township judicial authorities who acted jointly with the police officials in those townships;

(c) In the initial stage, in Bago Division, military security personnel allegedly were involved in the implementation of the restraining orders; in the other states and divisions, only the township judges and the respective police station are said to have been involved. There has been a consistent pattern of NLD-elected representatives being taken to their respective police stations and being held there overnight in some instances, for two nights. The NLD representatives would be allowed to take their own bedding, blankets and mosquito nets; the next morning (or morning thereafter), they would be released if two "guarantors" would post bond in the amount of 100,000 kyats each. The township judge would then read out an order based on the Emergency Powers Law, section 5, sub-section 1(f) and (g), under which the elected NLD representatives would be required to "sign in" at the local police station every day at 8 a.m. and 5 p.m. (in some instances, at 9 a.m. and 5 p.m.). This practice is said to have been designed to prevent the individuals thus restrained from travelling outside their town's jurisdiction. Non-compliance with the restraining order would entail a prison sentence of one year;

(d) It is contended that the NLD leadership has urged its elected representatives to defy the restraining orders and that, as a result, a number of arrests have been made by the authorities. The total number of restrictions in effect for the whole country now exceeds 50 elected NLD representatives. The exact number is unknown, since telephone connections to certain townships and places are said to have been disconnected.

12. There is no doubt that such practices, if true, would constitute a violation of basic international human rights norms, in particular, those proclaimed in articles 9 and 21 of the Universal Declaration of Human Rights.

13. On Thursday, 25 June, security forces prevented four elected NLD representatives and 40 young men from entering Daw Aung San Suu Kyi's compound for a regular "reading session". They were pushed back to the junction of Kabe Aye Sati Road and University Avenue. When they were informed of the incident, U Tin Oo, NLD Vice-Chairman, and Daw Aung San Suu Kyi went to the junction to lead the members back to her compound. After blocking them at various points, a man in civilian clothing ordered the security forces to attack the group. The police proceeded to do so, using batons and branches from trees which were lying on the roadside. A statement from NLD said that eight NLD youth

members suffered injuries and Aung San Suu Kyi was also slightly injured. The location of the incident was a restricted area, thus no one else was present.

14. The Myanmar authorities, in a statement issued the day after, said the group had refused legitimate orders to leave "on security ground(s)" and that after the staging of a sit-down protest overnight, they had been allowed to enter. Officials had earlier denied that anyone was injured in the scuffle and said no arrests had been. The road to Aung San Suu Kyi's compound remained sealed off on Friday.

15. On Monday, 29 June, in an apparent response to these events, the Myanmar authorities threatened to take legal action against Aung San Suu Kyi and NLD. Commentaries run by three State-owned newspapers stated that the Myanmar Government and its people could no longer tolerate the acts of Aung San Suu Kyi, who ignored the interest of the nation and the people. The newspapers cited Law No. 5/96 which prohibits individuals or organizations from disturbing, destroying, obstructing, inciting, delivering speeches, making oral or written statements and disseminating in order to undermine, belittle and make people misunderstand the functions being carried out by the National Convention for the emergence of a firm and enduring Constitution. A conviction, under Law No. 5/96, carries a minimum sentence of five years, with a maximum of 20 years imprisonment.

16. Faced with the gravity of the situation, the Special Rapporteur issued a press release in which he expressed his concerns, and on 8 July 1998, he sent a letter to the Minister for Foreign Affairs in order to seek clarifications. Relevant parts of the letter are reproduced here below.

"I would like to express my concern following recent reports that members of the NLD continue to be subject to various forms of restrictions in the normal exercise of their civil and political activities, as should be the case for members of a legitimate and legally registered political party, as indeed for everyone. You will recall, in this regard, the observations I made in my reports to the General Assembly and to the Commission on Human Rights over the past two years in the light of the applicable international norms and the relevant resolutions of the General Assembly and the Commission, calling upon Myanmar to observe those norms.

"According to information received, on the afternoon of 25 June 1998, while approaching Daw Aung San Suu Kyi's house, a group of around 30 NLD writers, journalists and activists were prevented by the security forces from attending a "reading session" regularly held at her home. When Daw Aung San Suu Kyi and U Tin Oo went out to escort the group into the compound, they were allegedly verbally abused and beaten by security forces. As a result four young men around Daw Aung San Suu Kyi were severely beaten, while she herself was slightly

injured. In protest at the refusal to allow the group access to her compound, Daw Aung San Suu Kyi and U Tin Oo remained with the group, surrounded by security officers, throughout the night until they were finally allowed to enter her residence at 8 a.m. the following morning.

"It has also been reported that a number of NLD members have been allegedly arrested throughout the country during May and June 1998. These include six NLD youth leaders, including Ko Tun Zaw Zaw, as well as Members of Parliament such as Mr. Mahn Johnny from KyongPyaw township; David Hla Myint of Ngapudaw township and Dr. Tin Min Htut from Pantanaw township.

"It has been further reported that, as of 25 June 1998, NLD-elected Members of Parliament in various parts of the country, excluding Yangon Division, are required to remain within their township jurisdiction and are required to present themselves twice a day to the nearest police station in order to report their presence by signing a declaration. Those who refuse to sign the declaration are allegedly immediately taken to custody without any inquiry or trial. Such was reportedly the case for more than 15 representatives elected from various constituencies.

"In as much as all those reported to have been arrested were members of NLD, I take this opportunity to repeat my previous and continuing concerns about the fate of the over 80 NLD members and sympathizers who have been arrested since 1990 and who remain detained.

"With respect to other NLD members, I urge your Government to ensure their personal integrity and freedom of expression, including the right to receive and impart information, freedom of association, assembly and movement.

"In order to have an accurate and comprehensive view of the situation, I would greatly appreciate receiving information which your Government may wish to provide regarding the events and cases referred in the above paragraphs, both in respect of the facts themselves and the applicable legislation. I would also appreciate receiving a list of the names of any NLD-elected representatives arrested in Myanmar during the months of May and June 1998 as well as of those arrested since 1990.

"I would further appreciate receiving any other details or observations which your Government deems pertinent."

17. The Special Rapporteur has noted that a reply, dated 10 August 1998, to the substance of his letter was sent, on behalf of the Permanent Representative of Myanmar to the United Nations at Geneva, to the Director of Activities and

Programmes Branch of the Office of the United Nations High Commissioner for Human rights. It was not addressed to the Special Rapporteur nor did it make any reference to him. The Special Rapporteur regrets that the Government of Myanmar is deliberately ignoring his attempts to establish a constructive dialogue with the authorities in Myanmar, as requested by the General Assembly and the Commission on Human Rights.

18. On the substance of the reply, the Special Rapporteur notes that the Government of Myanmar did not provide the Special Rapporteur with a list of the names of NLD-elected representatives arrested in Myanmar during the months of May and June 1998 or of those arrested since 1990. Nor did the Government of Myanmar provide the texts of the applicable legislation in force in the country which is used to justify the restrictions placed on the activities carried out by NLD.

19. Indeed, although the Special Rapporteur did not receive the official figures concerning the status of the NLD Members of Parliament elected in the 1990 elections, he has received several reports stating that the Election Commission has dismissed from Parliament all Members who have been charged with an offence and has banned others from running in future elections. After the election in 1990, the NLD had 392 of the 485 seats. Since the 1990 election, 112 Members of Parliament have apparently been forced from office or dismissed by the Election Commission. This represents more than a quarter, or 28 per cent, of the 392 NLD Members of Parliament who were elected under the NLD banner. Seventy-eight Members of Parliament all from the NLD have been jailed since the election and two (U Tin Maung Win and U Hla Than) have died in prison. At the moment, there are 42 NLD Members of Parliament who remain under detention in Myanmar for their political activities. Furthermore, as a result of threats and intimidation from the authorities, 20 opposition Members of Parliament, most of whom are from the NLD, have fled Myanmar.

20. It would appear that, given the refusal of the authorities to establish a genuine dialogue with the leadership of the NLD and the failure to convene the National Assembly, the NLD leadership has embarked on a campaign designated to achieve those ends by resorting to political actions in line with the normal exercise of basic civil and political rights. It would appear that the NLD had formally called the regime to convene the National Assembly by 21 August 1998 and had sought to exercise its right to conduct normal political activities by visiting members and sympathizers of the party outside Yangon.

21. On Tuesday, 7 July, Aung San Suu Kyi and Aung Shwe attempted to go to Min Hla township (147 km north of Yangon) to meet with a party member. They were stopped by the police 80 km from Yangon and ordered to return home. Aung

San Suu Kyi and Aung Shwe refused and staged an overnight sit-in protest in her car at Shwe Mya Yar village. According to the authorities, the trip outside her home, without a customary security-forces escort, followed by her refusal to return home, amounted to a challenge to governmental authority amid a wider push to hasten civilian rule. The following day, however, the Government announced that it had allowed her to meet with the party member, Hla Hla Moe. Arrangements were made to bring Hla Hla Moe to Shwe Mya Yar to meet with the NLD leader on the morning of 8 July. After the meeting, both parties returned home.

22. On 24 July 1998, Daw Aung San Suu Kyi was stopped by local authorities about 51 miles (32 km) west of Yangon as she attempted to drive to Bassein, 100 miles (160 km) west of the capital, to meet members of her political party, the National League for Democracy. The authorities refused to let her proceed, and she refused to return to Yangon. As a result, Daw Aung San Suu Kyi spent five days stuck in a car on a rural highway surrounded by governmental security personnel. While Daw Aung San Suu Kyi and members of their party were staying near Anyarsu and Pandine villages because of the blockade, the authorities, on 30 July 1998, ordered the security forces to use force to remove them. The General Secretary was physically forced into a car and driven back to her home without her consent. The authorities also drove the car belonging to the General Secretary back to her home without her permission. The remaining Central Executive Committee member and two other members of the party were also forced into the cars of the authorities and driven back.

23. On 28 July 1998, the United Nations High Commissioner for Human Rights issued a press release expressing concern over reports of a standoff in Myanmar between the military and Aung San Suu Kyi and urging the Government of Myanmar to accept a visit of the Special Rapporteur to Myanmar. The press release reads as follows:

"The reports coming from Myanmar regarding the refusal of the military authorities to allow Aung San Suu Kyi to travel freely give cause for great concern. The incident is the latest in what appears to be a developing pattern of restriction of the rights to freedom of movement and to freedom of association of Mrs. Suu Kyi and members of the National League for Democracy. According to the information received, Mrs. Suu Kyi is today spending the fifth day in her car after being stopped on the road while going to visit supporters of her party outside of Yangon. There are legitimate concerns about Mrs. Suu Kyi's health and her security during this standoff.

"This incident provides stark evidence of the need for the Government to enter into a frank and sincere dialogue with civil society in Myanmar as a way of overcoming the political difficulties the country is facing.

"I urge the Government of Myanmar to work with Mrs. Suu Kyi and her supporters to resolve the current standoff peacefully and quickly. I also call on the Government 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 reiterate my recent request to the Government to facilitate a visit by the Commission on Human Rights Special Rapporteur for Myanmar, who has been seeking such a visit for a lengthy period."

24. On 12 August, in another attempt to travel outside her residence to meet members of her political party in the city of Patheingyi (Ayarwaddy Division), Daw Aung San Suu Kyi together, with U Hla Pe and a driver, were again stopped by the authorities at Anyarsu village, located 20 miles south-west of Yangon. After spending 12 days on the spot, Daw Aung San Suu Kyi and colleagues returned home without being able to reach Patheingyi and hold meetings with local NLD members.

25. The authorities of Myanmar, through "information sheets" received on a daily basis from the Office of the High Commissioner for Human Rights, recounted these events and justified the actions taken i.e., not to allow Daw Aung San Suu Kyi to travel outside Yangon and to meet with members of the NLD outside her residence, by invoking security concerns. In an information sheet dated 12 August 1998, it is stated that the Government of Myanmar regretted that security conditions in Ayarwaddy Division made it unsafe for Daw Suu Kyi to travel there at that time but that the Government encouraged her to return home and continue her political activities in a more secure environment in Yangon. She and her companions remained free to return to their homes at any time or to stay by the roadside as long as conditions remained safe. Furthermore, Myanmar authorities reported in an information sheet dated 23 August 1998 that, to ensure the health and safety of Daw Aung San Suu Kyi and her companions, Daw Aung San Suu Kyi's personal physicians had been given full access to her at any time and the Government was continuing to provide an ambulance and a medical team on stand-by exclusively for their use. While Daw Aung San Suu Kyi and her companions continued their stay at Anyarsu village, food, water, clothing and other amenities had been made available by the Government as well as other private sources.

26. The Special Rapporteur welcomes the fact that on 18 and 24 August 1998, Secretary 1 of the State Peace and Development Council (SPDC) met with the Chairman of the NLD. The Special Rapporteur hopes that these recent meetings will lead to a genuine dialogue and will not be inconclusive, as was the case in July and September 1997.

C. Death in custody

27. The Special Rapporteur continues to receive reports indicating that torture and ill-treatment, including beatings, in prisons and interrogation centres continue to be a common practice. In addition, sanitary conditions are critical, and there is a lack of medical attention. Moreover, the authorities continue to refuse the International Committee of the Red cross (ICRC) access to prisons and places of detention. In these circumstances, the Special Rapporteur is not surprised to continue to receive information to the effect that several prisoners have died in prison, including several members or sympathizers of the NLD.

28. Since June 1996, several NLD members or sympathizers have died in jail as a result of torture and poor treatment.

29. In his report to the General Assembly (A/51/466, para. 77), the Special Rapporteur reported on the death in custody on 22 June 1996 of Mr. James Leander Nichols, who had been arrested in April 1996 for illegal possession of communications equipment (telephones and fax machines) and sentenced to three years imprisonment on 18 May 1996. He had allegedly been deprived of sleep during long interrogations prior to his death. Mr. Nichols was 65 years old and suffered from heart problems and diabetes. The Myanmar authorities, in a press statement issued on 16 July 1996, denied that he was tortured and stated that he died from natural causes, due to a stroke and a heart attack. However, the Special Rapporteur has recently received additional information from a former detainee who, in May 1996, was serving the final year of a seven-year prison sentence in Insein Prison in a cell close to the one where Mr. James Leander Nichols spent his last days. According to that prisoner, Mr. Nichols had been interrogated by officers for six consecutive days. Upon his arrival, he was reportedly forced to sit in a Poun-San position i.e., to sit cross-legged on the floor with his hands on his knees, back straight and head bowed. During interrogation sessions he is said to have been forced to stand up for hours. Each time, he is said to have been taken away by officers with a hood over his head. Once he reportedly came back to his cell at Insein Prison with swollen legs and a puffed face after having been subjected to four days of interrogation. Despite the fact that he was suffering from acute dysentery and diabetes, he was allegedly not given either proper food or medicines. His health is believed to have quickly deteriorated. The last time he was reportedly seen by fellow inmates before being taken away by officers, he had swollen legs, could not walk properly, and was suffering from dysentery, vomiting and dizziness. It is not clear whether an autopsy was performed. To date, authorities are thought not to have satisfactorily provided a full, written account of events leading up and surrounding his demise. Clearly, a full enquiry by an independent body is called for in light of the new evidence.

30. It is also reported that U Thein Tin, a member of the Yangon Township Organizing Committee of the NLD, died at Yangon General Hospital on 18 February 1998, following physical and mental torture in Insein Prison. U Thein Tin had been detained in Insein Prison since March 1996. He was charged under section 10(a) of the 1975 State Protection Law, which is designed to protect the country from the dangers of those who wish to harm it. A writer by profession, U Thein Tin was a former student leader during 1962-1963. He came to prominence during Daw San Suu Kyi's house-arrest for his unwavering commitment and management skills. He was well respected by both the leadership of the NLD and the youth wing of the party. The State Peace and Development Council (SPDC) claims that U Thein Tin died of blood cancer, according to a statement. However, other sources said that U Thein Tin had been tortured and his health had been deteriorating when he was finally admitted to hospital. He was already dying when he was taken to hospital, according to those sources, and the SPDC had long refused his requests for proper medical care. A Myanmar governmental spokesman confirmed that Thein Tin had died but denied that he had been poorly treated. He said Thein Tin had even been given a pardon three days before his death and released from his prison sentence because he had liver cancer. Medically, Thein Tin had been suffering from liver cirrhosis since 1982 and while he was serving his sentence on 3 December 1997, the prison medical authorities had transferred him to the Yangon hospital, according to the spokesman. He also said that Thein Tin's family had been allowed to pay him regular visits while he was in hospital.

31. Aung Kyaw Moe, 29 years old, a former student of Yangon Institute of Technology, who had been sentenced to 14 years imprisonment for his involvement in a December 1996 student demonstration, died in the prison hospital on 23 May 1998 after being beaten by prison authorities, following a hunger strike by political prisoners at the Thayawaddy Prison, 200 kilometres north of Yangon. On 22 May, political prisoners in Thayawaddy Prison staged a hunger strike to mark the eighth anniversary of the 1990 elections, in which the National League for Democracy (NLD) had won a landslide victory. The political prisoners made two demands: that the ruling State Peace and Development Council (SPDC) treat them as political prisoners, and that it enter into a dialogue with the NLD to solve the country's problems peacefully. However, the authorities, under instructions from the SPDC's Ministry of Home Affairs, rejected their demands and warned the prisoners to stop their hunger strike immediately. When they refused to do so, eight political prisoners were beaten and seriously injured. Afterwards, the family members of all the political prisoners at Thayawaddy Prison were forbidden to visit in an attempt by the authorities to prevent information about the incident from spreading.

32. The following two cases illustrate the severe physical and mental suffering reported to have been inflicted by prison officials to two former detainees:

(a) Thar Nyunt Oo, a leader of the student movement, was arrested in September 1990 and sentenced by the Special Military Court to five years imprisonment. He was detained at Insein Prison from September 1990 until November 1991. He was reportedly interrogated during the first two weeks, during which time he was confined to a small cell under continuous strong light, the intensity of which would be increased if he refused to answer a question. According to the information received, he was deprived of sleep for 60 or 70 hours at a time, beaten and kicked, and made to stand on his toes for hours at a time; meanwhile, his legs were kept in irons with manacles around his ankles and an iron bar between his legs. In 1991 Thar Nyunt Oo and other prisoners who had gone on strike were said to have been placed in solitary confinement and kept in leg irons. They were allegedly forced to stand with their upper bodies bent forward for up to thirty hours. They were reportedly prohibited from bathing for one month and were forced to cry and make admissions of guilt. Thar Nyunt Oo was transferred to Thayet Prison in November 1991 and then to Monywa Prison in December 1992. He was finally released in November 1994 and resumed his political activities. He was forced to flee to the border in December 1996;

(b) Aung Khaing, a graduate of Yangon Institute of Technology and resident of Prone Township, was arrested in November 1990 for his role in the pro-democracy movement and sentenced to 15 years imprisonment. His sentence was commuted to 10 years shortly after General Than Shwe was installed in 1992 as head of the State Law and Order Restoration Council (SLORC). Aung Khaing was released from prison in June 1998. During his eight years of detention in Insein Prison and Taungoo Prison in Pegu Division, Aung Khaing was reportedly subjected to severe beatings by prison warders, and as a result he developed psychological problems. Despite several requests from his family, the prison authorities refused to provide him with proper medical assistance; but instead, he was put in a solitary confinement cell that was designated for leper prisoners until his release in June 1998.

IV. Forced labour

33. The Special Rapporteur continues to receive numerous substantiated reports from a wide variety of sources indicating that the practice of forced labour remains widespread. The phenomenon of forced recruitment of civilians for the purpose of portering is reportedly still practised. Conditions for porters are described as brutal, with forced marches over mountains with heavy loads.

34. Since 1955, Myanmar has been a party to ILO Convention No. 29 concerning forced labour. Amendment or repeal of national legislation providing for the exaction of labour and services, under the threat of penalty, from residents who have not offered themselves voluntarily, has been called for by the ILO Committee of Experts for the Application of Conventions and Recommendations in comments regularly addressed to the Government since 1964.

35. Following the lodging of a representation in January 1993 by the International Confederation of Free Trade Unions, the ILO Governing Body urged the Government of Myanmar, in November 1994, to ensure that the relevant legislation, in particular, the Village Act and the Towns Act, would be brought into line with Convention No. 29, as had already been requested by the Committee of Experts, to ensure that the formal repeal of the power to impose compulsory labour be followed up in practice and to ensure that those resorting to coercion in the recruitment of labour be punished.

36. At the International Labour Conference in June 1996, the Committee on the Application of Standards noted the persistent failure of Myanmar to implement the Convention. The complainants alleged that the Government of Myanmar had demonstrated its unwillingness to act upon the repeated calls addressed to it by the supervisory bodies of the ILO to abolish forced labour in law and in practice and that, instead, the practice of forced labour was becoming more widespread and that the authorities in Myanmar were directly responsible for its increasing use.

37. At its two hundred sixty-eighth session, in March 1997, the ILO Governing Body decided to refer the complaint to a Commission of Inquiry chaired by Sir William Douglas (Barbados). The Commission's mandate was to consider whether, and to what extent, the alleged violations existed or had existed and to make any recommendations it deemed appropriate.

38. The Commission held its first meeting in June 1997 to establish its rules of procedure; it held formal hearings of witnesses in November 1997 in Geneva. In the course of its inquiry, during hearings in Geneva and during its visit to the region, the Commission received over 6,000 pages of documents and heard testimony given by representatives of a number of non-governmental organizations and by some 250 eyewitnesses with recent experience of forced labour practices.

39. The Government of Myanmar, which had been invited to take part in the proceedings, abstained from attending the hearings and did not authorize a visit by the Commission of Inquiry to Myanmar, arguing that such a visit would not contribute much towards resolving the case and would interfere in the internal affairs of the country.

40. The Myanmar authorities stated, in response to the initial complaint and supplementary evidence, that they were aware of the criticisms made by some worker delegates relating to use of forced labour in Myanmar and that a considerable portion of the criticisms relating to Myanmar were unfortunately based on biased and specious allegations made by expatriates living outside Myanmar who wished to denigrate the Myanmar authorities for their own ends.

41. According to the report issued by the Commission of Inquiry on 20 August 1998, the obligation to suppress the use of forced or compulsory labour was violated in Myanmar in national law as well as in actual practice in a widespread and systematic manner, with total disregard for the human dignity, safety and health and basic needs of the people. The Commission concluded that the impunity with which governmental officials, in particular, the military, treated the civilian population as an unlimited pool of unpaid forced labourers and servants at their disposal was part of a political system built on the use of force and intimidation to deny the people of Myanmar democracy and the rule of law. The Commission also concluded that any person who violated the prohibition of recourse to forced labour in international law bore an individual criminal responsibility.

42. The Commission's report relates "a saga" of untold misery and suffering, oppression and exploitation of large sections of the population inhabiting Myanmar by the Government, the military and other public officers. It is a story of gross denial of human rights to which the people of Myanmar have been subjected, particularly since 1988, and from which they find no escape except fleeing the country.

43. In its conclusions on the substance of the case, the Commission stated that there was abundant evidence before it of the pervasive use of forced labour imposed on the civilian population throughout Myanmar by the authorities and the military for portering; the construction, maintenance and servicing of military camps; the construction and maintenance of roads, railways and bridges; other infrastructure work; other work in support of the military; and work in agriculture, logging and other projects undertaken by the authorities or the military, sometimes for the profit of private individuals.

44. The Commission also stated that in actual practice, the manifold exactions of forced labour often gave rise to the extortion of money in exchange for a temporary alleviation of the burden but also to threats to the life and security and extrajudicial punishment of those unwilling, slow or unable to comply with a demand for forced labour. Such punishment or reprisals ranged from demands for money to physical abuse, beatings, torture, rape and murder.

45. Forced labour in Myanmar was widely performed by women, children and elderly persons, according to the Commission's conclusions, and by other persons otherwise unfit for work, and was almost never remunerated.

46. Porters, including women, were often sent ahead in particularly dangerous locations, such as in suspected minefields, and many were killed or injured that way, the Commission stated. Porters were rarely given medical treatment of any kind, and some of the sick or injured were left behind in the jungle.

47. Similarly, on road-building projects, injuries were in most cases not treated, and deaths from sickness and accidents were frequent on some projects, the Commission stated.

48. Forced labourers, including those sick or injured, were frequently beaten or otherwise physically abused by soldiers, resulting in serious injuries; some were killed, and women performing compulsory labour were raped or otherwise sexually abused by soldiers.

49. In conclusion on the subject of forced labour, the Special Rapporteur wishes to make two observations. First, the proceedings and report of the Commission of Inquiry of the ILO clearly indicate that the attitude of the regime in Myanmar towards the Commission was the same as that which the regime had adopted towards the Special Rapporteur, the Commission on Human Rights and the General Assembly that is to say, an attitude of total non-cooperation, in violation of the obligations that Myanmar had freely undertaken under the Charter of the United Nations and relevant ILO Conventions. Secondly, the conclusions of the Commission of Inquiry of the ILO confirm all the serious concerns that the Special Rapporteur has highlighted in his reports to the General Assembly and the Commission on Human Rights concerning the laws on and the practice of forced labour in Myanmar.(c)

V. Minorities

50. Since independence from British colonial rule in 1948, Myanmar has witnessed unresolved conflicts between some of the 135 ethnic minorities of the country and the central authorities. These conflicts have given rise to insurgencies in several parts of the country which have resulted in large numbers of internally displaced persons and refugees in neighbouring countries. In connection with these conflicts, the Special Rapporteur continues to receive detailed reports on human rights violations committed by members of the armed forces (Tatmadaw). Two examples among many others may be cited:

(a) On 27 June 1998, 13 villagers, including two women and seven children, were reportedly killed by about 120-130 troops of the State Police and Development Council led by commander Htun Nyein. The troops were patrolling and searching deserted villages in the countryside of Murg-Nai when they found the people at a farm 4 miles west of their village of Nawng Tao, Kaeng Tawng tract. The villagers killed belonged to the same extended family;

(b) On 29 June 1998, the same troops are reported to have beaten to death a man named Sai Phim who was weeding his farm at the deserted village of Nar Sarn, west of Nawng Phar, Kaeng Tawng. They buried his body in the ground at the foot of the steps of his farm hut, leaving his head above the ground.

51. Information received by the Special Rapporteur indicates that sexual violence against women, including rape, is frequently committed by members of the Tatmadaw with impunity. The victims are civilians, often ethnic minority women and girls, and the perpetrators are reported to come from all ranks within the Tatmadaw hierarchy. One example of this kind of violence involved a 14-year-old girl, who is reported to have been raped and burned alive at a farm about 3-4 miles east of Lai-Kha on 11 May 1998. The girl, named Nang Zarm Hawm, was the daughter of Loong Parn and Pa Poo from Nawng Zem village, who had been forced to move to Lai-Kha town in October 1997. On that day, Nang Zarm Hawm had gone with her parents to work at their rice farm, about 3 miles east of the town. They ran out of the paddy seeds which they were sowing, so Loong Parn and Pa Poo went back to town to get more paddy seeds, leaving their daughter at the farm hut. At that time, Maj Myint Than and 85-90 troops, who were patrolling the outskirts of the town, came to the farm and saw Nang Zarm Hawm alone in the hut. Myint Than asked her about her parents and ordered his soldiers to wait at the edge of the farm and arrest anyone who came to the farm. He then raped Nang Zarm Hawm in the hut several times during the day and at about 4 a.m. burned Nang Zarm Hawm in the hut, and left the place with his troops.

52. Hundreds of thousands of persons have been forcibly relocated, without any compensation or assistance, to new towns, villages or relocation camps in which they are essentially detained. Forced relocations are currently being implemented on a wide scale in eastern Myanmar, in Shan State, Karenni and Karen areas. One report indicates that on 4 June 1998, Golden Triangle Military Commander Major General Thein Sein (Chairman of the Eastern Shan State Peace and Development Council) ordered Major Hla Htwe to confiscate 13 plots of land and rice fields owned by villagers of King-Ka in zone 2 of Kaeng-Tung, for the purpose of expanding the SPDC military base there. The military would provide each household with a plot of land at a different place big enough to build a small house. But the villagers would have to buy them at the price of K 10,000 each plus an extra K 1,000 for a land survey fee. Furthermore, the same villagers were

forced to grow crops for the military on the land that had been forcibly taken from them.

53. Forced conscription of civilians into compulsory labour for the military authorities, including the practice of forced recruitment of porters, is also one of the reasons that people were leaving their homes. The practice disrupts family life and precludes persons from carrying on their daily work in order to earn a living. Reports indicate that from time to time, SPDC troops in Kun-Hing have been forcing children of the villagers to do menial work in the military bases, 10-15 boys at a time, ages ranging mostly from 14 to 16. On 20 May 1998, children were forced to work on certain military bases fetching water, washing dishes, weeding grass in the military compounds, sweeping and cleaning trenches, feeding pigs, feeding chickens and ducks, washing and dusting cars and other vehicles, and feeding dogs. When the children were tired, the soldiers would scold them and beat them with sticks. Some parents tried to go to work in the place of their children, but the soldiers would not allow it. The children had to bring their own food for the midday meal, but the soldiers either ate or stole their food.

54. As a result of the internal armed conflict, abuses and human rights violations, many people have fled to neighbouring countries. It is reported that the Thai border is home to more than 100,000 refugees, mainly Karen, Karenni and Shan. The Bangladesh border is home to 20,000 refugees from Rakhine state. The Special Rapporteur is aware that, since 1995, the refugee camps along the Thai border have been prone to attacks by troops allegedly supported by the Tatmadaw. It is further reported that in March of this year, another series of attacks occurred in the camps located along the Thai/Myanmar border. Although UNHCR is present in Rakhine state and in Cox's Bazar (Bangladesh), the Special Rapporteur hopes that UNHCR will soon finalize an agreement with the Government of Thailand regarding a presence on the Thai/Myanmar border.

VI. Conclusions and recommendations

A. Conclusions

55. The Special Rapporteur has to state with regret that the Government of Myanmar has so far ignored the resolutions of both the General Assembly and the Commission on Human Rights. It has also displayed a total lack of cooperation with the Special Rapporteur and has not so far, more than two years after his appointment, found an appropriate time for him to visit the country.

56. The situation in Myanmar has not evolved in any favourable way since the submission of the report of the Special Rapporteur to the Commission on Human Rights at its fifty-fourth session. The conclusions drawn in paragraphs 68-76 of that report (E/CN.4/1998/70) unfortunately remain valid.

57. Although the Special Rapporteur had hoped that a dialogue would finally begin between the Government and the National League for Democracy, including leaders of minorities, his hopes have not been fulfilled. The result is that the structure of power under the military regime remains autocratic and accountable only to itself and rests on the denial and repression of most fundamental rights.

58. The Special Rapporteur remains deeply concerned about the continued harassment of political leaders and the detention of many political prisoners. He is also seriously concerned about the virtual blockade of the General-Secretary of the NLD in her compound, about her continued vilification and the inability of her party to organize normal political meetings and functions.

59. The Special Rapporteur is deeply concerned about the serious human rights violations that continue to be committed by the armed forces in the ethnic minority areas. The violations include extrajudicial and arbitrary executions (not sparing women and children), rape, torture, inhuman treatment, forced labour and denial of freedom of movement. These violations have been so numerous and consistent over the past years as to suggest that they are not simply isolated or the acts of individual misbehaviour by middle- and lower-rank officers but are rather the result of policy at the highest level, entailing political and legal responsibility.

B. Recommendations

60. Given the refusal of the Government of Myanmar to give effect to the resolutions of both the General Assembly and the Commission on Human Rights, the Special Rapporteur feels constrained to repeat the recommendations made in paragraphs 77-97 of his report to the Commission on Human Rights earlier this year (E/CN.4/1998/70).

61. Further, the Special Rapporteur recommends that an independent inquiry be held into the circumstances of the deaths of Mr. Nichols in June 1996 and of U Thein in February 1998, while detained in Insein Prison, in the light of any evidence that may be gathered from fellow prisoners and prison officials and, indeed any other persons, so that action may be taken against the individuals who may have been responsible for their deaths or harsh treatment.

62. Urgent steps should be taken by all governmental authorities to put a stop, once and for all, to forced labour and portering and to comply fully with the obligations of Myanmar under ILO Convention No. 29.

63. The Government of Myanmar should, with the least possible delay, implement the recommendations that the Commission of Inquiry of the ILO recently made.

Notes

(a) A/47/651, A/48/578, A/49/594 and Add.1, A/50/568, A/51/466 and A/52/484.

(b) 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 and E/CN.4/1998/63.

(c) A/51/466, paras. 126-145; E/CN.4/1997/64, paras. 80-81, 108 (13) and (14); A/52/484, paras. 50-68, 152 (j) and (k); E/CN.4/1998/70, para. 88.

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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in Myanmar

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on the situation of human rights in Myanmar, prepared by Mr. Rajsoomer Lallah, Special Rapporteur of the Commission on Human Rights, in accordance with General Assembly resolution 51/117 of 12 December 1996 and Economic and Social Council decision 1997/272 of 22 July 1997.

Annex

Interim report on the situation of human rights in Myanmar, prepared by the Special Rapporteur of the Commission on Human Rights, in accordance with General Assembly resolution 51/117 and Economic and Social Council decision 1997/272

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I. 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 reports of the Special Rapporteur to the General Assembly (A/47/651, A/48/578, A/49/594 and Add.1, 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 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 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 establishment of a constitution of democratic governance, the lifting of restrictions on personal freedoms and the restoration of human rights in Myanmar. 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.

2. 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 51/117 and Commission resolution 1997/64, which are the most recent. These concerns may be summarized, in substance, as follows:

(a) The continuing violations of basic human rights, including extrajudicial, summary or arbitrary executions, death in custody, torture, arbitrary and politically motivated arrests and detention, absence of due process of law, including trial of detainees in secrecy without proper legal representation, severe restrictions on freedom of opinion, expression, movement, assembly and association, forced relocation, forced labour by children as well as adults, including portering for the military, abuse of women and children by government agents and oppression of 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 long-drawn-out 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 severe restrictions on the freedom of expression, association, assembly and movement placed upon Daw Aung San Suu Kyi and other political leaders, harassment, detention and forced resignations of elected representatives, the recent attack against Daw Aung San Suu Kyi and other NLD members and the mass arbitrary arrest of and the harsh sentences imposed on members of NLD and other supporters of democratic groups, including persons peacefully exercising their political and civil rights;

(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 the rights of children 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.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

3. Since his appointment in June 1996 and, despite the request renewed in latest resolutions of the General Assembly and the Commission on Human Rights that he have direct access to the Government and people of Myanmar, the Special Rapporteur has so far not been allowed by the Government to visit the country and to see the situation on the ground.

4. It is significant to note that in their responses made after the presentation of the reports of the Special Rapporteur to the General Assembly in November 1996 (A/51/466) and to the Commission on Human Rights in April 1997 (E/CN.4/1997/64), the representatives of the Government of Myanmar in New York and Geneva indicated that the Special Rapporteur would have the opportunity to visit Myanmar at a mutually convenient time.

5. Under those circumstances, the Special Rapporteur wrote for the fourth time to the Government of Myanmar seeking its cooperation and requesting its authorization to visit the country. In his latest letter, dated 4 June 1997, the Special Rapporteur referred to his previous letters dated 9 and 26 July 1996 and 9 January 1997. The Special Rapporteur again expressed his continuing desire to have the cooperation of the Government in order to allow him to discharge his mandate fully. He reiterated his wish to visit Myanmar as soon as possible to examine the situation in situ and to meet with appropriate governmental representatives as well as other persons relevant to the fulfilment of his mandate, adding that "such a visit would greatly assist in the establishment of a fruitful and constructive dialogue". There has again been no response to his letter.

6. The Special Rapporteur wishes to express his regret that although he has for more than a year remained ready to visit the country and to examine and discuss the situation in situ, 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.

7. Notwithstanding the absence of cooperation on the part of the Government of Myanmar, the Special Rapporteur, through his missions and consultations, has continued to receive 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 further 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.

8. 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 Thailand-Myanmar border. He reported on the situation of persons belonging to the ethnic minorities living in the border areas. Displacement has become a way of life for many of them. For the past 30 years, the Karen, Mon, Karenni and Shan ethnic groups have had to flee their homes and lands in order to avoid conscription into compulsory labour for the military, in particular for portering or for development projects. The Special Rapporteur has also mentioned the frequent violent attacks against persons and property, which have often resulted in forced displacement. In addition to those developments, which have caused serious consequences and social problems for the population living in that area, military operations have recently been undertaken in Karen State, and artillery bombardment is reported to have caused not only property damage but also human suffering and loss of life. The findings of the mission are reflected in section III of the report to the Commission on Human Rights.

9. In both of his reports, the Special Rapporteur described the politico-legal system in Myanmar. The present legal and institutional framework through which legislative, executive and judicial powers continued to be exercised in Myanmar was not in conformity with established international norms governing human rights. Those norms required that the authority of Government be based on the will of the people and that such will be expressed in genuine elections in which everyone is entitled to participate, either directly or through freely chosen representatives. Several years had passed since the will of the people in Myanmar was freely expressed in general elections in 1990, but that will continued to be frustrated. The National Convention, established by the authorities in 1993 to devise principles to govern a new constitution, had been afflicted by criticism that it is unrepresentative, that its procedures obstruct meaningful debate and, in particular, that it coffers a leading role on the armed forces in the future political life of the country. There was no indication as to when its proceedings would end.

10. In the meantime, the suppression of the exercise of civil and political rights had been reported to have attained new heights. A panoply of laws continued to be used to criminalize and punish the very exercise of civil and political rights. There were still frequent allegations of arbitrary killings of civilians and insurgents by members of the armed forces. Acts of torture or other cruel or inhuman treatment were reported to occur frequently, especially in connection with large-scale displacement of persons belonging to ethnic minorities. Due process of law continued to be flouted. In particular, NLD and its leadership were reported to be the constant subject of harassment and oppression to the extent that NLD found it necessary to write to the authorities to highlight specific instances of arrest, harassment and other unjustified actions by officials. On the other hand, peaceful protests by students were reported to have been met by the closure of the

universities, thus putting in jeopardy the education of a generation of the youth of the community.

11. The Special Rapporteur concluded in his reports that the absence of respect for the rights pertaining to democratic governance, as expressed by the people in the elections of 1990, was at the root of all the major violations of human rights in Myanmar and that the establishment of a democratic order in itself would create the most secure basis to remedy the situation and to create the proper infrastructure for the protection and enjoyment of human rights.

12. As the Special Rapporteur awaits the response of the Government of Myanmar to his request for a visit to the country, he continues to study the general situation of human rights in Myanmar. His final report to the Commission will again address the situation in terms of the human rights obligations of Myanmar. In the meantime, the Special Rapporteur submits the present report, which is based upon information received up to 30 August 1997.

III. RIGHTS PERTAINING TO DEMOCRATIC GOVERNANCE

13. In the absence of any improvement in the overall situation of human rights in Myanmar, the Special Rapporteur must state with regret that his previous conclusions relating to the causes of human rights violations in Myanmar remain valid. The Special Rapporteur had previously emphasized that the core of the problem in Myanmar lay in the absence of respect for rights pertaining to democratic governance insofar as that absence implied a structure of power that was autocratic and accountable only to itself, thus inherently resting on the denial and repression of fundamental rights.

14. The politico-legal structure of Myanmar has not changed in the past year, and the exercise of power under such a structure continues to be used in a manner and to an extent that persistently violates basic and universally accepted civil and political rights. The laws in place in Myanmar, on which the Special Rapporteur commented in his previous reports, continue to be used together with a host of executive orders to criminalize many aspects of normal civilian conduct, especially political activities. In that regard, the Special Rapporteur continues to receive information that gives rise to grave concerns.

15. With respect to restrictions on political parties, reports indicate that in Myanmar they are subject to intense and constant monitoring by the State Law and Order Restoration Council (SLORC). In that 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 one prohibiting the assembly of five or more persons, which remains in effect. Members of political parties are not allowed to leave their locality without prior permission from the authorities, otherwise they risk arrest and interrogation by the police or military intelligence agents.

16. Numerous reports indicate that although Daw Aung San Suu Kyi is no longer under house arrest, her freedom of movement, association and expression nevertheless continue to be severely curtailed by the presence of military roadblocks outside her residence. The objective of the roadblocks is to prevent or deter people from seeing her and to put a stop, since the end of last year, to her weekly meetings and addresses to the members of NLD, its sympathizers and the citizens of Myanmar generally. The reports further indicate that she is subject to vilification and unsubstantiated allegations by certain officials of the regime and the government-controlled media without the possibility of defending herself. Indeed, it would appear that even watching a videotape portraying her could amount to a criminal offence.

17. It was reliably reported that 11 men and 6 women members of NLD left Prome by train on the evening of 11 February 1997 to attend the NLD Union Day celebration at Yangon. When the train stopped at Tharawaddy station, soldiers and policemen arrived, arrested 15 NLD members (two of the women were not arrested) and took them away by car to the quarters of the thirty-fifth regiment. The four women arrested were Daw Myint Myint Khin, Daw Tin Hlaing, Daw Than Than Nu and Daw Aye Mya San. The men were U Aund Myint, U Myo Thein, U Aung Myo Myint, U Shwe Thein, U Myint Than, U Paik Tin, U Myint Htwe, U Chit Tin, U Win Naing, U Aung Thein Win and U Thein Zaw. Seven people who had come from Prome and Kama by car to attend the NLD Union Day celebration were also reportedly arrested in Tharawaddy.

18. Fifty-eight others, including U Aye Than, U Ohn Naing, U Khin Maung Myint, U Min Aung, U Tin Myint, U Ohn, Ko Tin Oo, Daw Tin Tin Hla, Daw San Yee, Daw San San Myint, Daw Sein Sein, Ma Tin Than Oo, Ma Tin Than Aye, Daw Khin Kyu and Ma Aye Aye Mar, were also arrested while they were on their way to attend the Union Day celebration in Yangon. U Khin Maung, U Chit Than, U Pe Win and U Thein Han were also arrested while on the way to attend the Union Day celebration. U Thaug Aye, a member of the NLD Irrawaddy Division organizational committee, was told to sign an undertaking not to go outside Maubin. Because he refused, he was sentenced to three months in prison.

19. Gatherings of political parties are routinely repressed; NLD members and their sympathizers are prevented from attending the gatherings. They are methodically

arrested either on their way to such meetings, as mentioned above, or after attending the gatherings.

20. U Soe Hlaing, Chairman of the NLD organizational committee of Thanatpin, U Tin Tun, Secretary, and U Soe Nyunt, Joint Secretary, were reportedly arrested because they attended the NLD Union Day celebrations. U Tin Tun was released, while the others were charged under section 5(e) of the 1950 Emergency Provision Act and sent to Pegu jail.

21. Dr. Hla Win, NLD Member of Parliament representing Kyaungon, Mahn Tin Win, interim Chairman of the NLD organizational committee of Kyaungon township, U Wa Toke, U San Shein and U Thein Han attended the Union Day ceremony. After they went back to Kyaungon, a township meeting was held on 15 February 1997. While the meeting was in process, two carloads of policemen and military intelligence officers arrived and ran into the NLD office. Hla Win and U Saw Lwin were handcuffed and taken to the police station with 14 other members of the organizational committee. A certificate and other papers were taken away. All 16 were held at the Kyaungon police station until 17 February, when all except Hla Win, U Saw Lwin, U Thein Han, Mahn Tin Win, U Wa Toke and U San Shein were released. Charges were brought against the six, who are reportedly still under house arrest.

22. According to reports from a number of sources, the harassment and arrests culminated during the third week of May 1997 when more than 300 NLD members were arrested as a pre-emptive attempt by Myanmar authorities to prevent a party congress commemorating the seventh anniversary of the NLD victory in the 1990 elections. Those arrested included at least 60 elected Members of Parliament and senior party members. Many of the arrests took place in the Mandalay and Sagaing divisions as the NLD members were preparing to travel to Yangon to attend the congress. In other parts of the country, such as Ayeyarwadey Division and Shan, Mon and Kayin (Karen) states, it was further reported that a dozen others were detained in their homes and have been told that they would be arrested if they attempted to go to Yangon. The congress was due to take place on 27 and 28 May 1997 at the home of the NLD General Secretary, Daw Aung San Suu Kyi.

23. On 27 May 1997, the Chairman-Rapporteur of the Working Group on Arbitrary Detention, together with the Special Rapporteur, sent a letter to the Myanmar Minister for Foreign Affairs drawing the attention of the Myanmar authorities to information received and requesting information concerning the situation of the above-mentioned persons and the legal basis of their detention.

24. On the same day, the officer-in-charge of the Office of the United Nations High Commissioner for Human Rights issued a press release expressing his deep concern at reports of detentions and arrests of NLD members and called upon the Government of Myanmar to respect fully international norms of human rights and the principles enshrined in the Universal Declaration of Human Rights.

25. The Myanmar authorities questioned the validity and objectivity of the sources of the information. According to Myanmar officials, most of the information provided was not accurate because it emanated from sources hostile to the Government. The Myanmar authorities denied that anyone had been arrested or detained. In that regard, the Office of the United Nations High Commissioner for Human Rights received a letter dated 18 June 1997, the following extracts of which speak for themselves:

"The NLD's so-called election anniversary was held in Yangon on 22 and 26 May 1997. The meeting was chaired by NLD Central Executive Committee members U Aung Shwe and U Tin Oo. Seventy party members attended the meeting. The points from the annual party were discussed during the course of the meeting and the outcome of the deliberations were to be circulated to party members after 28 May 1997.

"No preparations had been made inside Daw Aung San Suu Kyi's compound or any other place to hold meetings on 27 and 28 May 1997

"No official request was put up to the authorities concerned by the NLD officials to hold such meetings.

"However, invitations were distributed by NLD not only to its members, but also to diplomats and journalists.

"About 80 NLD members gathered at four different points on the morning of 27 May 1997. The embassies of the United States, United Kingdom, Australia and Italy sent representatives to attend the function.

"The NLD members and the embassy officials were briefed by the authorities that no official request was made by the NLD officials to hold such meetings and that no preparations have been made at Daw Aung San Suu Kyi's residence for those gatherings. The authorities, after explaining the situation, requested them to leave the area.

"No one had been arrested by the authorities. But there were instances where local authorities had requested some invited party members to refrain from taking a course of action which is geared to create chaos and instability in the country.

"The Government is only trying to maintain law and order as well as stability in the country.

"The situation in Yangon is calm and business is going on as usual.

26. Distribution of party literature to the public is not allowed, and political parties are generally forbidden to use any means such as videotapes or printing equipment for the reproduction and distribution of their bulletins, pamphlets and statements. In this situation, it is difficult to assume that open discussion can possibly take place in Myanmar. The expression of political views is not permitted unless it is in support of the present military regime. Thus, in Minchaung village of Inle Lake in Nayungshwe, U Nhaung, U Aung Ba, U Soe Win and U Chit Pwe were reportedly sentenced to two years' imprisonment each for watching a videotape that featured Daw Aung San Suu Kyi.

27. U Hla Myint, NLD Member of Parliament representing Maubin, was given a prison sentence of two years on the ground that he had spoken disrespectfully to Township Law and Order Restoration Council (TLORC). U Win Shein, chairman of the NLD township organizational committee, was kept in prison for six months for making a speech and flying the NLD flag. U San Myint, NLD Member of Parliament for Laymyetnha, was sentenced to two years in prison under the videotape act.

28. The Special Rapporteur continues to receive reports alleging that SLORC continues to harass and keep the NLD supporters under pressure by sentencing their members under made-up charges when they decline to resign. Thus, U Khin Tun was reportedly told by SLORC to resign from his position as Secretary of the NLD organizational committee in Maubin. He refused to resign and was consequently sentenced to three months in prison.

29. U Saw U Re was reportedly forced to resign from NLD and also from Parliament and then sentenced to 17 years' imprisonment.

30. NLD members who refused to resign and who have not been arrested, and their families, are reportedly facing other harassments, such as being forced to vacate apartments.

31. U Nyunt Win, an NLD Member of Parliament representing the Yeki constituency, was told by SLORC to resign from his position. Because he refused, he was told by the Town and Village Housing Development Board, which claimed that its action was in accordance with the directive dated 6 November 1996 of the Irrawaddy Division Law and Order Restoration Council, to vacate the State-owned apartment where he and his family lived.

32. U San Pe, a member of NLD, had allowed an NLD office to be opened in his house. His wife, Daw Ohn Kyi, had a small restaurant on the grounds of Shwebo College. She was told that her husband was not free from party politics and was made to shut down her shop in October 1996. U Aung Kyaing, NLD Member of Parliament representing Nyaungdon, was pressured to resign from NLD and from Parliament. His daughter, a schoolteacher, was threatened with dismissal if her father did not resign.

33. It would appear that, as a result of harassment or pressure from the authorities, a considerable number of NLD Members of Parliament have resigned in the period from 1991 to 1996.

34. The following NLD Members of Parliament have reportedly resigned since the beginning of 1997: U Aung Tin, representing Shadaw, Kayah, and U Boe Thin, representing Loikaw, Kayah, on 13 January; U Thaung Ye, representing Danubyu, Irrawaddy, on 21 January; U Maw Ni, representing Yesagyo, Magwe, on 11 February; Daw Sein Tin, representing Shwegu, Kachin, on 23 February; Dr. Thaung Tin, representing Wundwin, Mandalay, on 25 February; U Saw Htun Lwin, representing Hlaingbwe, Karen, on 5 March; U Pu Htwe, representing Bhamo, Kachin, on 17 March; U Tin Ohn, representing Padung, Pegu, on 21 March 1997; U Kyaw Win, representing Htigyang, Sagaing, on 8 May; and U Than Kywe, representing Hlaingthaya, Yangon, resigned on 18 June.

35. In August 1997, Yangon Radio Myanmar reported as follows:

"U Ba Nyein of the National League for Democracy, an elected member of the People's Assembly in Banmauk township constituency, Sagaing Division, during the multiparty democratic general elections, citing old age and poor health, has submitted his resignation of his own volition to withdraw as elected representative."

"U Tun Yi of the National League for Democracy, an elected member of the People's Assembly in Thandwe [Sandoway] township constituency, Arakan state, during the multiparty democratic general elections, has submitted his resignation of his own volition to withdraw as elected representative as he has already resigned from the NLD."

"Khin Maung Swe of the National League for Democracy, an elected member of the People's Assembly in Sagaing township constituency-2, Sagaing Division, during the multiparty democratic general elections, has submitted his resignation of his own volition to withdraw as elected representative as he had already retired from NLD."

36. The Special Rapporteur has received information that on 21 February 1997, in Taungu, Pegu Division, 18 members of the Taungu NLD Township Organizational Committee were taken away by the police and members of the Ward/Village Law and Order Restoration Councils without any reason given. Those taken away were U Myat Thu, U Saw Tun Nwe, U Maung Win, U Myint Thein, U Thet Tun, U Kyaw Win, U Tin Thaung, U Kyaw Myint, U Tun Tin, U Tin Soe, U Pe Win and U Kyaw Win. Those arrested were taken away in army vehicles on 22 February. According to reports dated 24 February, the arrested people were seen in an army camp near Tabye village in Htandabin township. Later, U Saw Tun Nwe was found dead at a roadside in the vicinity of his native village.

37. The following members of NLD in Kyaungon township have, according to information received by the Special Rapporteur, been sentenced to prison: U Tin Aung (NLD Member of Parliament for Wakema), U Kyaw Din (Chairman of NLD Organizational Committee), U Ko Wai (Secretary), U Aung Kywe (Joint Secretary), U Win Kyi, U Tun Shwe, U Tin Nyein, U Maung Kan, U Yu Wai, U Pe Tin and Daw Khin Yee are reported to be serving time in Maungmya Jai. They were charged under section 5(e) of the 1950 Emergency Provision Act for having taken a prominent part in the funeral of a one-time member of the NLD Organizational Committee.

Due process of law

38. The Special Rapporteur, in his previous report to the General Assembly (A/51/466, paras. 62 to 71), analysed the notion of due process of law in Myanmar. He came to the conclusion that neither is due process of law respected nor is the rule of law upheld. The information received during the past year confirms that there is consistent failure to respect due process and the rule of law, as the following examples demonstrate.

39. In January 1997, the trial of 20 people was, according to reports received by the Special Rapporteur, held in a closed session in Yangon and the accused were denied access to legal counsel. The group, which included six NLD members was jailed for seven years for allegedly "inciting students and non-students during December 1996 student demonstrations".

40. It was reported that U Thaung Tin, the Chairman of the NLD Organizational Committee at Palaing village in Shwebo township, was arrested, summarily tried on the same day and given a two-year prison sentence. He was accused of inciting farmers to refrain from selling rice to the authorities.

41. The Special Rapporteur has received information that U Hla Min, an NLD Member of Parliament for Kawthaung, Tenasserim, was denied access to legal counsel and was not informed what he was accused of. He was sentenced to seven years in prison under section 5(e) of the 1950 Emergency Provision Act.

42. Another reported case of an unfair trial has been brought to the attention of the Special Rapporteur. At Insein prison, 22 political prisoners were refused access to legal counsel. There were also reports that beatings and torture were used as a means of obtaining confessions for use as evidence against some of the accused. The prisoners (Myo Myint Nyein, Zaw Tun, Nyunt Zaw, Soe Htet Khaing, Aung Kyaw Oo, Zaw Min, Phyo Min Thein, Win Thein, Aung Myo Tint, Htay Win Aung, Yin Htway, Win Tin, Hla Than, Ko Ko Oo, Kyi Pe Kyaw, Kyaw Min Yu, Myat Tun, Sein Hlaing, Zaw Myint Aung, Soe Myint, Ba Myo Thein) were charged under section 5(e) of the 1950 Emergency Provision Act for writing and distributing allegedly false information. They all received an additional sentence of seven years with hard labour.

IV. THE RIGHT TO FORM AND JOIN TRADE UNIONS

43. 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.

44. This year again, the situation in Myanmar was examined by the ILO Committee on the Application of Standards at the eighty-fifth session of the International Labour Conference held in June 1997 at Geneva. Regarding 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 in promoting and protecting the legitimate rights of all workers.

45. The Committee recalled, however, that the case had been discussed by the Committee on numerous occasions, in 1987, 1989, 1993, 1994, 1995 and 1996, and expressed 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.

46. The Committee also insisted on the need for those organizations to have the right to affiliate with federations and confederations and with international organizations, without any interference from the public authorities. The Free Trade Unions of Burma is not allowed to function in the country, and workers identified with it were under constant surveillance by the police and the military intelligence agency in permanent fear of arrest and torture.

47. Being concerned with the complete absence of progress in the application of the Convention, the Committee on the Application of Standards once again urged the Government of Myanmar to adopt the measures and mechanisms necessary to guarantee, in legislation and in practice, to all workers and employers, without any distinction or any previous authorization, the right to join organizations of their own choosing to protect their interests.

48. The Committee once again expressed its profound regret that it had not received a report from the Government, and that the government representative to the Conference Committee had only repeated what had been said in previous years concerning its intention to apply the Convention without being able to indicate that any specific positive developments had occurred in law and in practice. It recalled that it had 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.

49. In conclusion, the Committee expressed a firm hope that substantial progress in the application of the Convention might be noted in the very near future and urged the Government of Myanmar to supply a detailed report to the Committee of Experts at its next session. The Special Rapporteur cannot but join the Committee on the Application of Standards in the hope that it has expressed and in its efforts to assist the Government of Myanmar in fulfilling its obligations under Convention No. 87.

V. FORCED LABOUR

50. The prohibition of forced or compulsory labour can be found in several conventions. The 1930 convention concerning forced labour (ILO Convention No. 29) requires the suppression of the use of forced or compulsory labour in all its forms. The Convention defines forced or compulsory labour as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". Work or service exacted in virtue of compulsory military service laws for work of a purely military

character is exempted from the provisions. This concerns military service for the purpose of national defence, but not compulsory obligations to execute public works. The Convention also makes an exception for work or service required in genuine cases of emergency and forming part of the normal civic obligations of citizens in a fully self-governing country. Another exception is prison labour. Prison labour may, however, be imposed only as a consequence of a conviction in a court of law, and the person concerned shall be supervised and controlled by public authorities and not be hired to or placed at the disposal of private individuals, companies or associations.

51. Another convention concerning forced or compulsory labour is the 1957 convention concerning the abolition of forced labour (ILO Convention No. 105). The Convention prohibits every kind of forced or compulsory work as:

- (a) A means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;
- (b) A method of mobilizing and using labour for purposes of economic development;
- (c) A means of labour discipline;
- (d) Punishment for having participated in strikes;
- (e) A means of racial, social, national or religious discrimination.

52. A general prohibition against slavery or servitude is found in article 4 of the Universal Declaration of Human Rights. Also the International Covenant on Civil and Political Rights prohibits forced or compulsory labour, with similar exemptions as in the 1930 convention concerning forced labour (ILO Convention No. 29).

53. With respect to the prohibition of forced or compulsory labour and notwithstanding the fact that Myanmar since 1955 has been a party to ILO Convention No. 29 concerning forced labour, Myanmar still continues to use such labour.

54. Amendment or repeal of national legislation providing for the exaction of labour and services, under the threat of penalty, from residents who have not offered themselves voluntarily has been called for by the ILO Committee of Experts for the Application of Conventions and Recommendations in comments regularly addressed to the Government since 1964. Following the lodging of a

representation by the International Confederation of Free Trade Unions in January 1993, the ILO Governing Body had urged the Government of Myanmar, in November 1994, to ensure that the relevant legislation, in particular the Village Act and the Towns Act, would be brought into line with the Forced Labour Convention, as had already been requested by the Committee of Experts, to ensure that the formal repeal of the power to impose compulsory labour be followed up in practice and to ensure that those resorting to coercion in the recruitment of labour be punished. At the International Labour Conference in June 1996, the Committee on the Application of Standards noted the persistent failure of Myanmar to implement the Convention, and 25 worker-delegates lodged a complaint against Myanmar under Article 26 of the ILO Constitution.

55. The complainants alleged that the Government of Myanmar had demonstrated its unwillingness to act upon the repeated calls addressed to it by the supervisory bodies of ILO to abolish forced labour in law and in practice, and that instead the practice of forced labour was becoming more widespread, and the authorities in Myanmar were directly responsible for its increasing use.

56. At its two hundred sixty-eighth session, in March 1997, the Governing Body decided to refer the complaint to a Commission of Inquiry chaired by Sir William Douglas (Barbados). The Commission's mandate is to consider whether, and to what extent, the alleged violations exist or existed and to make any recommendations it deems appropriate. The Commission held its first meeting in June 1997 to establish its rules of procedure, and is expected to hold formal hearings of witnesses in November 1997 in Geneva.

57. Forced labour is reportedly also taking place in all parts of Myanmar, including those where a ceasefire has been agreed upon. The most notorious form is front-line portering, whereby the army raids villages and towns for porters to carry its supplies and ammunition for offensives in the border regions. This is the form of forced labour where the most brutal treatment is inflicted and where most deaths occur. Front-line portering accompanies all SLORC military operations, most recently the offensives against the Karen National Union in the dry season of 1997, in which an estimated 30,000 porters were recruited, and the offensives in Shan and Karenni states of 1996 and 1997. As a result of the ceasefires with the Kachin (1994) and a number of other groups, and the surrender of Khun Sa's Mong Tai Army in 1996, there has been a reduction in the number of actual front-line operations.

58. On 28 June 1997, according to reports received by the Special Rapporteur, 17 villagers were seized by SLORC troops at the village of Ho Thi, Laihka township. The villagers were forced to carry ammunition and other military equipment.

59. It has been reported that the Myanmar army has substantially increased its permanent presence in the border regions. This in turn has led to an increase in non-front-line forced labour for the military, such as non-front-line portering and courier duties; building, maintaining and guarding military roads and bridges; sweeping roads for mines, and building and servicing military camps and farms.

60. The Special Rapporteur has received reports about forced labour in Thabaung township, Irrawaddy Division. For the joint services manoeuvres of divisions 22, 33, 55 and 77 in the cool season of 1996/97, on all the village tracts within Thabaung township, villagers had to construct, at their own expense, temporary camps, barracks, stores, houses and furniture. The villagers also had to construct a road along the Hgawun River. To provide soil for the road, each household had to dig a pit of a specified size. While they were engaged in work connected to the military manoeuvres, the villagers were unable to carry out their own work, which resulted in a considerable drop in income for many of them. Because of lack of nutrition and the unhealthy conditions of the surrounding areas, many villagers engaged in the forced labour project suffered from various diseases. In addition, whole villages had to be moved in order to make room for the military manoeuvres.

61. On 4 July 1997, SLORC troops under the 44th Division led by Major Aung Zaw Htun reportedly forced the villagers who had been forced to relocate in Kunhing in 1997 to work for the army without any payment. The male villagers had to cut bamboo and build four layers of fences around the military camp, as well as dig trenches between the layers of fences.

62. Another form of forced labour that has been reported to the Special Rapporteur is work on commercial projects for the army such as rice farms, paddy, fish pond and tree-planting operations, which the local farmers have to build up and maintain. The required land is reportedly confiscated from local people.

63. Forced labour reportedly also occurs on infrastructure and "development" projects such as the construction and maintenance of roads, railways, bridges, airports, hydroelectric schemes and tourist-oriented projects.

64. According to reports received by the Special Rapporteur, forced labour was used to build a road from Ywamon to Zeebyugone in Natmauk township during October 1996. People from more than 40 villages in Natmauk were made to take part in the project. Households that could not supply labourers were made to pay. Work hours were from 8 in the morning until 8 in the evening. Soldiers from 301 artillery regiment (Meiktila), in charge of the project, punished, regardless of age, those whose work they did not find satisfactory. The victims were punched, made to hop like frogs, run up and down and turn somersaults in mud patches.

65. It was reported that 13 people, including two women, were arrested on 15 January 1997 because they refused to take part in a forced labour project to build a road from Bassein to Thalattgwa to Morton Point. Each household in 33 village tracts had to provide one and a half baskets of rock. Households that could not provide rock had to pay 2,000 kyats to the Village Law and Order Restoration Council. The people who went to break rocks were not given any medical care and many came back from their forced labour sessions with various illnesses. U Chit is reported to have fallen sick and died at the labour site. U Khin Maung Win, Maung Kyin Hoke and Mang Nyo also died while providing forced labour. It is also reported that Daw Ni, 60 years old and unable to provide either labour or money, was arrested on 6 January 1997 and sent to Bassein jail on 8 January 1997.

66. The Special Rapporteur has been informed that TLORC built a stupa in the Kyingyi village tract of Wuntho township. The farmers of the township had to provide labour in turn. TLORC decreed that those labourers should be referred to as "donors of labour". Not only were households obliged to provide labour, but those who could not provide labour themselves had to hire substitutes. Some of the villagers working on the project were beaten. The authorities in charge said after they had beaten the villagers that they did not care if complaints were lodged against them.

67. There were reports about forced contributions towards road and bridge construction projects in Pwintbyu, Magwe Division. In Pwintbyu township, landowners were made to contribute money towards the construction of the Man Bridge. The landowners were assessed at the rate of 200 kyats per acre owned. The whole township had to contribute to the construction of the Kanthagyi-Kyaungdawya road. The contributions were assessed at the rate of 250 kyats per acre. All the households in the township, including the poorest, had to contribute 360 kyat each to the building of Salin Road. Every household had to contribute between 45 and 70 kyats once every two weeks for years for the Natyegan Road construction. Farmers were forced to sell two baskets of split beans per acre to the authorities at specified prices. Those who refused to sell were made to stay under the hot sun for hours as punishment. Those who complained about their treatment were beaten.

68. Forced labour has also been resorted to in Kawhmu township. In the construction of the road to Htamanaing village in December 1996, every household had to provide labour or contribute money.

VI. VIOLATIONS AGAINST ETHNIC MINORITIES

69. The Special Rapporteur addressed the situation in the ethnic minority States, especially those along the Myanmar/Thailand border, in his previous reports to the General Assembly (A/51/466, paras. 37-51) and to the Commission on Human Rights (E/CN.4/1997/64, paras. 65-100). The Special Rapporteur has received well-documented information on military attacks and looting on civilian settlements, forced relocation of ethnic groups, forced labour for development and industrial projects and portering for military operations in apparent manoeuvres against insurgents or those suspected of supporting them.

70. In his report to the Commission on Human Rights, the Special Rapporteur called upon the Government of Myanmar to take immediate steps 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.

A. Violations of civil rights

71. Allegations received by the Special Rapporteur concerned serious and widespread violations of almost all civil rights. In particular, there are persistent allegations of violations of the rights to life, liberty and security of person; the freedom from arbitrary arrest, detention and torture and cruel, inhuman treatment or punishment; the right to due process of law; and the freedom of movement. According to reports and testimonies received, those allegations related especially to three governmental tactics:

- (a) Forced displacement;
- (b) Indiscriminate bombardment of civilian settlements and arbitrary killings;
- (c) Arbitrary arrest and torture of suspected "insurgents" and "terrorists".

1. Forced displacement

72. Reports indicated that the effect of the actions of the Government of Myanmar in the ethnic minority areas was to force the relocation of the inhabitants from their traditional and ancestral homeland to relocation sites that were subject to tight military control.

73. The Special Rapporteur observes that 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 relocation by the military as a means to control the population living in ethnic regions is not new, the scale of such moves increased significantly in 1996, and it is still taking place today, especially in central Shan State and in Kayah State.

74. Victims of displacement are mostly peasants, including members of 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. Most of them have not been officially registered and do not possess any identification cards or other documents. In most cases, it was reported that persons 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 stolen immediately or confiscated by SLORC troops.

75. Beginning in early March 1996 SLORC troops reportedly relocated more than 600 villages, comprising more than 20,000 households, in central and southern areas of Shan State.

76. Beginning in April 1996 SLORC reportedly started a mass relocation programme in Kayah State, relocating 100 villages between the Pon and the Salween rivers to relocation sites in Shadaw and Ywa Thit. Villagers received written orders stating that they would be treated as enemies if they did not move to the two relocation sites by June 1996.

77. Since 29 August 1996 SLORC troops stationed at Murngai had reportedly forced the villagers of Kun Sai, Nar Loi and Wan Mai, Murngnai township, to move into the town. The villagers were given five days to transport their possessions. On 9 March 1997 SLORC troops reportedly ordered villagers from Wan Nong Dee, Laihka township, to move to Laihka.

78. On 23 May 1997, SLORC troops from Murngkerng forced the people of several villages, such as Wan Yab, Ton Pek, Ho Nar, Loi Yang, Nar Taed, Tong Zu, Ham Ngai and Ho Khai, to all move to Murngkerng town. People in Wan Phen and Nar Phen had to move to Kaesee town.

79. On 1 June 1997 Captain Naw Win, head of TLORC in Murngkerng, issued a written order forcing all the people in the rural areas of Murngkerng to move close to the motorways. The movement had to be completed within eight days, from 1 to 8 June 1997. Any villages or houses that failed to move would be burnt down. In addition, the villagers were forbidden to cultivate their farms and fields.

80. On 25 July 1997 a combined force of SLORC troops ordered the residents of Lisaw village of Nawng Tao, 15 miles east of Murngpan town, to move within three days, leaving much of their property behind.

81. Numerous accounts received by the Special Rapporteur indicated that the civilian population living in or near the combat zone was the most susceptible to being forced to move: in those "grey zones" (zones controlled or influenced by the insurgents), the armed forces often resorted to ground searches, destruction and burning of houses and confiscation of property and food, which led the people to move temporarily or permanently.

82. In April 1997 the seven villages of Wan Phar Wawng, Wan Nawng Kern, Wan Zalai Loi, Wan Ho Nam, Wan Nawng Wo, Wan Kung Parng and Wan Nam Maw Long, all in Laihka township, were reportedly relocated and burned down by SLORC troops.

83. On 17 July 1997 a military column led by Captain Myint Shwe came to Panweh-po-klo village, Tavoy-Mergui District, and allegedly burnt down the village's Christian church. On 26 July 1997 the column allegedly burnt down five houses and the church in Pay-cha village.

84. Since the end of June 1997, as a part of the Myay Lan Sanit campaign, SLORC troops have reportedly burnt down approximately 256 Karenni houses in seven villages in the Mawchhi area, as described below:

(a) On 20 August SLORC troops under the command of Win Htwe burnt down 25 buildings in Lwe Po village, including the church;

(b) On 21 and 22 August SLORC troops allegedly burnt down 70 houses in upper and lower Gay Loe village and destroyed 21 acres of planted rice paddy as well as a substantial quantity of brown rice;

(c) On 24 August SLORC troops under the command of Aung Myo Min reportedly burnt down 28 houses in Kaw Moo De village;

(d) On 25 August SLORC troops under the command of Soe Nwe and Win Soe allegedly burnt down 16 houses of Ywe Beh village and destroyed 35 acres of planted rice paddy;

(e) On 25 August SLORC troops under the command of Lieutenant Colonel Khin Mg Htay allegedly burnt down 25 buildings, including the church, in Hu Muu Lah village;

(f) On 26 August SLORC troops under the command of Major Win Htwe allegedly burnt down the church of Kwe Kee village and 54 houses of Htee Sar Beh Htee village;

(g) On 27 August SLORC troops allegedly burnt down 28 buildings in Bwe Lay Kho village, including the church.

2. Indiscriminate bombardment of civilian settlements and arbitrary killings

85. Reports of artillery bombardment of civilian settlements and the burning of villages have been received by the Special Rapporteur on a regular basis since he was first appointed in June 1996. He now has lists of allegedly destroyed villages and ethnic settlements located in many areas (Shan, Kayin and Kayah) of the vast border between Thailand and Myanmar. However, there was a noticeable increase in the receipt of allegations of arbitrary killings of civilians during the summer of 1997.

86. On 9 March 1997 SLORC troops reportedly fired 79-mm mortar shells into the village of Kun Hong, Laihka township, killing Nang Seng and Loong Zum and wounding three others. Earlier that day, SLORC troops from Laihka had forced the villagers to move. However, five of the villagers had to spend the night in the village owing to a shortage of carts in which to carry them. Patrolling troops had fired mortar shells when they heard a dog barking.

87. On 4 April SLORC troops allegedly fired M 79 grenades into the Tard Mawk relocation site. Three villagers died and another three were wounded. On 8 April 150 SLORC troops came into the Tard Mawk relocation site and ordered all villagers to move to a Laihka township within two days. On 10 April SLORC troops reportedly burnt down all the more than 1,000 houses at the Tard Mawk relocation site.

88. On 16 April SLORC troops reportedly dropped six rounds of mortar shells into Murangkerng town, causing a lot of damage. For example, one of the shells exploded in the compound of Kyawang Kham temple.

89. While the Special Rapporteur has received reports and specific allegations of shelling and bombardments of civilian settlements, the most consistent violation of the right to life is said to stem from the continuing summary and arbitrary executions within the border areas, resulting in the death of large numbers of innocent persons, including women, children and elderly persons. Such killings

often take place when relocated people try to go back to their original villages in order to work their fields or take their possessions

90. On 19 April 1997 two women from Kung Kyawng village, Namzarng township, were reportedly raped and killed by seven SLORC troops south of Kho Lam. The two women had gone to tend their farm.

91. On 4 May Sai Nya Mon was reportedly shot dead by SLORC troops from Nam Mo. Sai Nya Mon had gotten permission from the SLORC troops to work on his farm at his former village of Kun Sai. While he was driving his old bullock cart towards Kun Sai, SLORC troops went after him and shot him dead in a field near the village. The soldiers left the cart and took the oxen back to Nam Mo where they killed them for meat.

92. On 11 May 15 Palawng villagers of Pha Ngarb village, Namzarng township, were reportedly killed near the village of Nawng Kwai. The villagers, who had been relocated at Kho Lam, had gone back to their former village of Pha Ngarb with five hired bullock carts to gather their belongings. Their bodies were dumped together in a pile, and all the carts and oxen were taken away by SLORC soldiers.

93. On 11 May Sai Nan Ti of Pa Mai village, Namzarng township, was reportedly shot dead on sight by SLORC troops. He had gone searching for his oxen near his former village of Pa Mai after being relocated at Kho Lam. On 14 May Sai Nan Ta and his brother, both from Wan Nang village, were reportedly arrested and killed while cleaning the irrigation ditches in their rice field at the village of Wan Nang near Nam Mawng stream, five miles south of Kho Lam. One of the brothers had run and jumped into Nam Mawng stream, but was chased and shot dead in the water. The other was tied up and beaten to death with a heavy stick on the bank of Nam Mawng stream.

94. On 6 June troops led by Major Nyunt Oo arrested 26 people in Pha Lang village, Kunhing District. The people were accused of having relocated without permission. According to the information received, all 26 villagers were tied up and shot dead at close range. The following villagers were reported killed: Pu Loi Kaw, Nai Loi Poi, Lai Zern Yong, Nai Zing, Su Nan Ta, Nang Kham, Sang Aw, Khat Nya, Wi Ling, Mu Ling, Kaw Ling, Su Ping Nya, Khing Thun, Khing Min, Sai Wong, Loong Man, Ae Nang, Kaw Ya, Su Ling, Loong Saw, Nang Lao, Nang Mart, Nang Seng Zing, Ook Ta Ma, Na Ling and Su Nan Ta.

95. On 11 June a patrol of SLORC troops killed 10 villagers who were gathering at a rice paddy in the deserted village of Wan Phai in Kunhing township. The reported victims were Loong Zarm, Pan Ti, Sai Suay, Sai Ekka, Su Zing, Kaw Na, Khing Khong, Wa Ling Ta, Khing Ung and Pan Ta.

96. Apart from the allegations of indiscriminate killings and burning of civilian settlements, the Special Rapporteur has continued to receive allegations of other arbitrary killings and extrajudicial executions of persons, either in their villages or after having been taken by the military from the area. General reports have been received stating that all persons are at risk of arbitrary killing on the mere suspicion of being a "criminal" or "sympathizer", or of harbouring or assisting "insurgents". Testimony indicates 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 permission to leave. Other sources have reported incidents of women and children being shot at while fleeing in areas near the border with Thailand.

97. On 29 March 1997 SLORC troops from Kho Lam under the command of Major General Khin Maung reportedly killed Sai Phit of Nawng Kwai village, Namzarng township. He was arrested at his house while sleeping with his wife and children, tied up with rope and taken to a place near a white bridge in the village, where he was beaten while being interrogated and finally shot dead.

98. On 18 May 1997 Major Aye Thant and his troops reportedly killed Sai Vi, Sai Vilarsa and Sai Saw Ta in Wan Mawk Zali village, Murngton township. The three men were arrested, accused of being soldiers of the Shan United Revolutionary Army (SURA), tied up, beaten, put into sacks and submerged in water several times before they were killed.

99. On 20 May SLORC troops led by Major Aye Thant reportedly killed Sai Ti Mar and Sai Thun in the village of Mawk Zali, Murngton township. Accused of supporting SURA they were tied up, beaten, put into sacks and submerged several times into water until they were dead.

100. On 22 May Major Kyi Aung and his troops from Murng Tar reportedly killed Loong Tan, Loong Than Ou, Loong Su, Sai Aw Ta, Sai Vi Zing Tar and Nang Kham in Wan Huay Aw. The six villagers had been arrested two days earlier and accused of having given SURA food and news.

101. It was reported that between mid-June and mid-July at least 400 civilians had been killed by SLORC troops in the areas of Sai Kao, Kaeng Lom, Kaeng Kham and Kho Lam in Kunhing township.

102. On 11 July, on the road that branches out from the main road to Kaeng Lom, the corpses of 26 villagers were lined up with their heads laid beside their bodies.

On 12 July, on the road between Kaeng Lom and Kaeng Tawng, 17 corpses were lined up in the same manner.

3. Arbitrary arrest and torture of suspected "insurgents" and "terrorists"

103. Reports indicate that the people living in Shan State are in constant fear of arbitrary arrest and detention. It is further stated that in the course of arrest and detention persons are subject to harsh treatment and torture while being denied access to virtually any form of judicial process. As a result, there appears to be a widespread, if not universal, fear of governmental authorities in the region.

104. Reports received refer to the army, Tatmadaw, as responsible for arbitrary arrests and detentions. Large numbers of security checkpoints are said to have been placed in and around the towns and cities of the region. Military patrols are said to move in and out of the border areas arresting civilians when they are so inclined. Testimony indicates that often the distinction between insurgents and non-combatants is not made and that, therefore, the inhabitants of those areas who are suspected of being insurgents or sympathizers of insurgents are subject to indiscriminate torture, beatings and arbitrary arrest.

105. On 31 March 1997, SLORC troops reportedly tortured four villagers of Wan Parng village, Laihka township. The soldiers tied them up with ropes, beat them and interrogated them. After a while, when the villagers could not tell soldiers what they wanted to know, they tied hay to the body and arms of one villager, set fire to the hay and let him loose. They tied another villager to a post of a hut and burned him with the hut. Meanwhile, the soldiers forced the other two villagers to watch and threatened to do the same to them if they did not tell what they knew. The soldiers beat the two men several more times and finally threw them into Nam Tawng stream east of Wan Parng. After the SLORC troops left the scene, the two villagers who were burned managed to free themselves and walked to the home of their relatives at Zalai village, seven to eight miles to the south. Although their relatives immediately sent them to the hospital in Laihka, both of them died there shortly afterward. One of the victims, who was accused of defying orders by refusing to move away and of having connections with the Shan resistance, was Sai Lao, 18 years of age.

106. In early April Loong Pingnya, a villager of Kan Kan, Murngpan township, was reportedly tortured by SLORC troops. His hands and feet were reportedly bound and he was stuffed into a gunny sack. The troops tied the mouth of the sack and submerged him in the water under a bridge near the Pho Ti temple, pulled him out after a few minutes and trampled on his chest until water gushed out of his

mouth while interrogating him. Then the troops submerged him in the water again. The procedure continued until he died.

107. On 13 April SLORC troops reportedly tortured a villager from Pang Tet Teo, a 60-year-old man named Loong La, near Nawng Ya Sai village, Laihka township. They tied him up, beat him, rolled a piece of bamboo on his shins and finally cut off his lips. He was arrested while tending a small plot of onions on his farm, accused of supporting the Shan resistance.

108. On 1 July SLORC troops led by Major Htun Mya ransacked the Kaeng Lom area and reportedly arrested 96 villagers of Waeng Kham, Kun Mi, Wo Long, Nar Taw, Wan Parng, Ho Ha, Nar Poi, Karng Nar, Nar Yao, Son Sarng, Nar Khar Awn and Nar Khar Long villages. They were all gathered together at the village of Kun Mi and were beaten, tortured and questioned. On 3 and 4 July the SLORC troops put plastic bags over the villagers' heads until they suffocated and threw the bodies into the Nam Parng River. The women were allegedly raped before being killed.

109. On 12 August 1997 the Ler-der-poo villager Saw Bla Daya was allegedly arrested and executed by a military column led by Khin Maung Win. The following day the column reportedly arrested and executed Hseet-ku villagers Saw Ko Sher, Saw Ba Nee, Saw Pee Ler, Saw Ba Shwe and Saw Wah Ler.

B. Treatment of the Muslim population in Rakhine State

110. According to information received by the Special Rapporteur, there are estimated to be about 7 million Muslims living in Myanmar today approximately 1.2 million of whom live in the Rakhine State. The first Muslims in the Rakhine area immigrated in the twelfth and thirteenth centuries. A second wave of immigration occurred in the seventeenth century, and a third in the early nineteenth century. The third immigration movement took place while Myanmar (then Burma) was a colony under British rule. The movement of person across what would later become the border between India and Myanmar was unimpeded and natural. By the time Burma became an independent union in 1948, there was a consolidated Burmese Muslim population of Indian ethnic origin.

111. In early 1992 there was a mass influx of some 250,000 Muslim refugees, referred to as Rohingyas, into Bangladesh from Rakhine State in Myanmar. In order to address the 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 the Office of the United Nations High Commissioner for Refugees (UNHCR) to facilitate the repatriation

and memoranda of understanding between UNHCR and the Governments of Bangladesh and Myanmar, which were signed on 12 May and 5 November 1993 respectively.

112. Between September 1992 and the end of 1996, a total of 220,118 refugees had returned to Myanmar and, according to UNHCR, it was anticipated that the remaining 30,000 refugees would have returned from Bangladesh to Myanmar by June 1997.

113. Although the repatriation process was scheduled to be completed by mid-1997, the Special Rapporteur has been informed that between 5,000 and 25,000 Muslim refugees had fled over the border to Bangladesh in the first half of 1997 in order to escape forced labour, portering and starvation.

114. Indeed, extensive recruitment for compulsory labour was mentioned as one of the main reasons for the mass exodus in 1991 and 1992. It continues to be an issue of concern. Although UNHCR has, from the outset of its involvement, focused on this issue and has repeatedly intervened with regard to returnees being called for compulsory labour, the authorities agreed to exempt the returnees only for the first two months after their arrival and to limit compulsory labour for the entire population in the area. In addition, the Muslim population of northern Rakhine State, including returnees, are subject to compulsory labour requests by different government authorities. They are forced to provide physical labour for 7 to 10 days a month without pay.

115. In December 1996 and January 1997 Rohingya villagers were reportedly used for forced labour in Rakhine State. Prisoners in chains and villagers were forced to work on roads from Kyautaw to Buthidaung and from Sittwe to Kyawtaw.

116. According to testimony received by the Special Rapporteur, many of the new refugees said that they had fled because of starvation. The food situation worsened in mid-1997 because of the fact that the whole of Myanmar suffered severe inflation, with the value of the kyat falling from \$1:120 kyats in January 1997 to \$1:380 kyats in June 1997. In Arakan State rice prices increased to 60 kyats per kilo in June 1997, compared to 20 kyats in June 1996. Taking into account that an average wage for a day labourer was only 50 kyats and that SLORC reportedly refused to allow local traders to import rice from Bangladesh, people were left with no option but to flee.

117. Cases of physical abuse and extortion of returnees have also been reported to the Special Rapporteur. As is the case for the rest of the local population in Rakhine State, all the families are requested to contribute financially or by

contributing crops as taxes for the various development projects that are being carried out in the region.

118. In February 1996 Rohingyas reportedly had to pay a fee when going to the river to fish or to the forest to cut bamboo. Further, a 35-year-old man from Maungdaw reportedly had to pay 20 kyats for a permit to travel every time he wanted to go to the market to sell his eggs or chicken meat.

C. The issue of citizenship

119. In his report to the General Assembly (A/51/466) the Special Rapporteur made some observations on the issue of citizenship. It would be useful to examine the legislation governing citizenship, if only summarily, in the light of the information that is available, as such examination may raise questions concerning its consistency with internationally recognized norms. The Special Rapporteur notes that he has not had the benefit of discussion with the Myanmar authorities on this issue and that he proposes to do so when he is authorized to visit the country.

1. The different types of citizenship

120. Under the 1982 citizenship law there are three types of citizens: full, associate and naturalized.

121. A full citizen must be able to prove his birthplace and the nationality of his ancestors prior to the first British annexation in 1823, and they must have belonged to an ethnic group settled on the territory before that year.

122. An associate citizen is a person one of whose grandparents was a citizen of another country. Associate citizenship is thus reserved for former foreign citizens or Stateless persons. One must note, however, that, in accordance with decree No. 3 relating to the citizenship law, the deadline for submission of applications for associate citizenship expired on 15 October 1982, and foreigners and Stateless persons can thus no longer apply for associate citizenship.

123. Citizenship by naturalization can be granted to a person who can prove that he was born in Myanmar and his parents had entered and resided in Myanmar before 4 January 1948. Persons with one parent who is a full, associate or naturalized citizen and one whom is a foreigner, with parents who are both naturalized citizens with one parent who is a naturalized and one who is an

associate citizen can also apply for naturalized citizenship. Applicants for naturalized citizenship must be able to speak one of the national languages well.

2. Obtaining citizenship

124. While full citizens pass on their citizenship to their children if married to a person holding any form of citizenship, children born of parents who are either both naturalized citizens or one a naturalized and the other an associate citizen do not automatically become citizens, but can apparently apply for naturalized citizenship. The citizenship law does not stipulate the status of children whose parents are both associate citizens, but it would seem that in practice such children would receive associate citizenship more or less automatically.

125. Regarding applications for citizenship, the only provision still enabling applications is section 8(a) of the 1982 citizenship law, which gives the authorities the possibility to confer in the interest of the State, on any person, citizenship or associate or naturalized citizenship. The decision would thus seem to be completely within the discretion of the authorities, as there is no clear legal right to obtain citizenship upon fulfilling certain criteria.

3. Revocation of citizenship

126. All forms of citizenship, except full citizenship may be revoked by the State. Full citizenship can be revoked only if the person acquires the citizenship of another country or leaves Myanmar permanently. Associate and naturalized citizens can also be deprived of their citizenship on a number of other grounds. The grounds for revocation are so widely formulated that they may easily give rise to arbitrariness in application. A person deprived of citizenship cannot, according to article 22 of the citizenship law apply, to become citizens again. By declaration 3/93 of 6 May 1993, the Government invited former citizens residing abroad who wished to give up their foreign nationality to apply for Myanmar citizenship within a year, an invitation seemingly not extending to persons deprived of their citizenship against their will.

127. As for the right to appeal decisions on revocation of citizenship, it would seem that a person whose citizenship has been revoked by a decision of the Central Board has the right to appeal to the Council of Ministers. The Central Board, consisting of the Minister for Immigration and Population as Chairman, the Minister for Defence, the Minister for Home Affairs, the Minister for Foreign Affairs and one person to be designated by the Chairman, has the competence to

decide whether a person is a full, associate or naturalized citizen and to revoke or terminate citizenship.

D. Conformity of the different forms of citizenship with international norms

128. Article 21 of the Universal Declaration of Human Rights provides, *inter alia*, as follows:

"(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

"(2) Everyone has the right of equal access to public service in his country."

Article 2 states:

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Further, article 16 of the Declaration provides that:

"Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family ... The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

129. Article 7 of the Declaration states that "All are equal before the law and are entitled without any discrimination to equal protection of the law."

130. The above provisions of the Declaration have also been reflected in articles 2, 23, 25 and 26 of the International Covenant on Civil and Political Rights. In particular, article 25 was the subject of a general comment adopted by the Human Rights Committee at its 57th session.^a Further, there is a provision in article 24 that states that every child has the right to acquire a nationality. It is significant to note that the Human Rights Committee, in its general comment, stated that, "Whatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects. Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant." The Committee further stated that no distinctions were permitted between citizens in the enjoyment of those rights on the grounds, among others, of race, language, religion, national or social

origin or birth status. Distinctions between those who acquired citizenship by birth and those who were naturalized may raise question of compatibility with the Covenant.(a)

131. The various distinctions that exist in the law of Myanmar regulating citizenship and its effect on the right to vote, to be elected or to have access to public office, and indeed on other rights promulgated in the Declaration and that are common to citizens as well as non-citizens in any given State, such as freedom of expression, movement, association and all the other fundamental rights, would appear to raise serious questions of compatibility with the principles governing the enjoyment of fundamental rights as promulgated in the Declaration.

132. In Myanmar, only full and naturalized citizens are entitled to enjoy citizenship rights, with the exception of rights from time to time stipulated by the State. All forms of citizenship entail the right to vote, but only full citizens may stand as candidates in elections.

133. Although not precluded by the citizenship law, an associate citizen cannot in practice own land or fixed property, be educated as a doctor or an engineer or work as a private teacher or for a foreign firm, United Nations agency or foreign embassy or stand for any elected post.

1. Citizenship identity cards

134. While all citizens are in principle entitled to a passport for travel abroad, the passports remain with the authorities while their holders are staying in Myanmar, and thus cannot be used for identification. Instead, citizens are required to carry identity cards (citizenship cards) at all times.

135. The identity cards are coloured differently according to the type of citizenship one possesses. The cards must be produced to enjoy a number of basic rights and services: to vote, to buy travel tickets, to stay outside one's ward of residence with friends or family or in hostels, to receive health services or to attend high school or university. Identity cards are routinely checked by the police and the army. The card number is noted in connection with the smallest transaction and is sent to the relevant authorities. In 1990 the identity cards were changed, and now also include mention of ethnic origin and religion. The necessity of mentioning a person's ethnicity and religion in this way remains open to question.

136. The confiscation of identity cards has also been used by the authorities as a means of harassment of recognized citizens.

137. On 26 January 1997 two NLD executives, who were staying in the Tawwin guest house in Myaungmya township were searched and had their citizen identity cards confiscated by local authorities. The cards were returned only after they had signed a pledge to return immediately to Yangon. Their meeting with the Chairman of the NLD Irrawaddy Divisional Organizing Committee was thus prevented.

138. The lack of proof of citizenship in the form of identity cards affects numerous aspects of life of those concerned. First, the right to freedom of movement is restricted. Not only are these persons prevented from travelling abroad, but they cannot even travel outside their ward of residence, as an identity card is needed to register as an overnight guest. The lack of an identity card in addition precludes access to health services and prevents young people from attending high school or university.

2. Groups particularly affected

139. Many persons belonging to ethnic minorities have no identity cards, even if they would be entitled to full citizenship under the citizenship law. Proving entitlement to citizenship is made difficult by lack of access to written records and the difficulty of travelling to government-controlled areas for registration. Furthermore, government officials are said to be generally unwilling to register persons belonging to minorities.

140. It is almost impossible for the Rakhine Muslims, or Rohingya, to become registered citizens, in particular children born in refugee camps. Following the promulgation of the 1982 citizenship law, all citizens were obliged to register for new identity cards. By December 1992, only 845,000 out of 1,200,000 inhabitants of Rakhine State had applied, the lowest percentage in the country. About 30 per cent of the relatively few applications made in Rakhine State were either rejected or are still awaiting a decision. Still, none of the returnees from Bangladesh is said to have received identity cards classifying them as any form of citizen. In fact, the Government of Myanmar refers to the returnees as Bangladeshi citizens. The army was said to have taken away the old identity cards from the 1950s and 1960s from many Muslims as they left the country. The only identity documents owned by many Rakhine Muslims are thus allegedly copies of so-called family lists, or lists of household members that are kept by local villages or township authorities as proof of residence. In July 1995 the Government issued new temporary registration certificates, intended for foreign residents or Stateless persons, to the population of northern Rakhine State, at least in theory both to returnees and to persons who never left. The cards were issued not on the basis of the 1982

citizenship law but on the basis of the 1949 Residents of Burma Registration Act and the 1951 Residents of Burma Registration Rules, both reintroduced solely for the purpose of registering the Rohingya. No figures as to the number of Rohingya who have in fact received the cards are available.

141. Most of the Muslim population of Rakhine State have not been issued citizenship cards under the existing naturalization regulations, and indeed most of them are not even considered so-called foreign residents.

142. The 1982 citizenship law would in fact seem to be intended to prevent the Rakhine Muslims from being recognized as citizens, as the majority of the group settled in Myanmar after 1823. The law is, however, not always applied, and the Rohingya were permitted to vote and to form political parties during the 1990 elections, which must be seen as a de facto recognition of the status of the Rohingya by the Government.

VII. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

143. The Special Rapporteur has unfortunately come to the conclusion, based on his examination of the human rights situation in Myanmar over the past year, that there has been no change in the situation since he submitted his report to the General Assembly in 1996 and to the Commission on Human Rights in 1997 and that his recommendations have gone unheeded by the Government of Myanmar. As a result, the conclusions of the Special Rapporteur in his reports to the General Assembly at its fifty-first session (A/51/466, paras. 146-152) 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 between a representative of SLORC and an official of NLD. There have been suggestions that the substance of the discussions was political in character, but the Special Rapporteur has no concrete information in that regard.

144. 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 General Assembly and in the Commission on Human Rights, he has not so far obtained any response. The Special Rapporteur has nevertheless taken great care in assessing the information gathered from all sources and organizations, both intergovernmental and non-governmental,

including information gathered during his mission to the Myanmar/Thailand border in the light of the laws, decrees and orders of Myanmar available in the Office of the United Nations High Commissioner for Human Rights.

145. The Special Rapporteur observes 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. Such absence is inherent in a power structure that 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 human rights situation in Myanmar cannot be attained without respect for the rights pertaining to democratic governance. In that regard, he notes with particular concern that the electoral process initiated in Myanmar by the general elections of 27 May 1990 has yet, after seven years, to reach 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.

146. 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 who were democratically elected in 1990 have been excluded from participating in the meetings of the National Convention, the restrictions imposed upon the delegates (practically no freedom to assemble, to print and distribute leaflets or to make statements freely) and the strict guidelines (including the requirement that the Tatmadaw play a leading role), the National Convention does not constitute the necessary steps towards the restoration for democracy, fully respecting the will of the people as expressed in the democratic elections held in 1990.

147. The well-documented reports, photographs and testimony 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 counter-insurgency operations in minority-dominated regions.

148. 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 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 that prescribe enormously disproportionate penalties and

authorize 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 against generally accepted international standards. 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 in the massive arrests of NLD supporters and the virtual blockade of the General Secretary of NLD in her compound.

149. On the basis of virtually unanimous reports of continuing violations and other information, the Special Rapporteur concludes that there is 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 that whatever they or their family members say or do, particularly in the area of politics, they risk arrest and interrogation by the police or military intelligence officers. The Special Rapporteur notes that NLD leaders cannot assemble in a group, cannot freely discuss and cannot publish or distribute printed or videotaped material. In such circumstances it is difficult to believe 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.

150. 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 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 discriminatory practices based on ethnicity.

151. An analysis of the laws relating to citizenship and their effect on the exercise of civil and political rights raises serious questions of the consistency of those laws with generally accepted international norms, since those laws appear to be discriminatory on the basis of religion, ethnicity, equality before the law and 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 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.

B. Recommendations

152. In the light of the foregoing conclusions, the Special Rapporteur submits the following recommendations for the consideration of the General Assembly and of the Government of Myanmar:

- (a) To ensure 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 Myanmar should be such as to ensure that the executive authorities are accountable to the citizenry in a clear and meaningful way and, furthermore, steps should be taken to restore the independence of the judiciary and to subject the executive to the rule of law and render unjust and unjustifiable action justiciable;
- (b) All necessary measures should be taken to accelerate the process of transition to a democratic order and to involve in a meaningful way the representatives duly elected in 1990. Genuine and substantive discussions should take place without further delay between the present military regime and the leaders of NLD and with other political leaders who were duly elected in the democratic elections of 1990, including representatives of ethnic minorities. Certain steps reportedly taken in July by SLORC, apparently to initiate such discussions, are a welcome and positive development, but that development must be intensified. SLORC 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;
- (c) Immediate measures should be taken to put an end to the harassment of the leaders and the membership of NLD, to ensure that the General Secretary of NLD is genuinely free and able to exercise her functions without fear of attack and to ensure that all political parties are able freely to exercise their rights;
- (d) 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 released immediately, and the Government should ensure that there are no acts of intimidation, threats or reprisals against them or their families and take appropriate measures to compensate all who have suffered arbitrary arrest or detention;

(e) Constitutionality and the rule of law should be re-established, and SLORC orders and decrees should no longer be the basis of law. All laws rendering violations of human rights legitimate should be repealed immediately, and all laws should be given due publicity. The principle of non-retroactivity of penal laws should be respected in all circumstances;

(f) The Government of Myanmar should give particular attention to prison conditions and take all necessary steps to allow international humanitarian organizations to have access thereto and to communicate freely and confidentially with prisoners;

(g) Urgent steps should be taken to facilitate and guarantee the enjoyment of the freedom 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;

(h) 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;

(i) All discriminatory policies that interfere with the free and equal enjoyment of property should cease, and adequate compensation should be given to those who have been arbitrarily or unjustly deprived of their property;

(j) The Government of Myanmar should fulfil its obligations under ILO Convention No. 87 of 1948 concerning freedom of association and protection of the right to organize. In compliance with that Convention, it should guarantee by law the existence and practice of free trade unions. 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 law and practice, on the one hand, and the Convention, on the other hand, are eliminated immediately;

(k) 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. The Government should urgently take 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. The Government is encouraged to cooperate with the ILO Commission of Inquiry;

(l) The Government of Myanmar should take immediate 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 that 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 measures to ensure that adequate food, housing, medical care and social amenities, including arrangements for the education of children, are provided;

(m) The Government of Myanmar should refrain from actions that contribute to insecurity affecting the population, such as the use of military forces and bombardments against civilian targets along its border with Thailand;

(n) In order to promote the repatriation of the Muslims and other minorities of Myanmar, 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 that end, it should also promote their complete civil, political, social, economic and cultural participation in Myanmar without restriction or discrimination due to status;

(o) 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. Such laws should be substantially revised so as to remove all discriminatory features based on religion, ethnicity or inequality and to remove any adverse impact on the right of children to have a nationality. Further, measures should be adopted by the Administration to ensure that citizenship can be obtained without burdensome and unrealistic administrative procedures and requirements. Those laws should also be brought into conformity with the principles embodied in the 1961 Convention on the Reduction of Statelessness. Consideration should also be given by Myanmar to ratify that Convention as well as the 1951 Convention relating to the Status of Refugees and its Additional Protocol of 1967. The 1982 citizenship law should be revised or amended to abolish its overly burdensome requirements for citizenship. The provision of the law regarding categories of second-class citizens should not be applied in a manner that has a discriminatory effect 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;

(p) The Government of Myanmar should take steps to bring the acts of soldiers, including both privates and officers, in line with accepted international human rights and humanitarian standards so as to prevent arbitrary killings, rapes and confiscation of property, or forcing persons into acts of labour, portering, relocation or otherwise treating persons without respect for their dignity as human beings. When local villagers are hired for portering and other work, it should be done with their consent 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 villagers is considered necessary for military operations or for development projects in the public interest, proper consultation with the villagers should take place and appropriate compensation should be paid. The amount of the compensation should be reviewable by independent courts;

(q) Military and law enforcement personnel, including prison guards, should be thoroughly informed and trained regarding their responsibilities in accordance with international human rights norms and humanitarian law. Such standards should be incorporated into Myanmar law, including the new constitution;

(r) Given the magnitude of the abuses documented, the Government should subject all officials committing human rights 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;

(s) The Government of Myanmar is urged to fulfil in good faith the obligations it 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. The Special Rapporteur notes 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 main languages spoken in Myanmar;

(t) 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 additional protocols to the Geneva Conventions of 1949 and, in the meantime, to ensure the application of the principles proclaimed in those international instruments in order to evidence a firm commitment towards the promotion and protection of human rights without discrimination of any kind outlawed under those norms;

HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in Myanmar

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on the situation of human rights in Myanmar, prepared by Judge Rajsoomer Lallah, Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1996/80 of 23 April 1996.

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I. INTRODUCTION

1. The Special Rapporteur on the situation of human rights in Myanmar (originally Professor Yozo Yokota) was appointed by the Chairman of the Commission on Human Rights in accordance with Commission resolution 1992/58 of 1992. Professor Yozo Yokota submitted his first report on the situation of human rights in Myanmar to the General Assembly at its forty-seventh session and to the Commission on Human Rights at its forty-ninth session. In pursuance of resolutions of the General Assembly and the Commission on Human Rights, the mandate was successively extended by the Commission in 1993, 1994 and 1995. On 23 April 1996, the Commission on Human Rights, by its resolution 1996/80, decided to extend for one year the mandate of the Special Rapporteur to establish or continue direct contacts with the Government and people of Myanmar, including political leaders deprived of their liberty, their families and their lawyers and requested the Special Rapporteur to report to the General Assembly at its fifty-first session and to the Commission on Human Rights at its fifty-third session. On 24 July 1996, the Economic and Social Council, in its decision 1996/285, approved Commission resolution 1996/80.

2. For professional reasons, Professor Yokota resigned as Special Rapporteur on 12 May 1996. The present Special Rapporteur wishes to pay tribute to the eminently constructive work performed by his predecessor in the past years in the discharge of his mandate.

3. Following the resignation of Professor Yokota, Ambassador Saboia, Chairman of the fifty-second session of the Commission on Human Rights, decided to appoint Judge Rajsoomer Lallah as the Special Rapporteur on the situation of human rights in Myanmar for the purpose of implementing the aforesaid resolutions of the Commission on Human Rights and the General Assembly.

4. 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 but more particularly in General Assembly resolution 50/194 of 22 December 1995 and Commission resolution 1996/80, which were the ones most recently adopted. 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 cease-fire agreements, together with the continuing violations of human rights, has resulted in flows of refugees to neighbouring countries.

5. Given the gravity of the concerns highlighted, the mandate remains a most sensitive and difficult one since it relates to the very nature of the administration of a State Member of the United Nations and its adverse impact on the observance and protection of basic human rights and freedoms. With a view to discharging that mandate in the most impartial and effective manner, the Special Rapporteur immediately after his nomination, sought the cooperation of the Government of Myanmar. Accordingly, on 9 July 1996, the Special Rapporteur wrote a first letter to the Government of Myanmar through its Permanent Representative to the United Nations Office at Geneva. In that letter, he stated, *inter alia*:

"In accepting to serve as Special Rapporteur, I am fully aware of the important and demanding responsibilities with which the Commission has entrusted me. I would like to assure Your Excellency that I intend to carry out my mandate in the most impartial and objective manner and that I shall endeavour to base my reports on all relevant and credible information which may be submitted to me. In this

connection, a primary and most valuable source of information would undoubtedly be Your Excellency's Government.

"I would be most grateful if I were to receive the cooperation of Your Excellency's Government in order to allow me to discharge my mandate fully and reliably in reporting to the Member States 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. In this connection, and in accordance with operative paragraphs 21 and 23 of Commission resolution 1996/80, I would wish to visit Myanmar as soon as possible to examine the situation in situ and to meet with appropriate Governmental representatives as well as other persons relevant to the fulfilment of my mandate ..."

6. On 26 July 1996, the Special Rapporteur addressed a second letter to the Permanent Representative of Myanmar to the United Nations Office at Geneva, in which he reiterated his request for cooperation and to visit Myanmar.

"In a letter addressed to Your Excellency on 8 July 1996, I have requested to undertake a visit to Myanmar to meet with appropriate governmental representatives as well as other persons relevant to the fulfilment of my mandate. Accordingly, and in keeping with my commitment to endeavour to accord full consideration to your Government's views on the substantive issues raised in my mandate, including both general and specific allegations of human rights violations by the Government of Myanmar, I am reiterating my wish to visit your country.

"Specifically, and keeping in mind the deadline for the submission of my report to the General Assembly, I would hope that your Government would agree to my visit from 20 August through 2 September 1996 so that I may provide the General Assembly with an accurate and comprehensive assessment of the situation of economic, social, cultural, civil, and political rights in Myanmar ..."

7. So far, the Special Rapporteur has received no reply from the Government of Myanmar. In this connection, the attention of the Special Rapporteur has been drawn to a letter addressed to the Chairman of the fifty-second session of the Commission on Human Rights by the Permanent Representative of Myanmar dated 4 July 1996 (No. 287/3-27/02-21). In that letter, the Permanent Representative indicated that Myanmar had disassociated itself from the decision of the Commission on Human Rights at its forty-eighth session to raise the level of consideration about the situation in Myanmar through the appointment of a Special Rapporteur and that his Government refused to accept the appointment of the Special Rapporteur, as such an exercise was "intrusive and constitutes

unwarranted interference in our internal affairs". The Permanent Representative further stated that Myanmar continued to maintain this position and that the Chairman's decision to appoint the present Special Rapporteur on the situation of human rights in Myanmar was unacceptable, as in the case of the previous Special Rapporteur, Professor Yozo Yokota.

8. It is appropriate to recall that the Government of Myanmar nevertheless did allow Professor Yokota to visit Myanmar on several occasions to enable him to fulfil the mandate conferred upon him by the Commission on Human Rights. The absence of a response by the Government of Myanmar to the Special Rapporteur's request for a visit is, in the circumstances, not understandable. However, the absence of a response, coupled with the refusal of the Government of Myanmar to accept the appointment of a Special Rapporteur, call for a few observations.

9. It should be recalled that a considerable number of resolutions of the Commission on Human Rights establishing various procedures with regard to the human rights situation in certain States have not required the express consent of the States concerned. Those procedures have been established on the basis of the general and implicit powers of the Commission, in the light of the principles enshrined in the Charter of the United Nations governing the promotion of universal respect for and, observance of, human rights and freedoms and in the light of the obligations deriving from the pledge given by States Members to take joint and separate action in cooperation with the organs of the United Nations to implement those principles. In this regard, the Special Rapporteur also recalls the practice which has been developed over the years in the relevant organs of the United Nations in the achievement of those principles.

10. With regard to the stand of Myanmar relating to intrusiveness and interference in its internal affairs by the procedure of the appointment of a Special Rapporteur, it must be observed that this stand does not conform to the obligations undertaken by Myanmar under Article 56 of the Charter to cooperate with the United Nations and its organs and cannot relieve the relevant organs of the United Nations from the duty of performing their functions. This stand further cannot frustrate the General Assembly or the Commission on Human Rights in carrying out their functions in accordance with the procedures which have been developed over the years.

11. The Special Rapporteur feels bound to record his regret that the Government of Myanmar would appear to adopt an attitude of non-cooperation. Clearly, the refusal of the Government to cooperate has rendered the task of the Special Rapporteur more difficult in determining the factual situation as it has evolved since October 1995. More particularly, it seeks to frustrate the resolution of the Commission in which the Special Rapporteur was mandated "to establish or

continue direct contact with the Government and the people of Myanmar, including political leaders deprived of their liberty, their families and their lawyers" (para. 21 of resolution 1996/80) and to have free access to any person in Myanmar whom he may deem appropriate (para. 23). It is also a matter of regret that the absence of a response from the Government of Myanmar has not rendered possible the engagement of a constructive dialogue with the Government in the light of the analysis which the Special Rapporteur has made of the present situation, the current laws and practices, and the developments described in the report and which manifestly have an unfavourable impact on human rights in Myanmar. The Special Rapporteur greatly hopes that the Government of Myanmar will cooperate and engage in such a dialogue in response to the concerns of the international community, as expressed in the resolutions so far adopted by the General Assembly and the Commission on Human Rights.

II. THE INTERNATIONAL NORMS GOVERNING HUMAN RIGHTS

12. As a Member State of the United Nations, Myanmar has undertaken to respect the human rights obligations contained in the Charter. Those obligations are expressed in the Preamble, and in Articles 1 (3), (55) (c) and 56. Further specificity to those obligations has been provided by, inter alia, the Universal Declaration of Human Rights (General Assembly resolution 217 A (III)); the United Nations Declaration on the Elimination of All Forms of Racial Discrimination (resolution 1904 (XVIII)); the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (resolution 36/55); the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (resolution 3452 (XXX)); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict (resolution 3318 (XXIX)).

13. 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. It is to be noted that Myanmar is a member of the International Labour Organization (ILO) and is a party to its conventions concerning forced labour (No. 29) and concerning freedom of association and protection of the right to organize (No. 87).

14. On 24 August 1992, Myanmar acceded to the four Geneva Conventions of 1949 relative to humanitarian laws of armed conflict.

15. Of particular, though not exclusive, significance in the case of Myanmar at the present juncture of its constitutional evolution are the norms proclaimed in the Universal Declaration of Human Rights:

(a) The exercise of political rights without distinction on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (articles 2 and 21);

(b) The rights through which political rights themselves can properly and meaningfully be exercised, that is to say, the right to freedom of thought, the right to freedom of opinion and expression, to seek, receive and impart information and ideas through any media (articles 18 and 19), the right to freedom of peaceful assembly and association (article 20), and the right to freedom of movement (article 13);

(c) The right to equality before the law, including protection of the law and the right to a fair and proper trial by an independent and impartial tribunal and the right to procedural guarantees necessary for one's defence (articles 7, 10 and 11);

(d) The right to life, liberty and security of person (article 3);

(e) The right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment or to arbitrary arrest or detention (articles 5 and 9).

III. BASIC LEGAL FRAMEWORK GOVERNING THE EXERCISE OF POLITICAL RIGHTS IN MYANMAR

16. In order to understand the legal framework in Myanmar governing human rights in general, and political rights in particular, it is necessary to retrace the recent political history of Myanmar since it became a sovereign State. In his last report to the Commission on Human Rights in March this year (paras. 5 to 18 of E/CN.4/1996/65), the Special Rapporteur recalled much of that history and it will only be necessary to mention the most salient events.

A. The establishment of the State Law and Order Council and the imposition of martial law

17. In 1988, a wide-ranging and violent revolt by the people took place as a combined reaction against, first, the long-felt suppression of civil and political liberties since the overthrow of the Constitution in 1962 and the failure of the economic and social policies practised under the system of the "Burmese Way to

Socialism". There were thousands of deaths and significant numbers of people who suffered severe injuries and destruction of property in circumstances which may be said to have given rise to a state of emergency.

18. In these circumstances, as announced in Declaration 1/88 of 18 September 1988, the Armed Forces established martial law, overturning the Constitution of 1974, dissolved all State organs, including the Pyithu Hluttaw (People's Assembly) and the State Council. The Armed Forces constituted for itself the State Law and Order Council (SLORC) which assumed all legislative, executive and judicial powers. Legislative power was exercised by instruments variously called laws, decrees or announcements. Administrative power was delegated at regional and local levels (that is to say, at the division/State, township and ward/village levels) to Law and Order Restoration Councils (LORCs) composed of both civilian and army defence personnel. With regard to the exercise of judicial power, various levels of courts were established to handle ordinary criminal and civil cases. From a juridical standpoint, the assumption of power by SLORC constituted a break from constitutionality and legal continuity. However, everything indicated that SLORC did not intend to arrogate to itself for all time the extra-constitutional powers it had assumed.

19. As indicated in Declaration No. 1/488, SLORC set itself four objectives: first, the re-establishment of peace and tranquillity in the country; second, the restoration and provision of communication and transport; third, measures to ensure better supply of food, clothing and shelter by facilitating the operations of private enterprise and the cooperatives in these sectors; and fourth, when the first three measures would have been accomplished, the holding of multi-party democratic elections to be held in a free and fair manner.

20. In due course peace and order must have been sufficiently re-established to allow a return to civilian rule, as SLORC established by law an Election Commission, including provisions for the registration of political parties. It also, most importantly, promulgated the People's Assembly Elections Law for the holding of free and fair multi-party democratic elections. All indications were that the ground was set for the ending of martial law and the transfer of government to the civilian representatives to be elected by the will of the people.

B. The general elections of May 1990

21. In May 1990, general elections to the People's Assembly were held in Myanmar. More than 90 political parties contested the elections, among which were the National Democratic League (NLD), the National Unity Party (NUP) and

the League for Democracy (LDP). The elections were generally accepted to have been held in a free and fair manner. NLD won the overwhelming support of the electorate and obtained over 80 per cent of the seats in the People's Assembly (392 out of a total of 485) with a 60 per cent share of the vote.

22. It was generally expected that the People's Assembly, as a constituent assembly, would be convened for the drawing up of a constitution and, in the meantime, to form an interim government. A number of obstacles, however, came one after another to thwart the freely expressed will of the people at the general elections and SLORC continued to exercise all powers under martial law. It is necessary to refer to some of these obstacles.

C. Declaration No. 1/1990 and the National Convention

23. First, the official announcement of the results of the poll was postponed for the apparent purpose of allowing the Election Commission to scrutinize the expense accounts of all elected representatives. Second, two months later, in July 1990, SLORC issued Declaration 1/1990, the most important parts of which are reproduced in the annex to the present report. What was clear at this juncture was that SLORC would continue to exercise all powers of State; there would be no transfer of power to the Civil Authorities, whether under an interim constitution or otherwise, until a new constitution was enacted; and it would be the responsibility of representatives elected at the general elections to the People's Assembly to draft the new constitution.

24. Subsequent events have shown, however, that various measures were progressively taken, effectively preventing, or at best delaying, the People's Assembly from being convened. On 18 October 1990, SLORC Deputy Foreign Minister U Ohn Gyaw announced in the General Assembly that a broadly based national convention would be convened to discuss all factors that should be taken into account in drafting the new constitution. Its drafting would be the responsibility of the elected representatives. One year later, also in the General Assembly, Deputy Foreign Minister U Ohn Gyaw stated that in addition to the elected representatives, leaders of political parties, leaders and representatives of all national races and respected veteran politicians would participate in the convention. On the basis of the national consensus arrived at in the convention, the elected representatives would draw up a new constitution.

25. It is evident that the issue of convening a National Convention to draw up guidelines or principles for the eventual drafters of the new constitution and the issue of the delegates composing the National Convention emerged as a

controversial and unexpected element in the envisaged process of the transfer of power. Further, a significant proportion of the elected members of NLD have subsequently been arrested and imprisoned or else disqualified temporarily or for life from membership of the People's Assembly.

26. In 1992, a National Convention Committee was formed by SLORC with the purpose of convening a National Convention to draw up a new constitution. Its objectives were: non-disintegration of the Union; non-disintegration of national solidarity; perpetuation of sovereignty; the establishment of a genuine multi-party democratic system; the promotion of justice, liberty and equality in the State; and the participation of the Tatmadaw (Armed Forces) in a leadership role in the affairs of the State. It is to be noted that the mandate of the National Convention Committee was not only to select delegates to attend the National Convention but also to direct the proceedings and to lay down its objectives, one of which included "the participation of the Tatmadaw in a leadership role in the national politics of the State".

27. On 9 January 1993, the Government convened the National Convention to lay down the basic principles for the elaboration of a constitution. In a report to the Commission, the Special Rapporteur noted that, of the 702 National Convention delegates from eight categories, 49 were selected by the 10 political parties remaining after the 1990 elections, 106 were elected representatives and the remainder of the delegates from the six other categories were chosen by SLORC. In fact, NLD members, despite winning a little more than 80 per cent of the seats in the 1990 general elections, comprise only about 15 per cent of the 702 delegates and are thus permanently in a minority. 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 NLD, the party that had won the 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.

28. On 28 November 1995, the Government of Myanmar reconvened the National Convention. 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 boycott the Convention following the denial of an NLD request to review its working procedures. Subsequently, the National Convention's Work Committee revoked the delegacy of the NLD delegates on the ground that they had absented themselves on two occasions without permission. The Chairman of the Convention invited the remaining delegates to continue their work in accordance with the original arrangements. This expulsion was, in the view of the Special Rapporteur, arbitrary and has highlighted the lack of any meaningful representation at the Convention. The members of parliament elected

in 1990 now constitute less than 3 per cent of the total current delegates to the Convention and none are from NLD, the party which had won the elections and which would otherwise have been the government returned by the will of the people.

29. The procedures for the working of the Convention have been controversial and not conducive to any genuine attempt to consider properly the views of delegates. The issues to be raised and the papers to be presented are rigidly controlled and supervised at the level of the National Convention Convening Commission, the chairmen of the eight discussion groups and at group discussion level as well. Freedom of expression in general, and political debate in particular, in the National Convention compound seems to be severely restricted and circumscribed. Delegates 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 not to comply with the established 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, they have to be submitted again for scrutiny by the Work Committee. Moreover, it appears that delegates are not totally free to meet other delegates and to exchange their views freely inside the compound. They are reportedly not entitled to distribute leaflets, wear badges or bring any written or printed materials to the Convention without the prior approval of the National Committee.

D. Non-conformity of the legal framework with international norms

30. Article 21 of the Universal Declaration of Human Rights proclaims, in paragraph 1, that everyone has the right to take part in the government of his country, directly or through freely chosen representatives. It further proclaims, in paragraph 3, that the will of the people shall be the basis of the authority of government and that this will shall be expressed in periodic and genuine elections.

31. In essence, the assumption of all governmental powers by SLORC in 1988 constituted, as mentioned earlier, a break from constitutionality and legal continuity and further constituted a departure from the norms governing the enjoyment of political rights proclaimed in article 21 of the Universal Declaration. There could, arguably, have been some legitimacy in the assumption of power by SLORC, without the consent of the people, in circumstances which could be said to have amounted to a state of public emergency threatening the life of the nation. In any event, as its name indicates, an emergency is only temporary and cannot be said to last longer than a given situation requires. It is not uncommon, however, to have a civilian government managing a state of emergency, with the military

playing an important role but still under the policy directions of the civil authorities. In the case of Myanmar, general elections took place so that a civilian government was chosen as a result of the freely expressed will of the people. The will of the people has remained frustrated for a period which is now in excess of five years. The question arises, with growing urgency, as to whether any juridical legitimacy that could, arguably, have been derived from past acquiescence in the assumption of power by the Military Forces can any longer provide a defensible basis for the continued maintenance of a non-constitutional system based on the assumption of martial powers, having such an unfavourable impact on human rights in the context of generally accepted international norms and the obligations undertaken by Myanmar.

32. SLORC gave the explanation, in Declaration No. 1/1990, that the People's Assembly could not be convened until a constitution was drafted and that it was the responsibility of the elected representatives to draft the constitution. However, it has not been left to the People's Assembly, returned by the people, to draft the Constitution and determine the principles on which it should be founded. Instead, a National Convention, consisting of delegates who in their overwhelming majority were not returned by the people, was devised some three years after the general elections of 1990. Two features of this Convention require to be mentioned. First, it was expressly mandated to adopt principles on the basis of which a democratic constitution would be drafted by the People's Assembly. Already, however, the mandate contained the principle that the Armed Forces would have a leading political role in the constitutional system. It is questionable whether this principle would be consistent with article 21 (3) of the Universal Declaration of Human Rights, which requires that the will of the people "shall be expressed in periodic and genuine elections" and that although the Armed Forces can be understood to be part of the State's services, it cannot be understood how they could be periodically elected. In any event, this principle could not be said to have been a political principle approved by the people in the general elections of 1990. Second, three more years have gone by since the National Convention started its work and from all accounts it would appear that detailed provisions are being worked out for a constitution and not merely general principles which could be considered by the People's Assembly in the drafting of the constitution.

33. With regard to the proceedings of the National Convention, the main criticisms which have been variously made have centred around, first, the composition of the delegates and the absence of genuine and proper representation of members returned at the general elections; second, the restrictions imposed upon the delegates and the restrictive procedures which are required to be followed; and third, the restricted opportunity for meaningful discussion, including the absence of free debate and exchange of ideas. These features do not appear to constitute the necessary steps towards the restoration of democracy so as to respect the will of

the people as expressed in the democratic general elections held in 1990 and do not conform to the rights to freedom of thought and expression in accordance with international norms necessary for the exercise of political rights, especially when a constitution is being formulated.

E. Remedial measures for the re-establishment of constitutionality and the democratic order

34. Given the non-conformity of the present legal framework with international norms, coupled with steps taken over the past six years which have been adverse to the implementation of the democratically expressed will of the people at the general elections, necessary measures implementing the resolutions of the General Assembly and the Commission on Human Rights become the more urgent for the re-establishment of constitutionality and democracy. Some work has been done in the proceedings of the National Convention. But those proceedings were themselves flawed by the unrepresentative character of the Convention and its other features relating to its mandate and restrictive procedures. In the Special Rapporteur's considered view, a dialogue should be engaged between the present regime and the leaders of political parties which have been returned by the people, with a view to working out such measures as might be considered best to bring the democratic process engaged in the 1990 elections to fruition.

IV. IMPACT OF MYANMAR LAW ON HUMAN RIGHTS

35. In Myanmar, several laws criminalize or adversely affect freedom of thought, information, expression, association and assembly through fear of arrest, imprisonment and other sanctions. The most commonly employed laws banning the enjoyment of civil and political rights and suppressing dissent against SLORC have been the 1923 Official Secrets Act, the 1950 Emergency Provisions Act, the 1957 Unlawful Associations Act, the 1962 Printers' and Publishers' Registration Law, the 1975 State Protection Law (Law to Safeguard the State from the Dangers of Destructive Elements) and Law No. 5/96 Protecting the Stable, Peaceful and Systematic Transfer of State Responsibility and the Successful Implementation of National Convention Tasks Free from Disruption and Opposition.

36. Moreover, these laws are backed up by a series of orders and other emergency laws still in force which provide the basis for detention in most cases. Order 1/1991 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; Order 2/1988 prohibits the assembly of five or more persons; and Order 3/1990, relating to the right to assemble and campaign, forbids criticism of the 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 6/1990 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.

A. Extrajudicial, summary or arbitrary executions

37. The Special Rapporteur has been informed that, since January 1993, based upon SLORC Order No. 1/933 1992, death sentences passed between 18 September 1988 and 31 December 1992 have been commuted into life sentences. Furthermore, the Special Rapporteur has this year not received information indicating that an explicit or systematic government policy encouraging summary killings would exist. However, the Special Rapporteur is concerned about reports alleging instances of killings of civilians or insurgents by members of the Myanmar army in the insurgency areas.

38. The reports received by the Special Rapporteur often concern minority-dominated areas where the persons allegedly killed were often accused of being or cooperating with insurgents, or as a revenge for acts by insurgents in the area.

39. On 18 October 1995, a section of MI 18 of Buthidaung township, about 80 miles north of Akayb, in Arakan State arrested five Rohingya youths from different villages in the township for allegedly having links with insurgents. During interrogation they were allegedly severely tortured. Later all five were reportedly executed behind a hill west of the MI office.

40. On 21 March 1996, more than 50 villagers were reportedly arrested in Bawdi Gone village, Thantaung township. The village headmaster was accused of cooperation with the Karen National Union and the All Burma Students Democratic Front, and later killed.

41. Other reports received by the Special Rapporteur concern cases where persons were allegedly killed as punishment because they could not provide goods or services demanded by army troops, including labour, food, money or arms.

42. The Special Rapporteur has also received allegations that persons have been killed because they have refused to be relocated. In the beginning of May 1996,

villagers in the Chiang Tong area were told to move, otherwise they would be shot. Five villagers returned from the place to which they had been relocated to Kung Sar village with bullock carts to fetch some rice and were allegedly shot by Battalion 99 while loading the carts.

B. Torture and other cruel, inhuman or degrading treatment

43. The complete prohibition of torture and other cruel, inhuman or degrading treatment or punishment is embodied in article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights. In addition, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment describes such acts as an offence to human dignity. In accordance with this Declaration, no State may permit or tolerate such acts. Torture, which is an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment, is defined in article 1 of the Declaration as follows: "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".

44. Furthermore, article 3 of the Declaration states that "exceptional circumstances" may not be invoked as a justification of torture or other similar treatment. This indicates that the rules of international law set forth in article 4 of the International Covenant on Civil and Political Rights, which prevents derogation from article 7 even in times of emergency, constitute *jus cogens* and may therefore be invoked in respect of any State member of the international community, regardless of whether or not it has contracted any specific treaty obligations.

45. In this connection, the Special Rapporteur expresses his concern at the large number of cases of torture and other ill-treatment attributable to the Myanmar armed forces through its military, intelligence and other security personnel. Torture and other cruel, inhuman or degrading treatment or punishment are regularly employed against civilians living in insurgency areas, against porters serving in the army and in working sites where forced labour is practised. Torture and ill-treatment appear to be common means of punishment and of obtaining information or confessions, in particular from persons suspected of anti-government activities.

46. With regard to habitual methods of torture, they are the same as those described on previous occasions by the former Special Rapporteur. It is a combination of methods of physical and psychological torture. In the case of primarily physical methods, the most frequent are severe beatings with canes or rifle butts, burning of body parts, stabbing, near suffocation, shackling and sexual abuses. Other frequently used methods are forcing the victim to adopt a fixed posture, depriving him of food and water. In the case of psychological methods of torture, the reports received by the Special Rapporteur refer to death threats against the victim or his family. It is alleged that villagers in Kru Gyee village who were suspected of hiding army deserters were arrested and tortured in January 1996 by the troops of LIB Commander Kyaw Lin. One villager was beaten so badly that blood came out of his ears. The soldiers then poured hot water on his body. A number of other villagers were beaten unconscious.

47. The Special Rapporteur continues to receive numerous reports indicating that army troops subject porters to torture and ill-treatment in the course of their duties.

48. A 20-year-old Karen from Bawgali village, Than Daung township, Karen State, was reportedly forced to join Infantry Battalion No. 48 in June 1995 as a porter. Carrying dried rations and mortar shells, he allegedly had to go in front of the troops in order to detect possible mines. He reportedly stepped on a landmine and was seriously wounded, was left behind by the soldiers and later died from the injuries. According to the testimony of a former SLORC soldier, his senior officer ordered him to beat the porters who could not keep up with them. If he did not beat them, the officer would beat him. Once he was ordered to beat a 52-year-old porter until he died, another time to shoot a porter who tried to escape and to leave him wounded without medical treatment.

49. Other forced labourers are also reportedly subject to conditions and treatment amounting to torture or inhuman treatment. According to allegations received, a man aged around 65 years who worked at the Ye-Tavoy railway construction was kicked and beaten with rifle butts and fists by army soldiers because he took a rest under a tree. The beating stopped only when other villagers explained that he was sick and therefore weak. The forced workers at the railway construction sites live in overcrowded conditions, and are not provided with proper shelter or sanitation. Pregnant women have reportedly worked and given birth at the labour camps, no care or protection of the infants being provided after their birth.

50. Village headmen are also said to have been subject to torture or ill-treatment in cases where they have not been able to provide army troops with the requested goods or porters. In July 1995, a village elder in Thein p'Lein village, Kawkaireik District was kicked and beaten with sticks and a rifle since she could not obtain the required porters as all villagers were away on their farms. The beatings caused

a miscarriage. Two villagers were also severely beaten when they tried to protect the village elder.

51. The Special Rapporteur has received allegations of sexual assault and rape of women by army troops. A 15-year-old girl from Kywe Thone Nyi Ma was reportedly raped so many times by soldiers at a railway worksite that she bled to death. Some foreigners are said to have found her unconscious and brought her by car to Tavoy hospital, but she reportedly died on the way. The soldiers at the worksite had reportedly also raped a number of other women at gunpoint.

C. Arbitrary arrest and detention

52. With regard to arbitrary arrest and detention, the Special Rapporteur has received many reports of such violations. An examination of the laws in force shows that such violations may easily occur. Further, a multitude of executive orders criminalizing far too many aspects of normal civilian conduct, prescribing grossly disproportionate penalties and authorizing arrest and detention without judicial review, leads the Special Rapporteur to conclude that a significant percentage of all arrests and detentions are arbitrary when measured by international standards.

53. The 1950 Emergency Provisions Act 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 or the behaviour of a group of people". One such example, among many others, is the following. On 15 August 1996, Dr. Hlaing Myint, a businessman and NLD activist, and U Kyaw Min, an elected member of Parliament, and Maung Maung Wan, a youth activist, were sentenced to seven years imprisonment under Section 5 of the Emergency Act for allegedly trying to foment unrest amongst the students.

54. The 1975 Law to Safeguard the State Against the Dangers of Those Desiring to Cause Subversive Acts is also used selectively by SLORC to carry out indiscriminate and arbitrary arrests and detention. Under this law, the Council of Ministers is authorized under section (7) of the Law "to pass an order, as may be necessary, restricting any fundamental right of a person if there are reasons to believe that any citizen 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". The same Law further stipulates in sections 13 and 14 the possibility to continue restraint for "a period not exceeding one year at a time up to a total of five years". Perhaps the most illustrious case is that of Daw Aung San Suu Kyi.

The Government of Myanmar had previously reported that she had been deprived of her liberty and effectively placed under house arrest on 20 July 1989 for an initial period of one year according to section 10 (b) of the above-mentioned Law. According to section 14 of the said Law, the restraints on Daw Aung San Suu Kyi were continued year by year for the maximum of five years as stipulated in the Law.

55. Detention on the presumption of what a person might do does not comply with international standards of justice. Article 11 (1) of the Universal Declaration of Human Rights stipulates: "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence". In addition, this Law, by being applied in the case of Daw Aung San Suu Kyi, in an ex post facto manner was also inconsistent with international legal standards. Indeed, article 11 (2) clearly stipulates "Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed".

56. Several persons have also been arrested and detained under the 1957 Unlawful Associations Act. This law permits the imprisonment for up to five years of any person who has been a member of, or contributes to, or receives or solicits any contribution towards any association "which encourages or aids persons to commit an act of violence or intimidation or of which the members habitually commit such acts; or which has been declared unlawful by the President of the Union". Moreover, anyone managing or assisting in the management of an unlawful association, or who promotes or assists in promoting a meeting of such an association, can be subjected to similar punishment. On 16 May 1996 six students from Yangon University were reportedly arrested in Rangoon for organizing people in support of the planned NLD congress. Among those arrested were Ye Kyaw Zwar, a technology student, and Kyaw Kyaw Htay, a first-year English major.

57. Another provision which has also been used to arrest individuals is section 122 (1) of the Penal Code under which anyone found guilty of "high treason" can be punished with death. Several persons have received long-term sentences under this provision.

58. On 20 August 1996, Do Htaung, an elected member of Parliament from Kale-1 Sagaing Division, Khun Myint Htun, an elected member of Parliament from Mon State, Khin Maung Thaung, a youth activist Kyaw Htwe, Kyi Aung, Tin Maung Aye, Kyaw Thaung, Aung Kyi, U Pwa, U Hla Soe, MP elect from Minbu-2, Magway Division, Than Htay, Khin Maung Myint, Dr. Khin Ma Kyi, Dr. Khin Soe Win and U Sein Myint are reported to have been sentenced to seven years imprisonment under Act 122/2 for high treason on the ground that they had

contacts with Burmese dissidents in India. Myanmar television announced their arrests and sentences, saying that the group had conspired to send members for training in political defiance with exiled colleagues in India led by Tint Swe, had distributed leaflets attacking military-organized constitutional talks and had made plans to open a secret office in the town of Monywa. Khin Maung Thaung, U Kyi Aung and Kyaw Htwe were reportedly arrested for possessing a critique of the National Convention made by the Burma Lawyers' Council, an expatriate opposition group. According to the same report, Kyaw Thaung, U Pwa and U Aung Kyi were apparently arrested for possessing "political letters" and material from "illegal organizations".

59. On 14 June, a 27-year-old NLD activist Tin Hlaing, a bodyguard of Daw Aung San Suu Kyi, was arrested for spreading "a disinformation". On 20 August, he was reportedly sentenced to seven years imprisonment under Act 122/2 for high treason.

60. These laws are inconsistent with a number of principles enshrined in international human rights instruments. Article 29 (2) of the Universal Declaration of Human Rights stipulates 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".

61. The Special Rapporteur holds the view that none of the acts for which these persons have been detained could be construed as a threat to national security. It would seem that the laws are simply used against citizens exercising their legitimate rights to free expression, free association and peaceful political activities. Mere criticism of the Government or SLORC, or of the National Convention procedures, as well as political dissent generally, have been made into criminal acts.

D. Due process and the rule of law

62. The notions of "due process of law" and "rule of law" are integrally linked. The rule of law is poorly served and undermined if the requisites of due process are not respected, and the notion of due process becomes meaningless if the rule of law is not secure. These two notions are defined, in particular, in articles 10 and 11 of the Universal Declaration of Human Rights. Further, the rule of law requires more than respect for procedural rights: it requires respect for all rights in order to provide protection against the risks of arbitrariness.

63. While judicial guarantees set out in the now defunct Constitution, according to the Government, do not apply, through correspondence received by the Centre for Human Rights, the former Special Rapporteur had been informed by the Government of Myanmar 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 an emergency regulation. The Code of Criminal Procedure provides that an arrested person may only be detained for 24 hours before being brought before a judge, who decides on the remand of the suspected person up to 30 days, or his release. The rights of an accused person standing trial are guaranteed by the Evidence Act (under which the accused may cross-examine witnesses for the prosecution) and by various provisions of the Code of Criminal Procedure, including the Court Manual. The accused has the right to be represented by counsel of his own choosing. If he cannot afford to retain a defence counsel, a court-appointed counsel is assigned to him if the offence carries the death sentence, otherwise not. The accused is tried at a public hearing (unless the law requires otherwise).

64. However, the Special Rapporteur has received numerous reports alleging the absence of counsel during trial, the absence of time and facilities to prepare a defence, and all other attendant guarantees. The examination of a few reported cases will help illustrate the problems.

65. It was reported that U Win Htein was arrested at midnight on 19 May 1996. When he asked whether there was a warrant for his arrest, he was told that a warrant was unnecessary because it was already decided how he was going to be sentenced. U Win Htain, and other members of NLD arrested with him, were tried on 7 August 1996. Although NLD sent lawyers to Insein prison, nobody was produced for trial. The lawyers were told that there was to be no trial that day and that they should not wait. NLD lawyers became aware that a trial was taking place when they saw the Magistrate who normally presides over these sessions, U Hla Phyu, leave Insein prison. When they caught up with him at Insein Court, they were told by the Magistrate that he could not tell them what sentence had been passed and that the lawyers should apply officially for a copy of the trial proceedings.

66. U Win Htain was arrested for arranging a meeting with NLD members U Poe Aye and his son Maung Htein Lin who made a videotape of the dry season paddy yield. It was also reported that obstacles had been placed before NLD when they tried to exercise their right of appeal. Families of the detained were also denied visiting rights and the defendants were tried in a secretive way.

67. Another reported case of an unfair trial has been brought to the attention of the Special Rapporteur. On 4 January 1996, a group of several comedians, celebrating

Independence Day, performed dances and songs at Daw Aung San Suu Kyi's house. A few days later, the members of the group were arrested in Mandalay by officers from Military Intelligence Unit 16, for having allegedly performed a satire of the authorities. The following persons were arrested: U Pa Pa Lay, U Lu Zaw, Ma Hnin Pa Pa, Myodaw Win Mar, U Htwe, U Tin Myint Hlaing, U Sein Hla and U Win Htay. Two other members of the group, Daw Myaing and Ma Yin Tin Swe, were reportedly arrested on 11 January. Another two persons, U Myint Thein and U Aung Soe, who had helped arrange the performance, were also arrested on 12 January 1996.

68. U Pa Pa Lay and U Lu Zaw were charged under section 5 (e) of the 1950 Emergency Provisions Act, while U Htwe and U Aung Soe were charged under section 109. All of them have been sentenced to seven years imprisonment for "spreading false news". According to reports received by the Special Rapporteur, they were not allowed any legal representation and witnesses have been prevented from attending the trial in order to testify and provide evidence. The eight remaining members of the group were released a month later.

69. It was reported that Ko Khin Tun was arrested on 6 November 1995 for having taken a photograph of a person serving a sentence in Insein prison whom he saw ploughing a vegetable plot outside the prison, while he was on his way to visit him. He was reportedly charged under section 5 (d) and section 42 (prison regulations). He was not allowed any contact with his family. Although he asked for the services of a lawyer from the time he was first tried, his request was not granted. Only 70 days later, on 17 January 1996, the last day of his trial, was he permitted the services of a lawyer. On that day, the crucial evidence, the film concerned, could not be produced. Nor was the member of the prison staff, who was the principal witness for the prosecution, present for cross-examination. Further, Ko Khin Tun was not given an adequate opportunity to defend himself. He was reportedly sentenced to four years and three months imprisonment.

70. Virtually all reports received by the Special Rapporteur relate to similar violations, in addition to the fact that there is no proportionality between offences committed and punishments applied, particularly in political or related cases. An obvious example reported to the Special Rapporteur is that of an NLD member, U Saw Hlaing, who was arrested by the police following a minor car accident. He was later reportedly sentenced to five years imprisonment at Kyungon police station for causing "grievous bodily harm" under section 338 of the Myanmar Penal Code after a summary trial. He was allegedly not allowed visits by a lawyer or family members.

71. The conclusions that can be drawn from the reported cases are that neither is due process of law generally respected nor is the rule of law upheld. On the

contrary, the information received reveals a consistent, if not routine, failure to respect due process and the rule of law. This is no doubt the result of rule under martial law without any constitutional legitimacy where the content and application of laws guaranteeing individual rights are overtaken by a martial policy of repressing and punishing political dissent or any risk of it.

E. Prison conditions

72. Given the fact that the former Special Rapporteur was denied access to prison cells and could not meet with any detainee while visiting Myanmar last year, 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, the Special Rapporteur can only rely on the complaints of former detainees and their families, which strongly indicate that Myanmar prison conditions do not comply with the Standard Minimum Rules for the Treatment of Prisoners established by the United Nations in 1955 and approved by the Economic and Social Council in its resolution 663 C (XXIV) of 31 July 1957.

73. The reports received suggest that ill-treatment is common. Prisoners are allegedly tortured and subjected to cruel, inhuman or degrading treatment and punishment such as beatings, various forms of water torture and electric shock treatment. Prisoners breaking the prison rules are said to be subjected to harsh punishments, including beating, being kept in the hot sun for long periods and being forced to crawl over sharp stones. The treatment of the political prisoners in Insein prison is reportedly especially harsh. They are allegedly subjected to torture both before and after sentencing and are liable to be sent to solitary confinement in the so-called "police dog cells" (a small cell where police dogs are normally kept), without any bed or bedclothes.

74. The Special Rapporteur notes with concern reports of very poor health and sanitary conditions in Myanmar prisons. Prisons are reportedly regularly overcrowded. It is alleged that prisoners receive inadequate food in amount and quality and that they are allowed insufficient means to keep up hygiene. There is reportedly also a lack of proper medical care and adequate medical provision. The Insein prison hospital reportedly has only one doctor, who does not himself carry out examinations or prescribe medicines; this is done by prisoners with only a rudimentary knowledge of medicine. The hospital provides few medicines. Food and medicines brought by families are said to be often confiscated by the prison authorities. A number of prisoners reportedly suffer from contagious and serious diseases, such as dysentery and malaria. There is also a growing AIDS problem in Myanmar prisons.

75. A prisoner named U Htwe who is currently detained in Insein prison is said to be suffering severely from malaria and is not receiving adequate treatment.

76. On 2 August, U Hla Than reportedly died at Yangon General Hospital. According to the prison authorities, his death was caused by tuberculosis and an HIV infection. The Special Rapporteur has been informed that needles which are not properly sterilized are used in the prison hospital, and that there is a drug problem in the prisons, which also contributes to the spread of HIV.

77. Mr. James Leander Nichols, who had been arrested in early April for illegal possession of communications equipment (telephones and fax machines) was sentenced to three years imprisonment on 18 May 1996 and died in custody on 22 June 1996. He had allegedly been deprived of sleep during long interrogations prior to his death. Mr. Nichols was 65 years old and suffered from heart problems and diabetes. The Myanmar authorities, in a "press statement" issued on 16 July 1996, denied that he was tortured and stated that he died from natural causes due to a stroke and heart attack.

78. The Special Rapporteur has also received reports of prison labour. This is claimed by the Government to be a way of reintroducing the prisoners into society. Such camps for prisoners reportedly exist inter alia in the Kabow valley in Tamu township in Sagaing Division. The camps include Wet Shu, Thanun and Yezagyo, and their conditions are said to be extremely bad. The Special Rapporteur notes that prison labour may only be imposed as a consequence of a conviction in a court of law. Allegations indicate that this condition is not respected. The harsh prison conditions, especially the inadequate health care, have allegedly led to the death of a number of prisoners in prison labour camps.

79. At the labour camp in Ywangan, Hanmyinmo Road, Sagaing Division, 400 prisoners reportedly died within a month. In Taungzun, Mopalin Quarry, Mon State, 30 per cent of the prisoners have reportedly died. It is said that 108 out of 530 prison inmates died from starvation, sickness and hard work during one year in Boke Pyin prison labour camp. About 500 prisoners are said to be kept at the 30-Mile labour camp, where they break rocks into pieces for the construction of the railway in Yebyu township.

80. The Special Rapporteur is also concerned about the case of U Pa Pa Lay, who is reportedly gravely ill in Myitkyina prison in Kachin State. U Pa Pa Lay and U Lu Zaw were reportedly transferred to a labour camp at Kyein Kran Ka near Myitkyina in early April 1996. They were forced to work with iron bars shackled across their legs, and had lost a considerable amount of weight. U Lu Zaw has been transferred from the labour camp to Katha prison, near Myitkyina in Kachin State. U Aung Soe and U Htwe were initially sent to a labour camp seven miles

from Myitkyina; in May 1996, they were reportedly moved to Sumprabom in northern Kachin State, where they were forced to break rocks.

81. 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. About 500 prisoners and about 1,000 civilians are said to be kept as labourers at the 30-Mile labour camp. The prisoners break rocks into pieces for the construction of the railway in Yebyu township. According to reports of the villagers, about 40 of the prisoners working on the Ye-Tavoy railway have died during construction work. Only some of the sick or injured prisoners are reportedly taken to the prison hospital. Also prisoners from Zin Bar camp, where about 400 prisoners are reportedly detained, are said to have participated in the building of the Ye-Tavoy railway in 1995.

82. Freedom of expression is denied in Myanmar prisons. Prisoners are reportedly denied reading and writing material. One prisoner, who was found with a piece of paper, was allegedly placed in shackles in a "police dog cell", for one month. Prisoners suspected of having sent letters with allegations of ill-treatment and poor conditions to the former Special Rapporteur, Professor Yokota, have reportedly been ill treated since November 1995 in Insein prison. On 28 March 1996, 20 prisoners implicated in the drafting of the letter, as well as in the hiding of three radio sets and distributing a clandestine newspaper within the prison, were allegedly tried and given additional sentences of 5 to 7 years. Among them were newspaper editor Win Tin and editors of the Bay Bhuhlwe magazine, Myo Myint Nyein and Sein Hlaing. Zaw Myo Aung, General-Secretary of Ma Ka Tha Pha, the National Students' Organization, was reportedly sentenced to three months solitary confinement in a "police dog cell" in Insein prison for breaking prison rules, the reason being a dispute on philosophy with another prisoner held after 9 p.m. and the fact that he said that "he was not afraid to tell the truth to any one even if he was a prison official", which was considered lack of respect for prison authorities.

F. Freedom of opinion

83. The freedom of thought, opinion and expression are embodied in articles 18 and 19 of the Universal Declaration of Human Rights. These three freedoms are obviously interlinked since freedom of expression is designed to give effect to the freedoms of thought and opinion.

84. The Special Rapporteur has found that freedom of expression in Myanmar is seriously restricted by several combined laws which are difficult to reconcile with

article 19 of the Universal Declaration on Human Rights. These laws affect not only freedom of expression but also freedom of information through any of the media.

85. The Myanmar media (television, written press and radio) continue to be subject to governmental censorship and are largely used as instruments to propagate governmental points of view.

86. Under the 1962 Printers' and Publishers' Registration Law, periodicals, magazines and films must be submitted to the "Press Scrutiny Board" prior to being printed or, in some cases, distributed. Authors, editors, publishers and distributors convicted for having transgressed its provisions face harsh penalties, which have been increased in June 1989 by SLORC Order 16/89 to a maximum of seven years' imprisonment for each infringement of the law and/or fines of 30,000 kyats.

87. Another law which restricts freedom of expression is the Myanmar Wireless Telegraphy Act. This law which was amended on 22 October 1995 (Amendment Law No. 15/95), stipulates that whoever possesses any wireless telegraphy apparatus without a licence shall be punishable with imprisonment for a term which may extend to three years or a fine which may extend to 30,000 kyats, or both. As mentioned in paragraph 27 above, Mr. James Leander Nichols, a former consular representative of some States, was arrested in early April for illegal possession of communications equipment (telephones and fax machines). He was sentenced to 3 years imprisonment on 18 May 1996 and died in custody on 22 June 1996.

88. Under the 1985 Video Law, all videos must also be submitted to the Video Censorship Board for scrutiny. Those involved in the making, copying or distribution of videos have been threatened with prison terms of up to three years under the Law. On 19 May 1996, U Win Htein was arrested for arranging a meeting with NLD member U PO Aye and his son Maung Htein Lin, who had made a videotape of the dry season paddy yield. This was interpreted as a disruption of a State agricultural project, agitation and spreading disinformation about the poor rice harvest. They were reportedly tried on 7 August 1996 and charged under section 5(e) of the 1950 Emergency Provisions Act for having spread disinformation about the rice harvest.

89. 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, first, criminalizing its exercise and, second, prosecuting "offenders".

90. It was reported that in May 1996, a monk named U Kaythara was arrested near Bandoola Park for writing on the palm of his hand that SLORC should have a dialogue with NLD and held a piece of paper also saying that SLORC should start a dialogue. It was further reported that his trial took place on 15 August and that he was sentenced to seven years imprisonment under section (5)j of the 1950 Emergency Provisions Act.

91. On 27 January 1996, in Yangon, six members of the Insein township branch of NLD were allegedly arrested by Military Intelligence Unit 6 for having written a poem commemorating the 1991 death in custody of U Tin Maung Win. The men were U Win Naing (32), U Khin Maung, U Thein Tun (56), lawyer U Maung Maung Lay (50), U Aung Myient (34) and U Htay Kywe (40). U Maung Maung Lay and U Aung Myint were released in February and U Khin Maung on an unknown date.

92. A group of four political activists were reportedly arrested for the possession of a critique of the National Convention by the Burma Lawyers' Council, which is an expatriate opposition group. Another group of three people were arrested for possessing letters about politics and materials from illegal organizations. Their dates of arrest and places of detention are unknown. All seven men, who are from Mandalay and Sagaing Division, were scheduled to appear in court on 19 June, but it is not known if they were charged and sentenced at that time.

93. On 23 September, the government press announced that nine students had been arrested for distributing leaflets outside Daw San Suu Kyi's house on charges of disrupting the nation's peace and tranquillity.

94. In Myanmar, the exercise of the freedom of opinion, particularly in political matters, is currently violated by the ban on the expression of any kind of political dissidence for the duration of the period of transition or drafting process of the new constitution at the National Convention, which, under the relevant circumstances, has no time-frame. The situation has given rise to widespread friction between the authorities and the various bodies of opinion seeking to establish a political position for themselves in the public life of Myanmar. In order to prevent any dialogue on the political situation which could take place outside the National Convention, the Myanmar authorities published, on 7 June 1996, a law called "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". Under this law, any organization or person who incites, demonstrates, delivers a speech, makes an oral or written statement and disseminates anything in order to "undermine the stability of the State, community peace and tranquillity and prevalence of law and order", "national reconsolidation" or "undermine, belittle and make people misunderstand

the functions being carried out by the National Convention ..." shall be subject to imprisonment for a term of a minimum of 5 years to a maximum of 20 years and may also be liable to a fine. This Law also forbids anyone or any organization to carry out, draft "the functions of the National Convention" or draft or disseminate the "Constitution of the State without lawful authorization".

G. Freedom of assembly and association

95. With regard to the issue of freedom of association, violations take two principal forms: restrictions on association of a political nature, and the right to form and join independent trade unions.

96. The repressive political climate in Myanmar since 1990 has made it virtually impossible for opposition parties to function and they have been severely hampered through constant pressure and arrests, with some members of Parliament in prison and some in exile. 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.

97. Since November 1995, when the NLD leaders withdrew from the National Convention, there has been increasing harassment of the party by SLORC, including arrests of dozens of party members over the last six months. The Special Rapporteur has already mentioned the cases of NLD activists who have been detained for possessing videotapes of Daw Aung San Suu Kyi's weekend speeches, others for a satire of SLORC in an NLD-sponsored performance, or others for writing a poem commemorating the death in custody of an NLD colleague.

98. This harassment and the arrests culminated during the third week of May 1996 when more than 200 NLD members, among whom many had been elected to the country's parliament in the May 1990 elections, were arrested by Myanmar authorities in order to prevent them from attending a meeting organized by NLD leaders in Daw Aung San Suu Kyi's house. The meeting was to take place from 26 to 29 May 1996 to mark the sixth anniversary of the NLD victory in the 1990 elections. The arrests have been widely seen as a pre-emptive attempt by SLORC to prevent the meeting from occurring. While most of the persons detained were released a few days later, the Centre for Human Rights has obtained the names of 27 persons who are believed to remain in custody but how many of the total of the detained persons have been freed cannot be confirmed. The planned NLD meeting took place from 26 to 28 May at the compound of Daw Aung San Suu Kyi; however, only 18 delegates were able to attend, as the rest had been detained. No

barricades were erected in front of the compound, and people were allowed to pass in and out freely.

99. On 23 May 1996, the United Nations High Commissioner for Human Rights met with the Permanent Representative of Myanmar to the United Nations at Geneva, expressing his concern over the arrest and detention of members of NLD. On 28 May 1996, following the meeting, the High Commissioner issued a press release in which he expressed his concern with regard to the recent arrest or detention of more than 100 members of the National League for Democracy. The High Commissioner drew the attention of the Ambassador to the fact that the freedom of expression was a basic and internationally recognized human right standard and expressed the hope that the people arrested or detained would be allowed to express freely their views and opinions and demonstrate peacefully. The High Commissioner therefore asked the Government of Myanmar to do its utmost to ensure the full enjoyment by all of the freedom of opinion, expression and association, and to keep him informed of any further developments.

100. The Government of Myanmar has not brought charges against the members of the group. 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 well. In a letter dated 23 May 1996 addressed by the Permanent Representative of the Union of Myanmar to the United Nations at Geneva for the attention of the Centre for Human Rights, the Government justified its action as follows:

"The threat of breakdown of law and order only brings about possibilities of the disruption of studies once more for students who are only now getting into the rhythm of an uninterrupted pursuance of education, the creation of anxiety in the minds of the populace, the hindrance of business and trade, as well as putting a check on the momentum of development projects undertaken by the Government. The Government is convinced that it has a firm duty that progress goes on without a break.

"With these possibilities of a breaking down of the peace and stability of the country in mind, and in order to prevent a repeat of the unrest that occurred in 1988, the Government of Myanmar has had to undertake what it sees as the best means of action for all the people and the country. Those who have been called in for questioning have not been arrested, nor have they been put into prisons or detention centres. They have instead been lodged at guest houses and given good treatment while the questioning is taking place".

101. The Special Rapporteur is aware that since the release of Daw Aung San Suu Kyi, she is allowed, with her colleagues, to make regular weekly appearances at

her home in Yangon and to speak to Myanmar citizens who gather there every weekend. However, the law prohibiting public gatherings of more than five people (Order 2/1988) remains in force. In recent weeks, it was reported that the military intelligence has started to arrest people attending Daw Aung San Suu Kyi weekend speeches delivered at her gate. On 13 June 1996, Maung San Hlaing, also known as Tin Hlaing or Eva, one of Daw Aung San Suu Kyi's aides, was arrested after he left her home compound for the first time in 20 days. Apparently, on 14 and 15 June, officers from Military Intelligence Unit 12 searched his family's home and confiscated videotapes and photographs.

102. According to information received by the Special Rapporteur, military intelligence personnel have used video recordings of the weekend meetings to identify participating civil servants or members of their families, and has then threatened them with dismissal if they continue to attend the meetings.

103. In connection with the meeting referred to in paragraph 98 above, on 28 September 1996, scuffles occurred between the crowd which had gathered outside Aung San Suu Kyi's compound, and Riot Control Forces, who responded by beatings and forcing about 100 people, at gun point, onto military trucks. Heavily armed police blocked the roads leading to Daw Aung San Suu Kyi's house, some of them reportedly entering the compound and taking away her maid, and the Government issued a statement ordering her not to leave her house for three days. Daw Aung San Suu Kyi thus effectively remained in house arrest. The signboards of the NLD headquarters had been taken down and replaced by signs saying that NLD was no longer in that place. Since no one was able to reach Aung San Suu Kyi's house, the usual weekend speeches could not take place.

104. On 27 September 1996, the United Nations High Commissioner for Human Rights met with the Permanent Representative of Myanmar to the United Nations at Geneva. He expressed his concern over the recent arrest or detention of the NLD members and his hope that the people arrested or detained would be allowed to express freely their views and opinions and demonstrate peacefully.

105. In a letter addressed, on 1 October 1996, by the Permanent Representative of the Union of Myanmar to the United Nations at Geneva for the attention of the Centre for Human Rights, the Government justified its action as follows:

"For stability of the State, community peace and tranquillity, security authorities curbed a bid by the NLD to hold a meeting with a gathering of people from 27 to 29 September 1996.

"On 27 and 28 September, security authorities called in temporarily for questioning some persons from the NLD in Yangon and some townships who

were going to assemble for the Congress. There are altogether 159 persons - 136 in Yangon and 23 in other townships. All of them were accommodated at guest houses temporarily, some of them are on their way back to their home from those guest houses. Assembling of people at Daw Suu Kyi's house on University Avenue and the Party's office of Shwegondine Road for the purpose of holding the Congress was restricted".

106. In a prelude to the September events, the Government, in a press conference held on 31 August, accused Daw Aung San Suu Kyi of "having secret contacts with illegal groups abroad that were trying to overthrow the Government, coordinating activities and accepting subversive materials from them". Colonel Kyaw Thein, a military intelligence official, added that "democratic freedoms, including political opposition, can cause instability" and that these activities "must be put on hold while Myanmar focuses on economic progress". On 25 September, in an article published by the State-run newspaper New Light on Myanmar, it was mentioned that Daw Aung San Suu Kyi would soon be charged with political crimes as she was working in conspiracy with former colonial powers and aiding exiled dissident groups in a plot to topple the Government. Earlier, military intelligence officers claimed to have charts and printed material proving Daw Aung San Suu Kyi's involvement with exiled dissident groups.

107. Aside from the weekly gatherings at Daw Aung San Suu Kyi's house, NLD has been subjected to intense and systematic harassment. It is reported that members of the party are constantly intimidated by local authorities as well as by armed forces personnel. After the withdrawal of the NLD delegates from the National Convention, several reports 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. Their houses, as well as Daw Aung San Suu Kyi's residential compound, are under constant surveillance.

108. Reports indicate that there were repeated attempts to restrict NLD leaders' movements. In March 1996, when NLD leaders, including Daw Aung San Suu Kyi, U Kyi Maung and U Win Tin, attempted to travel to Mandalay to give testimony at the trial of NLD members, they were told just before they arrived at the train station in Yangon that their railway carriage was broken. Most of the NLD leaders 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. Whenever members of NLD travel outside their residential areas, the houses where they will be residing are allegedly checked strictly to see if the owners have been prompt in reporting the visitors to the local authorities. Should the owner be a member of the civil services, he is asked not to allow members of NLD to stay in his house.

109. It is further reported that when a house is rented out to any political party, the landlord has to give a signed undertaking to the Township Law and Order Restoration Council agreeing to accept all the consequences that might follow - sealing of the premises, confiscation of the house and even arrest of the owner. On 3 March 1995, NLD applied to the Yangon Division General Elections Commission for permission to open its Yangon Division Office on a new site. There was no response from the Commission. The Yangon Division NLD made three further applications, on 9, 17 and 24 May 1995, to open its new office, but to date there has been no response of any kind.

110. Many members of political parties have been reportedly evicted from State-owned apartments where they had lived for many years. This was reportedly the case of U Win Tin and U Tin Latt of NLD, and Boh Aung Naing of the People's Volunteer Organization.

111. 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. Consequently, NLD offices have reportedly had to be moved to obscure locations. 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.

112. The harassment of NLD and the pressure under which its members are living have led some of them to resign. The resignation is publicized in the Government-controlled newspaper, New Light on Myanmar. In its edition of 2 July 1996, the following article was published:

"Dr. Kyin Thein of the National League for Democracy, Hluttaw representative elected at the Multi-party Democracy General Election from Yay Township Constituency-2, Mon State, submitted of his own volition to the Multiparty Democracy General Election Commission that he be permitted to resign as Pyithu Hluttaw representative-elect as he no longer wishes to do party politics; and U Sai Aung Than of the National League for Democracy, Hluttaw representative elected at the Multi-party Democracy General Election from Hsipaw Township Constituency-2, Shan State, also submitted of his own volition to the Commission that he be permitted to resign as Pyithu Hluttaw representative-elect as he has already resigned as a member and organizer of the National League for Democracy and no longer wishes to be involved in party politics.

"The Commission announces that Dr. Kyin Thein and U Saing Than have been permitted to resign from being representatives-elect of Yay Township

Constituency-2 and Hsipaw Township Constituency-2 respectively effective today under Section 11 (e) of the Pyithu Hluttaw Election Law".

113. With respect to the right to form and join trade unions, and although Myanmar had freely ratified ILO Convention No. 87 of 1948 concerning Freedom of Association and Protection of the Right to Organize in 1955, workers and employees in Myanmar do not enjoy the right to join organizations of their 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.

114. The Government of Myanmar announced that the Laws Scrutiny Central Body was reviewing a draft trade union law so as to protect the rights of workers and that, in the near future, the body of laws pertaining to freedom of association in Myanmar would be in line with Convention No. 87.

115. The Special Rapporteur has noted that, in June 1996, at the eighty-third session of the International Labour Conference in Geneva, the matter of freedom of association and protection of the right to organize in Myanmar had again been raised, for the ninth time since 1981, before the Committee on the Application of Standards. The Committee of Experts had commented on its application in Myanmar in 12 of its last 15 reports. Yet, ILO had not received any report from the Government, as requested by the Committee in a special paragraph of its report in 1995. To date, no developments whatsoever, either in law or in practice, had been conveyed to the Office of ILO. The necessary measures had not been taken in order to ensure workers the right, without prior authorization, to form organizations of their choice to effectively defend their interests, and to guarantee organizations of workers and employers the right to affiliate with international organizations of the same kind, as provided in articles 2, 5 and 6 of the Convention.

116. This year, after having taken note of the information provided by the Government of Myanmar and the subsequent discussion, the Committee deeply regretted the fact that very serious and persistent violations of the fundamental principles of the Convention were continuing in Myanmar. The Committee could only observe that there were no trade unions in the country whose objective was the defence and the promotion of the interests of the workers in the sense of the Convention. The Committee urgently requested the Government to take all necessary measures to guarantee the workers and the employers the right to set up the organization of their choice, without previous authorization, as well as the right of the organizations to become affiliated to international workers' and employers' organizations.

H. Freedom of movement and forced relocation

117. With regard to the freedom of movement inside the country, the Special Rapporteur notes that Myanmar 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. Furthermore, the Special Rapporteur has been informed 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, such as the Muslim population living in Rakhine State.

118. Leaving the country requires the possession of specific government authorization, which it is reportedly difficult to obtain. Application for exit visa and passport requires certificates of nationality and security clearances which many citizens either do not possess or cannot obtain. Passport applications are reviewed by a board and decisions appear to be dependent on political considerations. The Special Rapporteur has been informed that each time Myanmar citizens come back to their country, they have to return their passports to the authorities and a passport application should be submitted each time they want to travel outside the country.

119. Reports indicate that the Government has been responsible for the forced displacement of nearly 100,000 Myanmar citizens. Ethnic minorities living in places where armed opposition groups are active are relocated into areas under government control. The aim is to cut insurgents from local support and to prevent them having access to food supply. Relocated persons seem not to be given enough time or possibilities to bring all their possessions with them. Often livestock must be left behind and houses are burned by the army. The relocated persons are said to receive little or no compensation and cannot take much with them when they leave their houses. Contrary to promises given by the army before relocation, it appears that the relocation sites are not prepared for the arrival of large numbers of people, the ground is not cleared and there are inadequate water supplies. The relocated persons must reportedly buy their plots of land at the allocated areas, and people live in shelters or under other people's houses, as they cannot afford to build new houses.

120. Information received by the Special Rapporteur suggests that 98 villages in central Karen State received orders to relocate on 1 and 2 June 1996. It is, for example, reported that the villagers in the area between the Pon River and Salween River were told to move to relocation sites beside SLORC army camps at Sha

Daw and Ywathit by 7 June, and that after this date army troops would enter the villages and consider anyone remaining there as enemies.

121. Forced relocation has also been reported in central and southern Shan State since March 1996. In this area, almost every village away from towns and major roads has reportedly been forced to move, covering the entire region from Salween River westwards to Lai Kha and Möng Kung, and from Lang Ker and Mong Nai in the south northwards to the area west of the ruby mines at Mong Hsu.

122. Relocated persons are subject to restrictions of movement and a written pass is needed in order to leave the relocation site. A Shan farmer reported that those who have been relocated as of March 1995 in the site near Baw La Keh, Karen State, are not permitted to go further than 3 miles from the camp. Persons who have been relocated in a camp called Shadaw in June 1996 reported that they were given no food and that in order to leave the camp and return to their village to obtain food, they had to pay for a pass and could only be away for two days.

123. Villages resisting relocation are reportedly subject to harassment, looting, burning and torture. Reports suggest that by the end of October 1995, 17 villages in Bawgali area had been burned and livestock shot in an attempt to drive villagers into military-controlled areas. Hundreds of villagers were reportedly taken as porters, and others shot on sight.

124. Reports received indicate that large groups of relocated villagers have been used as forced labour on road construction or army projects. In April 1996, the population of Wan Jok village, consisting of about 125 households in Murng Kerng township, was allegedly forcibly relocated to a site on the main road north of Murng Kerng going to Tsipaw. Half of the households had to provide one person each for week-long shifts repairing the road to Tsipaw. A total of about 600 persons from different villages worked on the site, including old persons, women and children. Guards oversaw the work, and allegedly beat a man who went to the toilet without having asked for permission.

125. Another reason for forced displacement in the country is the need to make way for a great number of government infrastructure projects. In Yangon, Mandalay and other touristic cities such as Pagan, a number of inhabitants have been forced to move because the area where they lived would become a construction ground for a tourist project such as a hotel or in connection with the building of roads and other facilities. It was reported that the people displaced were not given appropriate compensation and were forced to live in satellite towns. It was reported that as part of a government project to extend the Yangon-Mandalay highway, many buildings close to the road have been torn down without compensation.

I. Forced labour

126. The Forced Labour Convention of 1930 (ILO Convention No. 29) requires the suppression of the use of forced or compulsory labour in all its forms. The Convention defines forced or compulsory labour as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". The loss of rights and privileges falls under the definition of penalty. Work of a purely military character is exempted from the provisions of the Convention. This concerns military service for the purpose of national defence, but not compulsory obligation to execute public works. The Convention also makes an exception for work or service required in genuine cases of emergency and forming part of normal civic obligations of citizens in a fully self-governing country. Another exception is prison labour. Prison labour may, however, only be imposed as a consequence of a conviction in a court of law and the person concerned shall be supervised and controlled by public authorities, not placed at the disposal of private individuals, companies and associations.

127. Although Myanmar had freely ratified ILO Convention No. 29 in 1955, the situation of forced labour in Myanmar has continued to worsen. In 1995, the ILO Governing Body stated that the Myanmar Village Act and the Towns Act were contrary to Convention No. 29 and urged the Government of Myanmar to amend both acts in order to bring them into line with the Convention, and to ensure that the formal repeal of the powers to impose compulsory labour be followed up in practice and that those who resort to coercion in the recruitment of labour be punished. It is to be recalled that both acts provided "for the exaction of labour and services, including portage service, under the menace of a penalty from residents who have not offered themselves voluntarily".

128. The Government of Myanmar announced that the process of amending the Village Act and the Towns Acts had started and that both acts were under review. In this regard, a board had been formed to monitor the progress made in reviewing the Village Act of 1908 and Towns Act of 1907. The Special Rapporteur notes that ever since 1967, the Myanmar Government has stated that the authorities no longer exercise the powers under the Village Act and the Towns Act, these being established under colonial rule, not corresponding to the country's new social order and obsolete and soon to be repealed. But, to date, both acts, which authorize forced labour under certain conditions, have still not been repealed and are therefore still into force.

129. The Special Rapporteur has noted that in June 1996, at the eighty-third session of the International Labour Conference in Geneva, the matter of forced labour in Myanmar had again been raised, for the third time since 1992, before the Committee on the Application of Standards. This year, after having taking note of the information provided by the Government of Myanmar and the subsequent discussion, the Committee was deeply concerned by the serious situation prevailing in Myanmar over many years where systematically recourse was had to forced labour. The Committee once again required the Government formally to abolish and urgently cancel the legal provisions and to abandon all practices that were contrary to the Convention. It urged the Government to prescribe truly dissuasive sanctions against all those having recourse to forced labour. The Committee hoped that the Government would, without further delay, take all necessary measures to abolish forced labour and to provide next year all necessary detailed information on concrete measures taken or envisaged to abolish in law and in practice the possibility of imposing compulsory labour. Moreover, the Committee decided to mention this case in its report as one of persistent failure to implement Convention No. 29 since, over a period of several years, there had been a serious and continued discrepancy in law and practices.

130. The Myanmar authorities continue to deny the existence of the practice of forced labour in the country. According to the argumentation of the Government of Myanmar, the concept of forced labour is not applicable to Myanmar, because the people of Myanmar are voluntarily participating in labour for community development, such as the construction of pagodas, monasteries, schools, bridges, roads, railways. During the last visit of the former Special Rapporteur, he was told in his meeting with Secretary One that "stories about forced labour were not true, ... the people of Myanmar were of the Buddhist faith and were willing to contribute voluntarily to the development projects" (E/CN.4/1996/65, para. 30). The same argumentation was confirmed to him by the Minister for National Planning and Economic Development. However, during the same visit, Professor Yozo Yokota received the text of two secret directives of SLORC which prohibit the practice of labour without payment. Directive No. 82 from 27 April 1995 concerns irrigation projects, while Directive No. 125 of 2 June 1995 concerns national development projects (*ibid.*, annexes II and III).

131. The existence of such directives suggests implicitly that the concept of voluntary contribution is not always valid since the people involved for a specific project should, in accordance with these directives, be remunerated for their contribution. Indeed, although welcoming the introduction of payment for workers in irrigation and development projects, the Special Rapporteur notes that if a person is obliged to perform a certain job for which he has not offered himself voluntarily, this constitutes forced labour, irrespective of whether he receives any payment or not. Furthermore, the Special Rapporteur notes that the content of

neither directive constitutes abrogation of any of the laws under the 1908 Village Act and the 1907 Towns Act. The Special Rapporteur notes that almost two years after their publication, these directives are still not public and therefore not accessible to persons whose rights are designed to be protected and who might be accused of breaking the law.

132. The Special Rapporteur continues to receive numerous reports from a wide variety of sources indicating that the practice of forced labour remains widespread in Myanmar. It has been alleged that civilians are forced to contribute non-compensated labour to certain large development projects. The projects concerned are said to include the building of roads, railways, bridges and gas pipelines. People living in villages near the various projects are said to be frequently forced to contribute labour under the threat of reprisals if they do not comply with the request. Numerous reports indicate that there is an especially extensive use of forced labour in several railway construction projects. Elderly persons, and sometimes children, have reportedly been seen working along the railway. According to reports received, the poor conditions at construction sites have led to accidents and illness, sometimes causing the death of several persons. The following are illustrative of reports which have been received by the Special Rapporteur.

133. The people of Ahphyauk town in Ayeyarwaddy Division have been made to work on an irrigation canal with a length of about 25 miles. Those who refused were fined 1,300 kyats or, if they could not pay, were prosecuted under section 12 of the Village Act and sentenced to one month's imprisonment from July to August 1996.

134. U Win Maung, from Hinthada in Ayeyarwaddy Division, was asked to contribute labour to build an embankment. Since he was too old, he sent his 15-year-old son. The authorities refused to accept the son. U Win Maung was thereupon taken to the police station, where he was subjected to severe beatings. He was hospitalized from 17 to 24 March. On 5 April, he lodged a complaint against the Sub-Inspector of Police, but no action was taken.

135. In May 1995, about 200 villagers were ordered by the township military authorities to go to Heinze Island for two weeks, where they cleared ground, constructed a helicopter pad, and built bamboo barracks and a wooden guest house. The workers received no wages, and were forced to pay for the petrol used in the boat which took them to the island. Villagers who refused to go were fined or arrested and sent to conflict areas to serve as porters for the military. Forced labour shifts in the area used to occur once a year. Now they occur three times a year and last much longer.

136. In August and September 1995, a Mon farmer from Ye Puy township was allegedly forced to build army buildings near the pipeline at On Bib Kwin and in Daik harbour. He was also repeatedly brought in to cut trees and clear bushes for the road between periods of forced portering.

137. The SLORC is building a two-floor museum for ancient Buddha images and other ancient objects in the town of Sittwe with the help of forced labour from the town. In autumn 1995, 200-300 persons per day, including children and elderly persons, have been forced to work on the building site, as well as children and elderly persons. Everyone has to work at least three times a month from 8 a.m. to 6 p.m. No one is paid for the work. The soldiers have beaten and kicked some workers badly.

138. According to a visitor, in Bassein, Irrawaddy Division, the Myanmar authorities wanted to exploit the beauty of Nga Saw beach northwest of Bassein, 20 miles north of Chaung Tha beach. They transferred a number of battalions there to prepare it for "Visit Myanmar Year". The local villagers had to construct a new road from Nga Saw to Thalatt Kwa, close to Bassein, the height of which being 10-12 feet and the width at least 30 feet, and to clear the ground for barracks and bungalows. The villagers were forced to pay for the fuel and operating costs of the bulldozers. They received no pay and no medical assistance when accidents occurred, and they had to bring their own food and supplies to the construction site.

139. In March 1996, villagers were forced to go to the village of Tu Kaw Koh to cut trees and carry timber to the sawmill in Kyet Paung village. Some villagers also had to work at the sawmill. The planks were then taken to a battalion headquarters, each village having to provide a certain number of carts with bullocks. Villagers also had to collect wood for the army brick factory, part of which was then sold back to the villagers by the soldiers.

140. The phenomenon of forced recruitment of civilians for the purpose of portering is reportedly still practised in Myanmar. Conditions for porters are described as brutal, with forced marches over mountains with heavy loads. According to the reports received, porters could be divided into several categories, i.e., operations porters, taken for the duration of a specific military operation; permanent or shift porters, provided by villages on written Myanmar Army orders: they work a set length of time and must be replaced by their village; emergency porters, demanded from villages for special tasks such as monthly rice delivery to troops; porters of opportunity - often farmers met on the road and kept on in case they are needed; punishment of civilians taken in urban or semi-urban areas as reprisals for minor infractions; convict porters, taken from prisons to frontline, and, paid porters, employed by more affluent villagers to accompany the army in

their stead. Porters are reported to have been rounded up by the military at home, at work places and even at schools to carry military material as well as supplies for the troops.

141. Porters are said to be ill-treated, given too little food and no medical care if they are ill or wounded. Porters attempting to escape are reportedly shot. Elderly persons, women and children have reportedly also been used as porters. Numerous reports indicate that the treatment of porters is brutal. The Special Rapporteur notes that porters are reportedly civilians forced to do work of a civilian nature, and portage does not therefore fall under the exception for work of a military character mentioned in article 2(2)(a) of the 1930 Convention. The conditions of portage in Myanmar can neither be considered "part of the normal civic obligations of the citizens of a fully self-governing country" that would qualify for exemption under article 2(2)(b) of the Convention.

142. In a letter addressed to the Assistant Secretary-General for Human Rights, on 13 February 1995 (E/CN.4/1995/148), the Myanmar Ambassador, Maung Aye, explained that porters are recruited only on certain conditions. According to section 8(1)(n) of the Village Act and section 7(1)(m) of the Towns Act, they must be unemployed, physically fit to work as porters and a reasonable amount of wages must be fixed and agreed to beforehand. The Government has further stated that they are equitably compensated in the event of injury. There are, however, several reports to suggest large-scale non-respect of even these criteria in practice.

143. On 10 December 1995 a group of soldiers reportedly arrived at Meh Bleh Wah Kee in the Day Law Pya area, arrested the 10 persons who did not flee, including at least one woman, in the fields where they were working. They were reportedly forced to carry very heavy army equipment across the Dawna mountains to Ber Kho on the other side. The trip took two days, during which they were followed by a village elder from Meh Bleh Wah Kee. On 13 December 1995, they were released and able to return with the village elder.

144. A Mon rubber planter was reportedly caught by a SLORC soldier in January 1996 and tied up with a rope. He was forced to carry army material such as guns and bullets for 17 days before he was able to run away.

145. In March 1996, a Mon fisherman from Taung Kun village in Ye township was allegedly forced to serve as a porter for the army. First, the village headman reportedly asked him to pay porter fees to SLORC in lieu of portering, but he did not even have enough food to eat at home and could not pay. SLORC soldiers coming to the village thereupon kicked him in the back with army boots until he coughed blood, and arrested him. He was serving as a porter for 15 days, but then

fled together with other men. The soldiers returned to the village to question the women about where the men were, and reportedly beat them.

V. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

146. 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, he is confident that much of the evidence brought to his attention speaks for itself in the light of the laws of Myanmar received by the Centre for Human Rights.

147. 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 insofar 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 may not 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 yet 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.

148. 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 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 constitute the necessary "steps towards the restoration for democracy, fully respecting the will of the people as expressed in the democratic elections held in 1990".

149. 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.

150. 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 for no other reason than an examination of the laws in place which show that such violations are legalized 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 NLD in her compound.

151. 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 that 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.

152. 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

153. 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.

(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 responsibility of the Government to refrain from all acts of intimidation, threats or reprisal against them or their families and to take 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. 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 confiscation of property, or forcing persons into acts of labour, portering, relocation or otherwise treating persons without respect to their dignity as human beings. When local villagers are hired for portering and other works, 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 in the public interest, proper consultation with the villagers should take place and appropriate compensation should be paid for those relocations; the extent of the compensation should be reviewable by independent courts.

(16) 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 in Myanmar law, including the new constitution to be drafted.

(17) 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.

ANNEX

Extracts from:

"The State Law and Order Restoration Council Declaration (Declaration No. 1/90) The Sixth Waxing Day of Wagaung, 1352 ME (27 July 1990)

12. Section 3 of the Pyithu Hluttaw Election Law provides that 'The Hluttaw shall be constituted with the representatives elected from the constituencies in accordance with this law'. The State Law and Order Restoration Council will take measures for summoning the Hluttaw in accordance with this provision. The Information Committee has from time to time explained that the Multi-Party Democracy General Election Commission, the parties which won seats in the election and the elected representatives should carry out measures which should be carried out in accordance with the law and rules.

15. There will be no necessity to clarify the fact that a political party cannot automatically get the three aspects of State Power - the legislative power, the executive power and the judicial power - just because a Pyithu Hluttaw has come into being and that they can only be obtained on the basis of a constitution ...

18. It can be seen from the statements issued that the desire of the majority of the political parties which contested in the Multi-Party Democracy General Elections is to draw up a new constitution. It will be seen that when the Constitution of 1947 was drawn up, matters concerning the national races were discussed only with the Shan, Kachin and Chin nationals at the Panglong Conference and that they were not discussed with the Mon and Rakhine nationals. Today, in Myanmar Naing-Ngan there are many national races who have awakened politically and it is obvious that it is especially necessary to draw up a firm constitution after soliciting their wishes and views.

19. As the State Law and Order Restoration Council is a military government, it exercises martial law. As such it exercises the following three aspects of State Power in governing Myanmar Naing-Ngan:

(a) Legislative power: only the State Law and Order Restoration Council has the right to exercise it.

(b) Executive power: The State Law and Order Restoration Council has the right to exercise it, however it has delegated this power to the Government, State/Division, Township Zone, Township and Ward/Village-tract Law and Order

Restoration councils at different levels and has caused administrative work to be carried out through collective leadership. This is a form of giving training to the service personnel so that they will be able to perform, by keeping themselves free from party politics, their departmental work under the government that will come into being according to the constitution.

(c) Judicial power: The State Law and Order Restoration Council has the right to exercise it. However, the Government has formed courts at different levels to adjudicate on ordinary criminal and civil cases so that they will have practical training when a constitution comes into being.

20. Consequently, under the present circumstances, the representatives elected by the people are those who have the responsibility to draw up the constitution of the future democratic State.

21. It is hereby declared that the State Law and Order Restoration Council will in no way accept the drawing up of a temporary constitution for forming a government to take over State Power and that it will take effective action if it is done so, and that in the interim period before a government is formed in accordance with a new firm constitution drawn up according to the desires and aspirations of the people, the State Law and Order Restoration Council (Tatmadaw) will defend and safeguard:

(a) The three main causes - such as the non-disintegration of the Union, non-disintegration of national solidarity and ensuring perpetuity of the sovereignty;

(b) Of the four main tasks mentioned in the State Law and Order Restoration Declaration No. 1/88 such as the prevalence of law and order, the rule of law, regional peace and tranquillity, ensuring safe and smooth transportation and communication, easing the food, clothing and shelter problems of the people and holding Multi-Party Democracy General Election, the first three main tasks (with the exception of the task of holding Multi-Party Democracy General Election);

(c) The task of bringing about the development of all the national races of Myanmar Naing-Ngan.

By order,

Sd. Khin Nyunt

Secretary - 1

The State Law and Order Restoration Council"

accordance with Commission on Human Rights resolution 1995/72 of 8 March 1995 and Economic and Social Commission decision 1995/283 of 25 July 1995

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I. INTRODUCTION

1. On 8 March 1995, at its fifty-first session, the Commission on Human Rights adopted without a vote resolution 1995/72 entitled "Situation of human rights in Myanmar". In paragraph 23 of the resolution, the Commission decided to extend for one year the mandate of the Special Rapporteur to establish or continue direct contacts with the Government and people of Myanmar, including political leaders deprived of their liberty, their families and their lawyers and requested the Special Rapporteur to report to the General Assembly at its fiftieth session and to the Commission on Human Rights at its fifty-second session. The present report, which constitutes a preliminary report by the Special Rapporteur, is being presented in accordance with that request. A final report will be submitted to the Commission on Human Rights at its fifty-second session.

2. In the same resolution, the Commission, *inter alia*: noted with particular concern that the electoral process initiated in Myanmar by the general elections of 27 May 1990 had not yet reached its conclusion; deplored the fact that political leaders remained deprived of their liberty, in particular elected representatives and Nobel Peace Prize laureate Daw Aung San Suu Kyi; expressed its grave concern at the violations of human rights, which remained extremely serious, 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, important restrictions on the freedoms of

expression and association, and the imposition of oppressive measures directed at ethnic and religious minority groups; and expressed its concern about the continuous problems created in neighbouring countries by the continuous flows of refugees from Myanmar. The Commission also expressed its grave concern over the offensive against the Karen National Union, Burmese student activists and other groups of the political opposition.

3. In addition to the above, the Commission took note of the fact that the Government of Myanmar: had acceded to the Geneva Conventions of 12 August 1949; had withdrawn several reservations it had entered concerning the Convention on the Rights of the Child; had observed cease-fire agreements with ethnic groups; had freed a certain number of political prisoners; and had received the Special Rapporteur for a visit to Myanmar.

4. On 25 July 1995, the Economic and Social Council, in its decision 1995/283, approved Commission resolution 1995/72.

5. The present preliminary report is submitted to the Secretary-General of the United Nations for dissemination to all States Members of the United Nations.

II. PROPOSED VISITS TO MYANMAR BY THE SPECIAL RAPPORTEUR

6. On 19 July 1995, following the lifting of restrictions against Daw Aung San Suu Kyi, the Special Rapporteur addressed the following letter to the Government of Myanmar requesting a visit to the country in order to meet with her:

"I have the honour to refer to Commission on Human Rights resolution 1995/72 of 8 March 1995, by which my mandate as Special Rapporteur on the situation of human rights in Myanmar was extended for a fourth year.

"By paragraph 23 of resolution 1995/72, the Commission called upon the Special Rapporteur 'to establish or continue direct contacts with the Government and people of Myanmar, including political leaders deprived of their liberty'. Paragraph 25 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 has free access to any person in Myanmar whom he may deem appropriate to meet in the performance of his mandate, including Daw Aung San Suu Kyi'.

"Accordingly, I would be most grateful to continue benefitting from the cooperation of your Excellency's Government so that I may provide the General Assembly and the Commission with an accurate and comprehensive assessment of the situation of economic, social, cultural, civil and political rights in Myanmar. In this regard, and given the recent decision of your Government to lift the restrictions placed on Ms. Aung San Suu Kyi, I would wish to visit your country to meet with her. On the same occasion, I would welcome the opportunity to have discussions with your Government's representatives. This exceptional mission will enhance the accuracy of my report to the General Assembly, in which all the recent developments could be reflected. Specifically, and keeping in mind the schedule of the General Assembly, I would hope that your Government would agree to my visit from 21 to 25 August.

"I wish to note in this connection that it would remain my intention to visit Myanmar for a lengthier period in October 1995 as I have done in each of the past few years. I will address this matter in greater detail in a future letter.

"Hoping that this would be acceptable to your Excellency's Government, let me also restate my commitment to accord full consideration of your Government's views and that, as such, I am at your entire disposal to continue our dialogue about the situation of human rights in Myanmar."

7. On 11 August 1995, the Special Rapporteur received a letter from the Permanent Representative of Myanmar to the United Nations Office at Geneva, in which he communicated his Government's reservation to such a visit:

"I have the honour to refer to your letter of 19 July 1995, addressed to His Excellency the Minister for Foreign Affairs of the Union of Myanmar, expressing your desire to visit Myanmar from 21 to 25 August 1995 in accordance with the provisions contained in resolution 1995/72 of the Commission on Human Rights.

"In this connection, I would like to inform you that the authorities concerned in Yangon have responded that it would be appropriate for you to journey to Myanmar at a later date as had been the case on previous occasions.

"I trust that you understand and plan to undertake your trip to Myanmar at a later date this year as originally proposed by you."

8. On 14 August 1995, the Special Rapporteur addressed the following letter to the Government of Myanmar, in which he reiterated his wish to undertake a short visit to the Union of Myanmar in the course of August:

"I have the honour to refer to a letter addressed to me on 11 August 1995 by your Permanent Representative in Geneva, Ambassador U Aye, by which you communicated your Government's reservation of my proposal to visit the Union of Myanmar between 21 and 25 August 1995. As Special Rapporteur on the situation of human rights in Myanmar, I would like to bring your Government's attention on the necessity for me to visit the Union of Myanmar during these specific dates.

"In the performance of my mandate, I have always endeavoured to establish direct contact with the Government and people of Myanmar. In this respect, I have never underestimated the importance of my having direct access to sources of information, including your Government's comments, in order to allow me fully and reliably to discharge my mandate in reporting to the States Members of the United Nations concerning the situation of human rights in Myanmar.

"In the past years, my requests to meet with Daw Aung San Suu Kyi were consistently denied, despite decisions of the Commission on Human Rights urging the Myanmar Government to cooperate fully. This year, following your Government's decision to lift the restriction to which Daw Aung San Suu Kyi has been subject since 1989, I believe that it is very important to meet with her as soon as possible to discuss topics pertaining to my mandate. Such a meeting is also expected by the international community and a summary of the discussions would therefore be published in my forthcoming report to the General Assembly.

"In keeping with my commitment to endeavour to accord full consideration to your Government's views on the substantive issues raised in my mandate, including both general and specific allegations of human rights violations by the Government of Myanmar, this visit could also be a unique opportunity for me to receive your Government's responses and explanations to the allegations of human rights violations received by me in the last year. These comments will be brought directly to the attention of the General Assembly during its forthcoming session.

"Keeping in mind the deadline for the submission of my interim report to the General Assembly (September 1995), a visit to Myanmar at the end of August may be the only opportunity to provide the international community with an accurate and comprehensive assessment of the situation of economic, social, cultural, civil and political rights in Myanmar. Indeed, this exceptional mission will strengthen the accuracy and the actuality of my report to the General Assembly. "In view of the above, I would appreciate the cooperation of your Government in reconsidering the dates proposed by your Government for my visit to Myanmar and to allow me to travel for five days as originally requested, i.e., 21 to 25 August 1995.

"In anticipation of receiving your Government's response to this request at its earliest convenience, and hoping that it may be positively considered, I remain, yours sincerely."

9. On 4 September 1995, observing that no reply was forthcoming regarding the Special Rapporteur's proposal to visit Myanmar in August, the Special Rapporteur addressed another letter to the Government of Myanmar suggesting other dates for his visit:

"I have the honour to refer to Commission on Human Rights resolution 1995/72 of 8 March 1995 by which my mandate as Special Rapporteur on the situation of human rights in Myanmar was extended for a fourth year. As you may be aware, at its most recent session the Economic and Social Council approved Commission resolution 1995/72 by its decision 1995/283 of 25 July 1995.

"In the performance of my mandate, I have always endeavoured to establish direct contact with the Government and people of Myanmar. In this respect, I have never underestimated the importance of my having direct access to sources of information, including your Government's comments, in order to allow me fully and reliably to discharge my mandate in reporting to the States Members of the United Nations concerning the situation of human rights in Myanmar.

"This year, following your Government's decision to lift the restriction to which Daw Aung San Suu Kyi has been subject since 1989, I have requested in a letter addressed to your Government on 19 July 1995 to undertake a short visit in August to meet with her. In a letter addressed to me on 11 August 1995 by your Permanent Representative in Geneva, Ambassador U Aye, you communicated your Government's reservation of my original proposal to visit Myanmar between 21 and 25 August 1995. Instead, your Government expressed its view that it would be more appropriate for me to postpone my visit to a later date.

"Accordingly, I would be most grateful to continue benefitting from the cooperation of your Excellency's Government so that I may provide the Commission and the General Assembly with an accurate and comprehensive assessment of the situation of economic, social, cultural, civil, and political rights in Myanmar in accordance with the provisions contained in Commission on Human Rights resolution 1995/72. In this regard, and in keeping with my commitment to endeavour to accord full consideration to your Government's views on the substantive issues raised in my mandate, including both general and specific allegations of human rights violations by the Government of Myanmar, I would wish to visit again your country. Specifically, and keeping in mind the deadline for the submission of my report to the Commission on Human Rights as well as your Government's suggestion, I would hope that your Government would

agree to my visit at about the same time as it had been the case during my previous visits; may I suggest from 8 to 17 October 1995.

"Hoping that this would be acceptable to your Excellency's Government, let me also restate my commitment to accord full consideration of your Government's views and that, as such, I am at your entire disposal to continue our dialogue about the situation of human rights in Myanmar."

10. 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.

11. Since the Special Rapporteur intends to visit Myanmar and Thailand in October, it is not feasible to reach conclusions for the present report on the many allegations on violations of human rights that have been reported to him. It is hoped that information gathered during the Special Rapporteur's visit, as well as continued dialogue with the Government of Myanmar, will facilitate conclusions to be included in the Special Rapporteur's comprehensive report to the Commission on Human Rights at its fifty-second session.

III. MEMORANDUM OF ALLEGATIONS TO THE GOVERNMENT OF MYANMAR

12. By a letter dated 5 September 1995 to the Minister for Foreign Affairs of Myanmar, the Special Rapporteur transmitted the following memorandum of allegations received by him of human rights violations reported to have occurred in Myanmar:

A. Summary or arbitrary execution

"1. As noted in his report to the Commission on Human Rights at its forty-ninth session (E/CN.4/1993/37), the Special Rapporteur welcomed the fact that all death sentences had been commuted to life imprisonment. This year the Special Rapporteur received no information of an explicit or systematic government policy encouraging summary killings.

"2. 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.

"3. In the minority-dominated areas where insurgencies have been taking place, many of the allegedly killed were civilians who were accused of either being insurgents or collaborating with insurgents. The following are examples of allegations received:

"(a) A 25-year-old Mon labourer who escaped from portering reported that, on 8 April 1995, soldiers belonging to Light Infantry Battalion No. 403, while coming from the Three Pagodas Pass, entered the Kayin village of Kamon and shot and killed four Kayin villagers on suspicion of being Kayin soldiers;

"(b) On 3 May 1995, a villager from Bee T'Kaa village was allegedly arrested and subsequently executed by soldiers belonging to Battalion No. 230, under the command of Kyaw Myint Taun, upon accusation of helping the Kayin National Liberation Army.

"4. 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. Two examples are as follows:

"(a) On 3 November 1994, a 25-year-old man was reportedly shot when fleeing from troops belonging to Infantry Battalion Nos. 62 and 31, under the command of Captain Aye Min, coming to arrest villagers for portering in Kawgo village, Mon state;

"(b) In March-April 1995, two porters, aged about 30 and 50 years respectively, were beaten to death by soldiers belonging to Battalion No. 104 for requesting water after supplies had been cut during a battle near Ka Neh Lay.

"5. The army is also reported to have executed civilians for failure to provide services demanded. These may include labour, food, money or arms. For example, at 8 p.m. on 11 September 1994, Local Infantry Battalion No. 33, Infantry Battalion No. 27, Company 1 (Battalion Commander Chit Thaung, Second-in-Command Zaw Myint and Company 1 Commander Captain Win Tint) reportedly entered Kyaun See village in Mon state and opened fire on villagers running away for fear of being conscripted as porters. Three men (aged 18, 21 and 23 years respectively) were reportedly arrested. At 4 a.m., on 12 September 1994, the 21-year-old man was reportedly stabbed with a knife in the throat. It was reported that the 23-year-old man's nose was cut off, and that he was stabbed in the eyes and both ears. The 18-year-old man's teeth and left arm were broken and the left side of his face was cut with a knife. It was reported that the three men died in custody.

"6. The Special Rapporteur would appreciate receiving information describing any investigations into the above allegations undertaken by the Government. Please

detail any steps taken internally by the military or by the civilian authorities, legal or otherwise, to prevent or curtail the occurrence of extra-judicial executions in contravention of article 3 of the Universal Declaration of Human Rights and article 3 common to the Four Geneva Conventions of 12 August 1949. Please indicate whether any military personnel have been tried and sentenced, dismissed from duty or otherwise sanctioned for their part in any verified violations; whether the Code of Criminal Procedure provides for sanctions for these violations, what remedies it may provide for the relatives of the victims and if any such petitions have been brought and to what effect.

B. Arbitrary arrest and detention

"7. The Government of Myanmar continued to release political prisoners in 1995, although the exact numbers could not be verified. According to information provided by the Government of Myanmar, 31 detainees were released from various jails on 15 March 1995 as a gesture honouring the Golden Jubilee Armed Forces Day. The Special Rapporteur welcomed this decision and on 24 March 1995 addressed the following letter to the Minister for Foreign Affairs of Myanmar:

'In my capacity as Special Rapporteur, I welcome the decision taken by the Myanmar authorities to release, on 15 March 1995, 31 detainees from various centres of detention in Myanmar. I am particularly pleased to note that among these detainees were two prominent political party leaders from the National League for Democracy (NLD), U Kyi Maung and U Tin Oo, whom I met in Insein Prison during my two previous visits to your country in 1993 and 1994.

'As Special Rapporteur, I believe that the release of these persons is an encouraging step towards national reconciliation and the democratization of Myanmar. In this connection, I trust that their release is without condition. I also hope that this recent decision will be followed in the near future by the unconditional release of all other persons who remain in detention on account of their opinions.'

"8. However, the Special Rapporteur has continued to receive reports from reliable sources indicating that Myanmar citizens (especially political party leaders) continue to be subject to restrictions on their liberty, especially freedoms of expression and association.

"9. According to several reliable sources, on 2 June 1995 the Myanmar authorities again arrested U Kyi Maung, a retired Colonel and leading spokesman for NLD,

who had been freed on 15 March 1995 after having been imprisoned for about five years. It is further reported that the Government of Myanmar released U Kyi Maung on condition that he would not become involved in any political activity or not contact journalists or foreign diplomats. It was reported that U Kyi Maung had been placed in detention shortly after he held talks with the British Ambassador to Myanmar. According to information received, U Kyi Maung was arrested with the following persons: U Tun Shwe (a former diplomat), U Thu Wai (former Chairman of the opposition Democracy Party, which no longer exists), Professor Than Hla (former Rector of Yangon University), U Aye Maung (friend of Professor Than Hla), U Chit Tun (former journalist for the Financial Times (London) and United Press International (UPI)) and Ma Theingi (former private secretary to Daw Aung San Suu Kyi). According to information received by the Special Rapporteur, Ma Theingi was released on 3 June, U Chit Tun was released shortly thereafter, and U Kyi Maung and the others were released on 8 June 1995.

"10. In mid-June 1995, U Tun Shwe (a veteran politician), U Thu Wai (former Chairman of the Democracy Party) and U Htwe Myint (Vice-Chairman of the Democracy Party) were rearrested and taken to Insein Prison where they are said to have been sentenced, during a summary trial, to seven years' imprisonment. All three had served prison terms of various duration in the past for their non-violent political activity. The charges on which they were convicted are not known, but it was reported that the three men met regularly with resident foreigners.

"11. In addition to the above allegations, the Special Rapporteur has received a list of 15 members of parliament (MPs) still detained as of July 1995. They are:

U Ohn Kyaing, MP-elect for Mandalay South-east-2

U Tin Htut, MP-elect for Einme-1

U Win Hlaing, MP-elect for Tatkon-2

U Saw Naing Naing, MP-elect for Pazundaung, Yangon

U Tin Aung Aung, MP-elect for Manalay North-west-1

Dr. Zaw Myint Aung, MP-elect for Amarapura-1

Dr. Myint Aung, MP-elect for Latha

Dr. Zaw Myint, MP-elect for Henzada-2

U Mya Win, MP-elect for Ingapu-1

U Hla Than, MP-elect for Coco Islands

U Tin Soe, MP-elect for Kyauktada

U Saw Win, MP-elect for Htilin

U Hla Tun, MP-elect for Kyimyindine, Yangon

U Khin Maung Swe (released on 1 May 1992, rearrested in August 1994)

U Sein Hla Oo (released on 1 May 1992; rearrested in August 1994)

"12. With regard to political leaders deprived of their liberty, the Special Rapporteur would appreciate the Government providing a copy of the list of persons in detention and of those released during the course of 1995, indicating which among these persons were/are active members of political parties and those who stood for the general elections of 1990.

"13. Allegedly because of the high level of intimidation discouraging open political activity, detention for public anti-government activities appears year after year to be less and less frequent. Nevertheless, the Special Rapporteur continues to receive allegations. For example, it has been alleged that on 20 February 1995, during a march celebrating the funeral of former Prime Minister U Nu, around 50 young activists were arrested. Among the group, the Special Rapporteur has received the names of the following persons: Moe Kalayar Oo, Aye Aye Moe, Yi Yi Tun and Cho Nwe Oo (all four being female students); Maung Maung Oo (a male student who was allegedly badly beaten when he was arrested by the military intelligence agents); Maung Maung Win (also known as Mye-Latt); Moe Maung Maung; and Moe Myat Thu (who is reportedly a student aged 26 who was a close associate of Daw Aung San Suu Kyi). Moe Myat Thu was reportedly arrested on 20 July 1989 and spent three years in Insein Prison before being released on 27 April 1992. It is alleged that he was badly beaten when he was arrested by the military intelligence agents. According to several sources, the above-mentioned persons may have chanted slogans during the funeral, but did not engage in any violent activity.

"14. Reports from various sources continue to describe how an unknown number of civilians have been arrested as suspected insurgents (or sympathizers thereto) and how they remain detained in the countryside prisons, especially in the regions of the country with predominantly non-Burman population. On 20 March 1995, the following persons were allegedly arrested at Tachilek: Nang Han Ny from Murng Koo village; Ai Mon from Nuam Kham; I Yi, along with two other unidentified men and two unidentified women. In addition, information has been

received concerning Ai Yi Long and Ai Long, who were reportedly arrested on 3 April 1995. It is reported that these persons are held at No. 24 Intelligence Camp near Ba Suk Village, where Battalion No. 331 of the State Law and Order Restoration Council's army is based. It is further reported that all those arrested were injured upon arrest. It is alleged that Ai Mon had one ear cut off in front of local people, that Ai Yi had his nose cut and that Nang Han Ny was beaten on the body. Ai Yi Lung and Ai Ling were said to be held at the local police station under suspicion of involvement with the Mong Tai Army. All those arrested are said to be civilians.

"15. The Special Rapporteur would appreciate the Government providing information regarding the detained persons described above, their places of detention, the formal charges lodged against them, the judicial guarantees accorded them before, during and after trial, the sentences received and whether these persons are allowed regular visits by their families and legal counsel. In addition, the Special Rapporteur would appreciate being informed of all steps taken by the Myanmar authorities to ensure the detained persons' rights to physical integrity.

"16. The Special Rapporteur welcomed with great satisfaction the announcement, made on 10 July 1995, that restrictions on Daw Aung San Suu Kyi had been lifted by the Government of Myanmar and that she had been released. Following this announcement, the Special Rapporteur addressed, on 11 July 1995, the following letter to the Minister for Foreign Affairs of the Union of Myanmar:

'I have the honour to address you in my capacity as Special Rapporteur on the situation of Human Rights in Myanmar, appointed by the Chairman of the Commission on Human Rights, pursuant to its resolution 1995/72. 'As Special Rapporteur, I welcome the announcement made by Myanmar authorities, on 10 July 1995, to release Daw Aung San Suu Kyi. In this connection, I trust that her release is without condition and will enable her fully to enjoy her liberty and personal freedom in accordance with international human rights standards.

'As Special Rapporteur, I believe that this decision will be very much welcomed and appreciated by the international community and could well form a basis for constructive dialogue and wider progress on the question of human rights in Myanmar. I also believe that the release of Daw Aung San Suu Kyi is a very positive and encouraging step towards national reconciliation and democratization in Myanmar.

'On this occasion, I would also like to express the hope that this recent decision will be followed in the near future by the unconditional release of all other persons who remain in detention on account of their opinions.'

"17. Since his appointment in 1992, the Special Rapporteur has followed very closely the case of Daw Aung San Suu Kyi. In this context, the Special Rapporteur has challenged the legal basis for the persistence of the limitations on her rights to freedom of movement, expression and other equally fundamental rights. At the same time, the Special Rapporteur has requested the Government of Myanmar to provide him with specific replies to his inquiries. However, he remains unconvinced by the Government's arguments in the responses provided. Therefore, in each of his reports and statements to the General Assembly and the Commission on Human Rights, he has recommended her release immediately and unconditionally. Prior to being informed about the announcement of her release, the Special Rapporteur addressed, on 10 July 1995, the following letter to the Minister for Foreign Affairs of Myanmar:

'I have the honour to address you in my capacity as Special Rapporteur on the situation of human rights in Myanmar, appointed by the Chairman of the Commission on Human Rights, pursuant to its resolution 1995/72.

'In keeping with my commitment to endeavour to accord full consideration to your Government's views on the substantive issues raised in my mandate, including both general and specific allegations of human rights violations by the Government of Myanmar, I would appreciate receiving your Government's response with regard to the ongoing detention of Daw Aung San Suu Kyi.

'In a letter dated 5 October 1994, I requested your Government to provide specific reasons, including reference to precise legal authority, for keeping Daw Aung San Suu Kyi under house arrest after 20 July 1994, and to indicate exactly when the Government intends to release her.

'In a note verbale dated 4 November 1994, your Government provided me with a detailed response concerning the specific legal authority for keeping Daw Aung San Suu Kyi under house arrest after 20 July 1994. According to the Myanmar legislation, in the 1975 "Law to safeguard the State against the dangers of those desiring to cause subversive acts", as amended in August 1991, it is stipulated under section 10 (b) that a person may be restrained for up to one year. The same law further stipulates in sections 13 and 14 the possibility to continue restraint for "a period not exceeding one year at a time up to a total of five years".

'In the case of Daw Aung San Suu Kyi, your Government has previously reported that she was restrained in her liberty and effectively placed under house arrest on 20 July 1989 for an initial period of one year according to section 10 (b) of the above-mentioned law. According to section 14 of the said law, the restraints on Daw Aung San Suu Kyi were continued year by year for the maximum of five years as stipulated in the law.

'In the light of the above, I understand that there will be no legal basis under Myanmar legislation for restraining Daw Aung San Suu Kyi after 20 July 1995, assuming her restraint was "necessary" under section 13 of the above-mentioned Law. If she is not released after this date, her detention would evidently contravene applicable Myanmar law, irrespective of any application of the minimum international standards securing liberty of person, in particular those embodied in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

'With due regard to my responsibilities, I appeal to your Government to ensure her release immediately and unconditionally. In my opinion, the release of Daw Aung San Suu Kyi would also be a positive and encouraging step towards national reconciliation and democratization in Myanmar.'

"18. The Special Rapporteur hopes that the decision to release Daw Aung San Suu Kyi will enable her to enjoy her liberty and personal freedom fully without any condition or restriction. In this connection, the Special Rapporteur would like to be informed if Daw Aung San Suu Kyi will be participating in the National Convention which, according to information received, will reconvene on 24 October 1995.

"19. The Special Rapporteur is concerned after the announcement made on 16 June 1995 by the International Committee of the Red Cross (ICRC) to withdraw from Myanmar because ICRC's 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) were rejected by the Myanmar authorities. The non-acceptance of ICRC's customary procedures for visits to places of detention followed by this well-recognized organization in all other countries where it conducts such activities is a negative step towards amelioration of conditions of detention in Myanmar, especially in so far as several reports allege ill treatment to be common in Myanmar's places of detention. Several sources indicate that political prisoners are generally not given access to proper medical treatment and are sometimes held in solitary confinement. In this light, the Special Rapporteur would appreciate receiving an indication from the Government of Myanmar as to whether it is prepared to resume its dialogue with ICRC and to reach an agreement with regard to the standards applied by ICRC for visits to places of detention.

C. Torture and cruel, inhuman or degrading treatment

"20. The Special Rapporteur has received numerous allegations, often in considerable detail and from different sources, describing civilians being subjected to torture or cruel, inhuman or degrading treatment by forces of the Myanmar military. The allegations include kickings and beatings with rifle butts or canes on the head and other parts of the body, causing head injuries, loss of teeth and/or broken bones. Other disturbing reported methods include submerging victims into water for long periods of time and pouring hot water over their bodies or into their noses. In some cases, victims alleged that they had suffered burns and the cutting of parts of their bodies (e.g., ears and tongue).

"21. According to reports received, torture and ill-treatment would seem to be a means for the Myanmar authorities to punish citizens who do not comply with their orders. It also seems to be a common method to extract confessions from civilians suspected of real or perceived anti-Government activities. The most vulnerable populations are detainees, village headmen (who are responsible to the authorities on behalf of their entire villages), porters in the course of their duties and civilians living in areas of insurgency. Women are said to be subjected to sexual abuses. It has also been reported that some victims of torture have to pay bribes to avoid such treatment.

"22. The following are some examples of the allegations received:

"(a) On 27 December 1994, Captain Htun Way from Battalion No. 376, Company 1, allegedly arrested a village headman in Plat Wa township, Chin state. According to the source, the headman was asked to provide information about persons having passed through his village. He was tied up when he could not give the information demanded. He was then repeatedly submerged into water and subsequently punched, beaten with a rifle butt and kicked. His nose and one rib were broken;

"(b) A former porter (aged 56) who served under Battalion No. 60 described how, on 8/9 February 1995, an officer from Battalion No. 48 allegedly poured hot water over a group of five porters at Baw Ser Ko for attempting to escape. According to the same source, another officer beat their legs 'like he was minced meat'. It was reported that the porters were also beaten around their waists and faces, and some of them, as a consequence, lost their teeth;

"(c) On 11 February 1995, two soldiers from Heavy Artillery No. 264, one of whom was an officer, allegedly put a jacket around a porter's neck and started pulling him along when he could not carry any more. He was beaten and kicked and had his walking stick broken over his back. He was abandoned on the road;

"(d) It was also reported that in the third week of December 1994, soldiers of Infantry Battalion No. 62 were ordered by their commander to torture a 50-year-old man in Hlainkhani village, Mon state, on suspicion of having let rebels stay on his land. He was repeatedly immersed in a water pool and beaten with rifle butts and combat boots;

"(e) On 1 January 1995, soldiers from Local Infantry Battalion No. 410 allegedly abducted a group of women of varying ages from Kaw Zar village, Mon state, and took them to Paukpinkwin village in order to rape them;

"(f) On 21 February 1995, soldiers of Infantry Battalion No. 62, under the command of Major Ohn Myint, reportedly entered Pee Setan village, Kayin

state. A 52-year-old man was arrested and had his wrists tied behind his back. Soldiers kicked his head (causing head injuries) and chest and beat him with a stick. They then walked on him and rolled bamboo up and down his shins. His head was forced back, a thin piece of cloth was put on his face, whereafter water was poured into his nose. His wife was arrested when the soldiers took him back to his house. Her wrists were tied behind her back and soldiers walked on her legs. Her face was then covered with plastic and water was poured into her nose. The wife was later released, but the husband was taken to another village, where he was released the following day against a ransom;

"(g) On 23 March 1995, at 2 a.m., troops from Local Infantry Battalion No. 62 allegedly came to Kwankhabawe village, Mon state, and arrested one woman and two men, accusing them of supporting the Mon troops. Their heads were covered with plastic bags, and water was poured over them. The torture went on for about an hour, after which the three victims were tied up and brought to Htonemine village, where another two villagers were arrested and accused of having been in regular contact with the Mon troops. These two villagers were subjected to the same form of torture as those from Kwankhabawe, after which all of them were taken to Klortsot village, where they were detained and reportedly tortured for four days. The victims were released against ransoms of 25,000 Kyats each;

"(h) On 22 August 1994, soldiers from Local Infantry Battalion No. 408 reportedly arrested a 56-year-old man in Ah Lae Sa Khan village, Ye Phyu township, and accused him of having contacts with rebels and passing information to them. His ears were cut off, his nails were driven through his hands and legs and his tongue was cut out. The victim died when nails were driven through the crown of his head;

"(i) On 10 January 1995, at Manerplaw, Sergeant Toe Toe of Local Infantry Battalion No. 205 allegedly beat and cut with his bayonet the flesh of the hands

of a 24-year-old porter trying to protect his friend who was too weak to porter. The friend, an 18-year-old man, was then executed by Sergeant Toe Toe, who stabbed him with a bayonnet after having tied his mouth with a cloth.

"23. The Special Rapporteur would appreciate the Government providing responses to the above allegations and indicating what steps have been undertaken to comply with the prohibition against these practices as encompassed by article 5 of the Universal Declaration of Human Rights, article 3 common to the four Geneva Conventions of 1949, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173 of 9 December 1988), and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX) of 9 December 1975). The Special Rapporteur would also appreciate being informed of any independent investigations that may have been carried out in regard to these allegations, whether any military or security personnel have been tried and sentenced, dismissed from duty or otherwise disciplined for their part in any established violation.

D. Forced labour

"24. The Myanmar Government reportedly made extensive use of various forms of forced, unpaid labour for a variety of development projects aimed at building the infrastructure of the country. Various sources have reported an especially extensive use of forced labour in relation to several completed or ongoing railway construction projects. Railway lines under present construction are, reportedly: the Pakokku-Gangaw-Kalemyo-Tamu Line, the Pakokku-Myaing-Gangaw-Kalay line and the Ye-Tavoy line. People are allegedly not only forced to contribute their labour to these and other projects, but also to contribute materials. No compensation is said to be paid by the Government. For example, in Zin Kalee area, it was reported that people were asked to bring 24 tins of rice, 100-150 kyats in cash, pick-axes, mattocks and hoes. Some people had to obtain these tools by selling their clothing and other properties. It was further reported that civilian trucks were conscripted and never paid for, and all workers had to spend their own money for food and transportation. The labourers also had to combine their resources to pay for the rental of bulldozers. In addition, those who were assigned to night-shift duty had to rely on their own resources for electricity.

"25. The Myanmar Government has proclaimed 1996 as 'Visit Myanmar Year'. Although this could be viewed as a general sign of the opening up of the country, human rights concerns have been expressed. Many of the measures that the

Government has taken to prepare the country for foreign tourists reportedly constitute violations of human rights. Forced labour has allegedly been used to restore some of the tourist sights (e.g., Mandalay Palace) and to upgrade the infrastructure (e.g., railways, roads and airports). For example, it is alleged that people working for 'The Mong Kwan Electric Power Plant' (which is being constructed approximately 10 miles south of Kengtung in Eastern Shan state) are expected to contribute as many as 60 days labour for the project throughout the year. It is further reported that they are also expected to provide their own food.

"26. In connection with the recent conflicts between the Myanmar Army and insurgent groups in Karen state, several sources have reported an increase of forced portering for the military. The Army has reportedly rounded up porters of all ethnic and religious backgrounds from villages and towns as far south as Mon state. The porters are said to have been taken from the streets, trains, movie theatres and even from their homes. The reports on portering allege physical abuse, appalling living conditions and arbitrary killings of porters who are unable to perform their tasks. For example, a former farmer from Grit Kote village, Pauk Kong Township, Pegu division, who allegedly escaped from portering, described how he had been arrested together with 10 other people from the same village by Local Infantry Battalion No. 66 on his way back from a video show. According to his testimony, there were about 200 porters when they started moving from Thaton, including 15 women. When they reached Papun, they were ordered to carry food supplies (60 kilograms of rice rations), munitions and artillery shells.

"27. The Special Rapporteur would appreciate receiving the Government's response to the above allegations indicating what measures have been taken to comply with the obligations under International Labour Organization (ILO) Convention No. 29 prohibiting the practice of forced portering and other forced labour and what rights of redress are available to victims of such practices.

E. Insurgent activities at the Thai/Myanmar border areas

"28. The Manerplaw area has long been a stronghold from where the Karen National Union (KNU) has conducted insurgent activities. Other opposition groups have reportedly also operated inside Myanmar from Manerplaw. In December 1994, the Myanmar Government reported that a breakaway faction of KNU had formed the Democratic Kayin Buddhist Organization (DKBO).

"29. Following the fall of Manerplaw and Kawmoora (both strongholds of KNU) in January and February 1995, several sources reported widespread human rights abuses, e.g., reprisals against civilians following insurgent ambushes, looting and

forced relocations. As a result of the unrest in the areas, over 10,000 persons belonging to the Karen minority reportedly fled over the Thai/Myanmar border. Preoccupied by this situation, the Special Rapporteur addressed, on 30 January 1995, the following letter to the Minister for Foreign Affairs of Myanmar:

'I would like to draw your attention to the situation which is currently prevailing along the Thai/Myanmar border. According to several reliable sources, the Myanmar Government has launched a largescale military offensive in the Kayeni area along large stretches of the Thai/Myanmar border. The sources claim that the offensive is directed at ethnic nationalities and student camps along the border, and that over 30,000 well-armed soldiers from the Myanmar Army are taking part in the offensive. The civilian population in the area is said to be fleeing and seeking refuge across the border. The Myanmar Army is said to be positioned immediately across the river from the refugee village Htoo Wah Lu. Refugees also fear that they will not be allowed to enter Thailand to escape the hostilities.

'These reports appear to contradict the statements made by your government representatives in Myanmar during my previous visits. I have understood that your Government is committed to the policy of strengthening national unity and solidarity and therefore is pursuing a policy of national reconciliation which seeks to return to the legal fold all minority groups with which the Government is presently in conflict. As a first step towards national reconciliation, I have also understood that your Government is seeking to obtain peaceful settlements through negotiated cease-fires.

'Given the above, you will understand my preoccupation with these reported incidents which would seem to constitute serious human rights violations against civilians and, in particular, an ethnic minority.'

"30. At the time of the armed conflict in the Manerplaw area, between the Myanmar Army and Karen armed groups, the Special Rapporteur issued a press release (HR/954 of 7 February 1994) expressing his concern that 'the prevailing situation might give rise to serious human rights violations affecting both the local population and captured members of Karen armed groups'. The Special Rapporteur was also 'concerned that vulnerable civilians, in particular women and children and the sick and wounded, may have special humanitarian needs'. He called upon the Government 'to resolve peacefully its difficulties with ethnic minorities and to take all appropriate measures to ensure respect for human rights and humanitarian obligations in this region'.

"31. Since 19 April 1995, DKBO, apparently accompanied by the Myanmar Army, has reportedly launched several attacks on Karen refugee camps located in Thailand in order to force the refugees to return to Myanmar. Numerous refugees

are said to have been killed, the material damage inflicted on the camps and also on nearby Thai villages is said to have been extensive and some refugees are reported to have been forcibly abducted to Myanmar. Several sources indicate that representatives of the Government of Myanmar regularly meet with DKBO leaders and that the Government has provided financial and military assistance to DKBO. The connection between the Myanmar Government and DKBO is not clear, but the Government reportedly admits to having assisted the Democratic Kayin Buddhist Army with logistical support. In this regard, the Special Rapporteur addressed the following letter on 29 May 1995 to the Minister for Foreign Affairs of Myanmar:

'In my capacity as Special Rapporteur, I would like to express my particular concern about the current situation along the Thai/Myanmar border. Since the fall of KNU bases at Manerplaw in January 1995 and following the split in KNU in December 1994, several reliable sources have reported that DKBO has committed widespread human rights abuses, e.g., reprisals against civilians following insurgent ambushes, looting and forced relocations. As a result, over 10,000 persons belonging to the Karen minority have reportedly fled over the Thai border. Some refugees are reported to have been forcibly abducted back to Myanmar.

'In a letter dated 13 February 1995 from the Permanent Representative of Myanmar to the United Nations Office at Geneva addressed to the Assistant Secretary-General for Human Rights, your Government acknowledges that the Tatmadaw provided necessary logistical support to DKBO.

'With due regard to my responsibilities, I appeal to your Government to use all the necessary means to ensure that DKBO ceases its attacks on refugees in Thailand and its reprisals against civilians in Myanmar, and that individuals abducted from refugee camps in Thailand are released. I also call upon your Government to protect and guarantee security and safety for the civilians who are returning either voluntarily or forcibly from Thailand to their country and also to investigate, prosecute and punish agents responsible for such violations.

'I look forward to receiving your Government's comments on these matters at its earliest convenience.'

"32. On 13 June 1995, the Minister for Foreign Affairs of Myanmar addressed the following letter to the Special Rapporteur:

'On behalf of the Minister for Foreign Affairs of Myanmar, I have the honour to refer to your letter of 29 May 1995, addressed to the Minister for Foreign Affairs of Myanmar, expressing your concern about the current situation along the Thai/Myanmar border.

'In this connection, I should like to respond to your letter and to apprise you of the true situation and recent events that have occurred in some of the so-called KNU refugee camps in Thailand, and in certain border areas of Kayin state of the Union of Myanmar.

'As you are fully aware, the discontent of those within KNU who wanted to live in peace and see the development of their region led to the formation of DKBO towards the end of 1994. When KNU forces still loyal to Bo Mya launched a massive offensive against DKBO, during which hundreds of people including civilians were killed, the local inhabitants requested assistance from the Myanmar Armed Forces.

'In connection with DKBO's sincere and genuine desire for peace and stability of the region, which falls in line with the objectives of the Government, the Myanmar Armed Forces provided necessary logistic support while DKBO launched its assault on KNU camps and units of the Armed Forces secured the rear with the aim of protecting nearby villages from attacks by KNU remnants.

'Since the fall of KNU camps along the border to DKBO forces, peace and security have been restored in these areas and Kayin nationals who were living in the "refugee" camps of KNU in Thailand are returning to Myanmar, in spite of attempts by KNU to hinder their return. The people in the camps are family members, relatives and sympathizers of KNU, DKBO and a few other armed groups. As of today, more than 10,000 persons have returned to Myanmar and more are expected to return.

'The people who have returned to Myanmar are given a warm welcome by officials and the local populace, and are settled systematically in their villages. All necessary assistance, such as shelter, food, clothing and medical care, are being provided to them. The main village, Kamamoung, is being upgraded to a township village level and Myaing-Gyi-ngu is being rebuilt as a model village. Amenities such as housing, police station, hospital and health clinics and primary schools are being developed. Steps are also being taken to alleviate poverty, such as help to the villagers in land cultivation and agriculture. Most importantly, the security of the returnees has been protected and consolidated by the authorities.

'Armed clashes have broken out at times between the forces of KNU and DKBO entering the camps, and preventing DKBO from taking relatives and families back to Myanmar peacefully.

'As the Government has not yet held any official peace talks with DKBO, and as DKBO still has yet to return to the legal fold, the Myanmar authorities have no control over DKBO, and are not responsible for their activities. The incidents that

have occurred recently at the KNU "refugee" camps and in certain areas of Kayin state arise from conflicts between the Kayin armed groups. The Government of Myanmar does not play any part in these matters.

'The Government of Myanmar cannot and should not be held responsible for the alleged human rights violations that occur beyond the control and jurisdiction of the Myanmar authorities and that are allegedly perpetrated by individuals belonging to an armed group over which it has no control.

'As such, the Government of Myanmar is unable to comprehend your concern about the current situation along the Thai/Myanmar border.'

"33. The Special Rapporteur would appreciate receiving from the Government indications about the situation currently prevailing along the Myanmar/Thai border, whether the Government of Myanmar has signed a peace agreement with DKBO and what is the status of peace talks between the State Law and Order Restoration Council (SLORC) and KNU. In pursuance of its policy to continue to extend its peace offer to those groups who join the legal fold, the Special Rapporteur would appreciate knowing if the New Mon State Party will be participating in the National Convention now that it has agreed to a cease-fire with SLORC.

F. The situation of women

"34. The Special Rapporteur addressed the question of violations of the rights of women in his reports of 17 February 1993 (E/CN.4/1993/37, paras. 77, 78, 95 and 96), 16 February 1994 (E/CN.4/1994/57, para. 49) and 28 October 1994 (A/49/594, para. 9 (14)).

"35. Traditionally, women in Myanmar appear to have enjoyed equal rights with men. This tradition enables women to participate equally in the development of the economy. Employment opportunities for women are said to be good, and it is reported that 40 per cent of the total labour force in Myanmar consists of women.

"36. With regard to human rights violations, it appears that women are generally treated less harshly than men. Some of the allegations received indicate, however, that women are not spared from torture, ill-treatment, arbitrary detention, summary execution, portering or other forced labour.

"37. The Special Rapporteur has continued to receive information from various sources describing sexual or sex-related violations committed by representatives of

the authorities against women. These include the undressing of women in public, touching breasts or sucking nipples, raping and gang-raping women individually or in groups. The rape of women serving in forced labour camps or as porters is said to be common. Some of the allegations received indicate that soldiers view rape as a right, and that sometimes it is encouraged by officers. It has also been alleged that women are sometimes singled out for portering or other forced labour in order to be raped. No consideration is reportedly being shown to the victim's marital status or condition of pregnancy. Soldiers are said to prefer young, unmarried girls. Some examples of allegations received are as follows:

"(a) In the evening of 25 September 1994, members of a joint military column of Local Infantry Battalion Nos. 206 and 208, under the command of Nyi Nyi Aung, were said to have intimidated a woman in Mi Ka Tit village, Kayin state, and ordered her to strip off her sarong and to uncover the lower part of her body;

"(b) On 1 January 1995, troops from Local Infantry Battalion No. 410 allegedly entered Ta Yoke Taung village, Ye township, and raped five women, one of whom was pregnant at the time;

"(c) In October 1994, the SLORC local council of Pong Kyun quarter, Tavoy, allegedly ordered a woman who was six months pregnant to contribute labour at the Zim Bar construction site in lieu of her sick husband. She was apparently assigned to dig an earthen pit. Other pregnant women were allegedly also contributing labour to the construction site, and some suffered miscarriages as a result. The women at the site were aged between 15 and 65 years.

"38. The Special Rapporteur would appreciate receiving a description of any investigations into these allegations undertaken by the Government, and information as to whether any military personnel have been tried and sentenced, dismissed from duty or otherwise sanctioned for their part in any verified violations. The Special Rapporteur would further appreciate knowing whether the Government of Myanmar intends to become a party to the Convention on the Elimination of All Forms of Discrimination against Women."

IV. RESPONSE OF THE GOVERNMENT OF MYANMAR TO THE MEMORANDUM OF THE SPECIAL RAPPOREUR

13. By a note verbale dated 4 October 1995, the Permanent Mission of Myanmar to the United Nations Office at Geneva transmitted the responses of the

Government of Myanmar to the summary of allegations received by the Special Rapporteur.

14. The following is the full text of the Government of Myanmar's response to the summary of allegations received by the Special Rapporteur:

Observations and rebuttals on the summary of allegations

A. Allegations of summary or arbitrary execution

C. Allegations of torture and cruel, inhuman or degrading treatment

"1. No instances of summary or arbitrary execution can be permitted in Myanmar and no provision is made in the law for such.

"2. Torture and other cruel, inhuman or degrading treatment are also illegal in Myanmar.

"3. Under section 330 of the Penal Code, whoever voluntarily causes hurt for the purpose of extorting confession shall be punished with imprisonment for a term which may extend to seven years and shall be liable to fine. Under section 24 of the Evidence Act, a confession made by an accused person is irrelevant in a criminal proceeding, if the making of confession appears to the court to have been caused by any inducement, threat or reward.

"4. Under section 43 of the Police Act, whoever tortures any detainee is liable to both imprisonment and fine. Under the Myanmar Police Manual, police officers of all ranks are rigorously required not to do anything that might tarnish the image of the police force, even by the slightest show of harshness or violence in the treatment of persons in custody. The maltreatment of defenceless persons will lead to the dismissal of the guilty police officer.

"5. Members of the Armed Forces have to observe strictly not only the Defence Services Act and the Defence Services Rules, but also the Civil and Criminal Procedures. A member of the Armed Forces who breaks the law is punished both by the military and civil courts. According to the Defence Services Act, murder and rape are crimes for which the maximum sentence of the death penalty can be meted out.

"6. It is therefore clear that torture and other cruel, inhuman or degrading treatment are prohibited by the relevant laws in Myanmar.

"7. In Myanmar, legal action is always taken and punishment meted out to those who are proved guilty of committing any crime. This also applies to members of the Security Forces. As in any country there exist some cases of members of the Armed Forces who break the law and legal action has been taken against them. In this regard, specific cases in which action was taken against those members of the Armed Forces who violated the law in various instances have been provided to the Special Rapporteur by the Government of Myanmar to help dispel misconception and false allegations that no action is taken against members of the Armed Forces who break the law.

"8. With regard to the examples of allegations contained in sections A and C of the summary of allegations, no reports from the civil or military have been received and no information about the alleged incidences has been received from the local populace. They are unfounded allegations originating from sources outside the country bearing ulterior political motives.

B. Allegations of arbitrary arrest and detention

"9. In 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, a 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.

"10. Provision is made under section 40 of the Prisons Act for the admission, at proper times and under proper restrictions, into every prison of persons with whom civil or unconvicted criminal prisoners may desire to communicate, care being taken that, so far as may be consistent with the interests of justice, prisoners under trial may see their duly qualified legal advisers.

"11. Provisions such as section 330 of the Penal Code, section 24 of the Evidence Act and section 43 of the Police Act are enacted to protect a person under detention from torture and inhuman treatment.

[Reference: paragraph 10]

"12. 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.

[Reference: paragraph 11]

"13. Legal action has been taken against certain representatives-elect for their infringement of the existing laws of the country. Information with regard to the cases of 15 individuals mentioned in the summary of allegations is provided as follows:

"(a) U Ohn Kyaing (Mandalay South-east-2)

"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';

"(b) 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';

"(c) U Win Hlaing (Tatkon-2), U Naing Naing (Pazundaung), U Mya Win (Ingapu-1) and U Hla Tun (Kyimyindine)

"Sentenced to 10 years' imprisonment on 30 April 1991 for their involvement in organizing a meeting for setting up an illegal parallel Government;

"(d) U Tin Aung Aung (Mandalay North-west-1), U Zaw Myint Aung (Amarapura-1), U Zaw Myint (Henzada-2) and U Hla Than (Cocos Islands)

"Sentenced to 25 years' imprisonment on 30 April 1991 for their involvement in organizing a meeting for setting up an illegal parallel Government;

"(e) Dr. Myint Aung (Latha)

"No person by the name of Dr. Myint Aung has been detained;

"(f) U Tin Soe (Kyauktada)

"Sentenced to two years' imprisonment and was fined 300 kyats on 25 August 1993 for criminal trespass into U Khin Maung 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;

"(g)U San Win (Htilin)

"Sentenced to 11 years' imprisonment on 23 August 1991 for misappropriation of teakwood which was to be supplied to the Thanlyin bridge project;

"(h)U Khin Maung Swe and U Sein Hla Oo

"Sentenced to seven years' imprisonment on 6 October 1994 for their collaboration with Dr. Khin Zaw Win in writing and distributing false news that would jeopardize the security of the State.

[Reference: paragraph 13]

"14. With regard to the allegation that 50 young activists were arrested at the funeral of former Prime Minister U Nu, only 9 persons, 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 taken into custody. 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. Yi Yi Tun and Maung Maung Win were not detained as alleged.

"15. 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.

[Reference: paragraph 19]

"16. The health of the prisoners serving sentences is taken care of by prison medical officers. When emergency and serious illnesses arise, arrangements are made for the patients to receive the necessary treatment at general or specialized hospitals. As such, allegations that certain prisoners are generally not given access to proper medical treatment is totally untrue.

"17. With regard to visits by ICRC to places of detention in Myanmar, negotiations have taken place with a view to signing, at an appropriate time, a

memorandum of understanding between the Government of Myanmar and ICRC. The Myanmar side has already intimated to ICRC its readiness to continue ongoing dialogue in this regard. ICRC maintains its regular contacts and cooperation with the Government and the Myanmar Red Cross Society through its regional office at New Delhi.

"18. As a party to the Geneva Conventions and as a nation respecting and adhering to the principles and objectives of the Red Cross Movement, Myanmar will continue to cooperate with ICRC in the future.

D. Allegations of forced labour

"19. Since Myanmar regained independence in 1948, various armed groups have been engaged in armed conflict against successive Governments. Basing themselves in remote and relatively inaccessible areas, these armed groups have terrorized and endangered the lives of ordinary citizens of the nation. In order to protect the lives and property of the civilians, and in order to maintain peace and security, the Armed Forces of Myanmar have had to launch military operations against the armed groups. Since the terrain inhabited by the armed groups is mountainous and thickly forested, many places are not accessible to motorized vehicles and the Armed Forces have had to recruit civilian labourers. The use of labourers in Myanmar has been practised since the time of colonial rule, during which time laws in connection with this were promulgated by the colonial rulers. Following independence, successive Governments have continued this practice according to the law.

"20. Recruitment and employment of civilian labourers are in accordance with the Village Act of 1908 and the Towns Act of 1907, and is based on the following three criteria:

"(a) They must be unemployed;

"(b) They must be physically fit;

"(c) They must be paid a reasonable amount of wages, fixed and agreed upon beforehand.

"21. The labourers must be paid from the time they leave their respective homes until they return, on completion of their duty. Apart from daily wages, they are entitled to receive rail and steamer travelling warrants or cash to cover the actual cost of transport between their homes and the operation area. The respective

military unit has the responsibility of providing accommodation, messing and medical cover for the recruited labourers. Daily wages must be commensurate with those prevailing in the area. They are never required to accompany the troops to the actual scene of battle, nor are they exposed to danger. In the unlikely event of loss of life or limb, they or their families are compensated in accordance with the Workmen's Compensation Act of 1923.

"22. In order to overcome the problem of having to recruit civilian labourers by the Armed Forces, amongst other reasons, the Government of Myanmar has been inviting armed groups to return to the legal fold, as part of the national reconciliation effort undertaken by the Government. As a result, 15 of the 16 armed groups have done so, and the problem of having to use recruited civilian labourers no longer exists in the areas where these armed groups once operated.

"23. The areas once inhabited by the armed groups that have returned to the legal fold now enjoy peace and can look forward to being part of the development activities that are taking place in other parts of the country. The Ministry for Progress of Border Areas and National Races and Development Affairs has been able to lay down and to implement programmes for the development of border areas and national races. To alleviate the socio-economic conditions of the people in the whole country, infrastructures for economic and social development in various sectors, such as transportation, agriculture, forestry, livestock breeding, energy, water supply, education and health are being developed and upgraded. Nowhere is this more needed than in the border areas where development in all fields has lagged behind owing to the presence of the armed groups.

"24. It has always been a tradition in Myanmar culture to donate labour in the building of pagodas, monasteries, roads and bridges and in the digging and clearing of wells, ponds, dams and canals. A belief exists that doing so leads to mental and physical well-being. Those who can afford to donate money do so while those who cannot, donate their labour. This is all part of community work that raises the standard of living, both materially and spiritually. As such, the local populace, members of the local military units, government servants, as well as members of the armed groups who have returned to the legal fold, participate enthusiastically and conscientiously. United Nations agencies, foreign and local non-governmental organizations are also involved in these projects. The local populace is already enjoying the benefits of their own endeavours.

"25. For their contribution towards community development, remuneration is given to the workers either on a piece-rate basis, or at prevailing wage rates. In some cases, the authorities disburse a lump sum of money to be used for the benefit of the whole community.

"26. As examples, the following references can be made to the various railroad projects of how much money the Government has spent for contributed labour. The following amounts of money have been paid out by the Government to the local villagers for their contribution of labour:

"(a) Tada U-Myaingthar sector: 1.4 million kyats;

"(b) Aungban-Pinlaung sector: K10 million for the villagers and K2,843,000 for the compensation of land taken up by the rail line;

"(c) Pinlaung-Loikaw sector: K10 million for the villagers and K912,000 for the compensation of land and houses taken up by the rail line;

"(d) Chaung U-MagyeeBoke sector and Pakokku-Minywa sector: K8.29 million;

"(e) Pakokku-Gangaw-Kalay sector: K30 million;

"(f) Shwenyaung-Namsan sector: K10.38 million;

"(g) Ye-Dawai sector: K12.46 million.

"27. A medical doctor was assigned to each of the sections by the Myanmar Railways during the construction of rail lines and the Chief Medical Officer toured the area regularly in order to provide health care for the local populace. In cases of injuries arising from the construction works, compensation is paid by the Myanmar Railways to the persons concerned.

"28. The development projects undertaken by the Government are solely for the benefit of the people of the region. It is the people who live in the area and who have contributed labour who directly enjoy the fruits of their endeavours.

"29. It would of course be ideal if the Government did not have to depend upon the labour contribution of the local populace in order to complete the projects in their respective areas. Lacking sufficient financial resources to complete independently projects that would bring development and progress to areas that would otherwise remain undeveloped, the Government has had to rely on the means available in order to improve the lives of the people. The Government does pay for contributed labour as far as its financial resources permit, and in accordance with prevailing local rates. If the Government did not try to raise the standard of living of the people with the means at its disposal, the people would remain victims of the circumstances in which they would otherwise be bound forever, unable to raise their standard of living.

"30. There are other projects taking place in Myanmar besides those pertaining to the improvement of infrastructure. Construction of hotels, business and commercial centres, and development of holiday resorts constitute some of the projects taken on as joint ventures, with either local or foreign companies. Work is undertaken by private construction companies who hire and employ workers of their choice. These companies operate within the bounds of a market economy and have to pay the workers competitively. As for the renovation of monuments of importance to Myanmar's cultural heritage, the work is so specialized that only highly skilled workers can be used. These workers command premium rates. Thus, allegations that forced labour is used in projects that promote tourism and international trade have no basis of truth.

"31. The ILO Committee of Experts has taken note of the conclusions and recommendations made by the Tripartite Committee set up by the Governing Body to examine the representation made by the International Confederation of Free Trade Unions (ICFTU), alleging non-observance by Myanmar of the Forced Labour Convention No. 29. The Committee of Experts has accordingly expressed the hope, with regard to public works projects as well as regarding portering services, that the powers vested in the authorities under the Village Act and the Towns Act will be repealed.

"32. The two laws in question, administered by the General Administration Department of the Ministry of Home Affairs, are among the list of laws that were first reviewed on 29 January 1995, and again on 16 May 1995, by a Board comprising the Deputy Minister for Labour as the Chairman, and with representatives from the Prime Minister's Office, the Ministry of Foreign Affairs, the Attorney-General's Office and the General Administration Department as its members.

"33. The Board found that the two laws were no longer in conformity with the prevailing conditions in the country, besides not being in line with the provisions of Convention No. 29. This finding is in agreement with the conclusion drawn by the Tripartite Committee set up by the Governing Body of ILO.

"34. Consequently, the Government of Myanmar, in compliance with the request from the Governing Body, 'to ensure that the relevant legislative texts, in particular, the Village Act and the Towns Act, are brought in line with the Convention and to ensure that formal repeal of powers to impose compulsory labour be followed up in practice and that those resorting to coercion in the recruitment of labour be punished', has started the process of amending those two laws.

"35. This development was presented to the Committee on the Application of Standards at the eighty-second session of the International Labour Conference by a member of the Myanmar delegation.

E. Insurgent activities at the Thai/Myanmar border areas

"36. The true situation and recent events that have occurred in some KNU refugee camps in Thailand and in certain border areas of Kayin state in Myanmar has been conveyed to the Special Rapporteur by the Minister for Foreign Affairs of Myanmar in letter No. 252/3-27/29 of 13 June 1995 of the Permanent Mission of Myanmar, an extract of which appeared in section E of the summary of allegations.

"37. The Government has not yet held any official peace talks with DKBO, and as DKBO has yet to return to the legal fold, the Myanmar authorities have no control over DKBO and are not responsible for its activities. The presence of government security forces along some sections of the eastern border are for the prevention of spill-over effects, and to provide security for local inhabitants who have requested such security assurances, as various factions of the Kayin armed groups continue to be in conflict with each other.

"38. The Government of Myanmar, in the spirit of national reconsolidation, continues to extend its peace offer to the remaining few to return to the legal fold and to work together with the people and the Government in building a peaceful and modern State.

F. The situation of women

"39. According to Myanmar customs and traditional culture, as well as under State constitutions adopted during consecutive eras, Myanmar women have always had equal rights with men. Existing laws of the country guarantee that all citizens, irrespective of race, religion, status, culture, place of birth or gender, are equal before the law.

"40. Moreover, specific provisions are made in some of the laws in order to protect women and children, and the following four laws in particular ensure the protection of the rights of women in Myanmar:

"(a) The Myanmar Buddhist Women's Special Marriage and Succession Act (1954);

"(b) The Suppression of Prostitution Act (1949);

"(c) The Myanmar Maternal and Child Welfare Association Law;

"(d) The Nursing and Maternity Law.

"41. Provisions are also included in the Penal Code to protect women against rape, illicit intercourse, torture, causing miscarriage without one's consent, seduction and enticement.

"42. There are also certain laws which have specific provisions for women labourers. There are provisions relating to the protection of modesty, prevention of hazards to life and accidents and the rights of women during confinement. Protection is given to all women prisoners.

"43. Women in Myanmar are not only protected by such laws and provisions, they are also protected by Myanmar traditions and customs, as well as customary law, religious beliefs and practices. Women's rights constitute human rights and Myanmar women fully enjoy fundamental rights.

"44. Myanmar people are well known for their culture, tolerance and compassion. In Myanmar society, men and women have a symbiotic relationship, mutually depending upon one another. They believe that they have equal and shared responsibilities towards the family and society. The men have a deep respect for women.

"45. The members of the Myanmar Armed Forces are but the sons and daughters of Myanmar nationals. They emerged from this society in which they were born and brought up. How can anyone from this society commit such outrageous crimes that were mentioned in the summary of allegations? Neither will such acts be knowingly condoned by persons in responsible positions.

"46. It is clear that these allegations are unfounded, emanating from anti-government sources and terrorist groups, with the aim of discrediting the Government as well as the Armed Forces of Myanmar. In the unlikely event that there is any truth in these allegations, it can only be repeated that unless and until the alleged victims bring their cases to the notice of the authorities concerned, nothing can be done to redress what they claim to have suffered."

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ANNEX

Interim 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 1994/85 and Economic and Social Council decision 1994/269

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I. INTRODUCTION

1. On 9 March 1994, at its fiftieth session, the Commission on Human Rights adopted without a vote resolution 1994/85 entitled "Situation of human rights in Myanmar". In paragraph 20 of the resolution the Commission decided "to extend for one year the mandate of the Special Rapporteur to establish or continue direct contacts with the Government and people of Myanmar, including political leaders deprived of their liberty, their families and their lawyers" and requested him "to report to the General Assembly at its forty-ninth session and to the Commission on Human Rights at its fifty-first session". The present report, which constitutes a preliminary report by the Special Rapporteur, is being presented in accordance with that request. A final report will be submitted to the Commission on Human Rights at its fifty-first session.

2. In resolution 1994/85, the Commission, inter alia: noted with particular concern that the electoral process initiated in Myanmar by the general elections of 27 May 1990 had yet to reach its conclusion; deplored the fact that political leaders

remained deprived of their liberty, in particular Nobel Peace Prize laureate Daw Aung San Suu Kyi; expressed its grave concern at the violations of human rights which remained extremely serious, including, in particular, the practice of torture, summary and arbitrary executions, forced labour, including forced portering, abuse of women, politically motivated arrests and detention, forced displacement, important restrictions on the freedoms of expression and association, and the imposition of oppressive measures directed at minority groups; and expressed its concern about the continuous problems created in neighbouring countries by the exodus of refugees from Myanmar.

3. In addition to the above, 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 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. On 25 July 1994, the Economic and Social Council, in its decision 1994/269, approved Commission resolution 1994/85.

II. CORRESPONDENCE WITH THE GOVERNMENT OF MYANMAR

5. On 10 August 1994, the Special Rapporteur addressed the following letter to the Minister for Foreign Affairs of the Union of Myanmar:

"I have the honour to refer to Commission on Human Rights resolution 1994/85 of 9 March 1994 by which my mandate as Special Rapporteur on the situation of human rights in Myanmar was extended for a third year. For your convenience, please find attached a copy of resolution 1994/85. As you may be aware, at its most recent session, the Economic and Social Council approved Commission resolution 1994/85 by its decision 1994/269 of 25 July 1994.

"By paragraph 20 of its resolution 1994/85, the Commission called upon the Special Rapporteur 'to establish or continue direct contacts with the Government and people of Myanmar, including political leaders deprived of their liberty'. Paragraph 21 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 has effectively free access to any person in Myanmar whom he may deem it appropriate to meet in the performance of his mandate, including Daw Aung San Suu Kyi'.

"Accordingly, I would be most grateful to continue benefiting from the cooperation of your Excellency's Government so that I may provide the Commission and the General Assembly with a comprehensive assessment of the situation of economic, social, cultural, civil and political rights in Myanmar. In this regard, I would wish to visit your country again. Specifically, and keeping in mind the schedule of the General Assembly, I would hope that your Government would agree to my visit at about the same time as last year; may I suggest from 7 to 16 November 1994? Hoping that this would be acceptable to your Excellency's Government, may I also follow upon the suggestion made to me last year in Yangon by one governmental official that, after spending the first days of my visit in Yangon, I might spend some days in the eastern part of your country towards the frontiers? On this last matter especially, I would certainly welcome your specific suggestions. On more general and substantive issues, let me also restate my commitment to endeavouring to accord full consideration to your Government's views and that, as such, I am at your disposal to continue our dialogue about the situation of human rights in Myanmar."

6. On 23 September 1994, the Minister for Foreign Affairs of the Union of Myanmar addressed the following letter to the Special Rapporteur:

"I have the honour to refer to your letter of 10 August 1994, regarding your proposed visit to Myanmar.

"I am pleased to inform you that your proposal is acceptable to the Government of Myanmar. It is indeed our pleasure to welcome you again this year to Myanmar as an expression of our continuing cooperation with the United Nations.

"I am sure that you will have the opportunity once again to observe at first hand the consensus reached for the writing of a firm and enduring Constitution in the national political process, as well as the achievements made in the economic development endeavours.

"I shall once again try my best to make your visit in Myanmar most productive and meaningful."

7. In a letter from the Permanent Representative of the Union of Myanmar to the United Nations Office at Geneva, which accompanied the above letter from the Minister for Foreign Affairs, the Special Rapporteur was informed that the proposed dates for his visit had been tentatively agreed to.

8. On 5 October 1994, the Special Rapporteur addressed the following letter to the Minister for Foreign Affairs of the Union of Myanmar:

"I have the honour to refer to your letter of 23 September 1994, by which you communicated your Government's acceptance of my proposal to visit the Union of Myanmar in November of this year. I am most appreciative of this opportunity to examine first-hand the situation of human rights in your country and to continue in person our dialogue on issues and developments in this regard.

"With respect to the specific itinerary to be followed during my visit to your country in November, I would welcome again the opportunity of meeting with the following officials: Secretary One of the State Law and Order Restoration Council; the Minister of Information; the Attorney-General; the Chief Justice of the Supreme Court; and, of course, your Excellency. In addition, I would welcome the opportunity of meeting with the following persons: leaders of various political parties participating in the National Convention, including the Chairman of the National League for Democracy; representatives of the Myanmar Red Cross Society; and, in fulfilment of paragraph 21 of Commission on Human Rights resolution 1994/85, Daw Aung San Suu Kyi. I would also appreciate the opportunity of visiting again Insein Prison with unrestricted access to all prisoners. Finally, I would greatly appreciate the opportunity of travelling to the eastern part of your country towards the frontiers where I would hope to meet with local authorities, visit a local prison, tour some development or construction sites, and meet with such persons as I may deem relevant to my mandate.

"In keeping with my commitment to endeavouring to accord full consideration to your Government's views on the substantive issues raised in my mandate, including both general and specific allegations of human rights violations by the Government of Myanmar, I submit herewith a summary of allegations received by me in the last year. In addition to the views of your Government concerning the issues raised in the attached summary of allegations, I would appreciate receiving your Government's responses to the following:

"1. Please specify the reasons, including reference to specific legal authority, for keeping Daw Aung San Suu Kyi under house arrest after 20 July 1994, and please indicate precisely when the Government intends to release her.

"2. Please describe in as much detail as possible the present status of Daw Aung San Suu Kyi's physical health.

"3. Please detail the Government's position with regard to maintaining dialogue with Daw Aung San Suu Kyi, indicating the time-frame the Government intends to follow in this regard.

"4. Please describe in as much detail as possible the progress made so far in the National Convention and the drafting of a new constitution, indicating the anticipated schedule for future meetings.

"5. Please indicate whether or not the Burmese version of the Universal Declaration of Human Rights has been distributed to all the delegates to the National Convention.

"In so far as I would like to bring your Government's views on the attached summary of allegations directly to the attention of the General Assembly during its present session, I would be grateful of receiving your Government's comments or specific responses by 31 October 1994. I would also appreciate receiving your Government's responses to the above queries as soon as possible.

"The continuing cooperation of the Government of Myanmar in the fulfilment of my mandate is most appreciated."

III. SUMMARY OF ALLEGATIONS RECEIVED

9. The following is the text of the summary of allegations which the Special Rapporteur submitted to the Government of Myanmar with his letter of 5 October 1994 as indicated above. With due regard to General Assembly resolutions 37/14 C of 16 November 1982 and 47/202 B of 22 December 1992 and Commission on Human Rights resolution 1993/94 of 11 March 1993, concerning, inter alia, the timely submission and circulation of reports, the Special Rapporteur reproduces below the text of his summary of allegations while awaiting receipt of the views of the Government of Myanmar. Immediately upon receipt of the views of the Government of Myanmar, the Special Rapporteur shall submit an addendum to the present report reproducing the aforementioned views in their entirety.

A. Extrajudicial, summary or arbitrary execution

"1. 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. 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, on 5 February 1994, Myanmar Army forces from Division No. 99, Battalion No. 84, reportedly arrested seven men

working in a field in Pa'an Township, Thaton District, Karen State; the men were accused of collaborating with the armed Karen insurgents and two of them were executed, while the others were held to ransom and subsequently freed. Many other similar situations include allegations of such severe torture that the victims died as a result. For example, in March 1994 in Pa'an Township, Thaton District, Karen State, soldiers from the Myanmar Army reportedly arrested a 13-year-old boy driving cattle outside his village; the boy was said to have been interrogated, tortured and killed by the Myanmar forces. Other examples of alleged extrajudicial killings include the following: on 10 March 1994, forces of Light Infantry Battalion No. 59 alleged arbitrarily executed Saw Soe Ghaz Htoo (aged 35 years) in Thay Baw village, Lu Thaw Township, Papun (Mudraw) District; on 18 March 1994, forces of Light Infantry Battalion No. 59 also alleged arbitrarily executed Saw Ko Pa Moo (aged 30 years) in Thu Daz village, Lu Thaw Township, Papun (Mudraw) District; on 20 April 1994, forces of Light Infantry Battalion No. 96 are alleged to have killed the villager Pa Kloh (aged 26 years) and wounded Saw er Ker (aged 20 years) in Paw Ghee Khee village, Thaton District; and on 10 May 1994, in Naw K'Toh village, Thaton District, two villagers (Kyaw Soe Puy, aged 32 years, and Saw Ganoo, aged 35 years) were said to have been arrested and executed by the forces of Light Infantry Battalion No. 76.

"2. Many of the reports from non-governmental sources have also described occasions where soldiers from the Myanmar Army have opened fire with light arms against civilians without any evident provocation. Such situations have frequently been reported in the process 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. In other situations, the Army is reported to have killed civilians who have disobeyed orders from the Army to relocate their homes, to supply goods or provide labour for little or no compensation.

"3. In addition to the above, Myanmar Army troops are reported to take revenge against nearby villages after being attacked by insurgent forces. These collective and arbitrary punishments are often said to include summary executions of civilians present in the area. On 15 December 1993, for example, following an insurgent ambush of Myanmar Army forces near Htee La Nay village, Hlaing Bwe Township, Pa'an District, Karen State, a villager working in a field was reportedly shot on sight. Under similar circumstances in May 1993, two young schoolboys were allegedly shot in Kyint Kyo village, Thaton Township. It has also been reported that, in the beginning of 1994, the regional commanders in Thaton District informed the civilian headmen of the district that, in the future, five villagers would be killed for every soldier who died. However, it is not known whether these reported threats have ever been carried out.

"4. In Shan State, different sources have alleged that, since December 1993, an offensive by the Myanmar Army against Khun Sa and the so-called Ming Tai Army has included air force strikes on civilian villages in the area of the insurgency. For example, on 10 July 1994, Ban Akhu village is reported to have been attacked and two boys are said to have been killed (aged 7 and 14 years) while five other persons were wounded. Whole villages are reported to have been destroyed by the Myanmar Armed Forces because of alleged cooperation with the Ming Tai Army. As in other cases, villagers trying to escape the military forces are said to have been shot on sight upon the suspicion of being insurgents or cooperating with them.

B. Arbitrary arrest and detention

"5. The Nobel Peace Prize winner, Daw Aung San Suu Kyi, is still being held under prolonged house detention without trial; on 20 July 1994, she passed her fifth anniversary 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 from throughout the world sent thousands of petitions to the United Nations in the last few months.

"6. Although some political prisoners have reportedly been released in the last year from centres of detention in Yangon, reports from different sources describe how an unknown number of civilians continue to be arrested as suspected insurgents (or sympathizers thereto) and how they remain detained in countryside prisons, especially in the regions of the country with predominantly non-Burman populations.

"7. Recently, the following new cases have been brought to the attention of the Special Rapporteur. On 27 May 1994, a Swiss national displayed a banner in front of Yangon City Hall, demanding the release of Daw Aung San Suu Kyi. Seven persons who were passively observing the protest in Yangon are reported to have been arrested by Myanmar intelligence officers.

"8. On 4 July 1994 at Yangon airport, members of Military Branch Three reportedly arrested Khin Zaw Win (a university student) when he tried to board a plane for Singapore. The report indicates that Khin Zaw Win was studying in Singapore and was writing a thesis on the political situation in Myanmar; he had been visiting Myanmar in order to obtain more material for his thesis. Recent reports say that he has been transferred from the Military Intelligence Centre to Insein Prison, and is now being detained in the same cell as a supporter of the

National League for Democracy. Khin Zaw Win has allegedly yet to have been charged with any offence.

"9. On 21 July 1994 in Plat Hon Pai section, Kwan Saya village, part of Halockhami refugee camp, soldiers from Infantry Battalion No. 62 of the Myanmar Army attacked the camp, destroying about 50 houses and causing some 500 Mon refugees (recently repatriated from Thailand) to flee again across the Thai border. The soldiers reportedly arrested 19 men, most of whom were camp leaders. The fate of those arrested remains unknown.

"10. On 4 or 5 August 1994 in Yangon, the following persons were reportedly arrested: 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 who had apparently worked for the United Nations Children's Fund (UNICEF) at Yangon); Daw San San Tin (a translator who had apparently been working occasionally for UNICEF); and Daw San San Nwe (a writer) and her daughter. It is not known where these persons are being detained, nor what (if any) charges have been brought against them. It is also reported that Khin Maung Swe, U Sein Hla Oo and Daw San San Nwe have all been previously imprisoned by the Government.

"11. Since 1993, many reports from different sources have alleged a widespread practice of arbitrary arrest and detention of persons for ransom, especially in the countryside. Civilians are said to have been rounded up in various public places in both urban and rural communities and held in detention until their relatives could supply a certain sum of money or goods; these detentions are often said to be maintained under the threat that the detainees will be taken as Army porters or be executed should the ransom not be paid.

"12. The information has also reached the Special Rapporteur that, on 15 July 1994 in Insein Prison, Thet Khine died four days after a failed suicide attempt. It has been alleged that the prison authorities placed Thet Khine in the prison's Medical Unit after his attempted suicide, choosing not to take him to a hospital facility outside the Prison; he died in the prison's Medical Unit. Thet Khine was arrested in 1989 and had been sentenced to 20 years' imprisonment together with other political leaders.

C. Torture and other cruel, inhuman or degrading treatment

"13. Numerous allegations, often in considerable detail, have been received from various sources alleging that forces 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 treatments and punishments. Such treatment seems to be routinely employed during the interrogation of persons who have been arrested or held on suspicion of real or perceived anti-government 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 forcing victims to consume large quantities of water or pouring hot liquids down victims noses or throats.

"14. The Special Rapporteur has continued to receive information from many sources indicating that rape occurs on a wide scale; reports of so-called gang rapes by entire groups of Myanmar military personnel are not uncommon. The victims are mostly reported to be women belonging to minority populations, although allegations of homosexual rape have also been received (including, e.g., the written testimony of a 13-year-old boy from Thaton Township, Thaton District, Karen State). Women serving as porters or otherwise as forced labourers are especially vulnerable and are often said to be victims of rape. It is also reported that rape is being used as a punishment for joining indigenous women's groups. Some of the reported rapes are said to have lead to death as a consequence of continuous rape or by infections caused by rape. Reports also describe situations where women who have resisted rape, or screamed during rape, have been killed. Furthermore, rape is also alleged to be used as a method of forcing women from ethnic minorities to marry soldiers from the Myanmar Army; the children of these marriages are subsequently considered to be of Burmese nationality.

"15. An especially severe incident which has been brought to the attention of the Special Rapporteur reportedly occurred on 2 August 1993 in Won Mon village, Won Tse village circle, Laikha Township in Southern Shan State, when Myanmar Army soldiers from Infantry Battalion No. 64 were said to have entered the village in search of a defector: they allegedly arrested 12 women (ages 15 to 35 years) and took them to a nearby farm for interrogation, whereupon the women were gang-raped.

D. Forced labour

"16. In his 15 August 1994 statement to the United Nations Subcommission on Prevention of Discrimination and Protection of Minorities at its forty-sixth session, Ambassador U Tin Kyaw Hlaing of the Permanent Mission of Myanmar

to the United Nations Office at Geneva stressed the following: 'In Myanmar, voluntary contribution of labour to build shrines, temples, roads, bridges, etc. is a long-established tradition going back centuries.' While the Special Rapporteur observes that uncoerced contribution of labour for the public good can hardly be described as a violation of human rights, it is to be noted that numerous reports from a wide variety of sources still characterize most of the contributed labour as being conducted under various threats of violations of personal integrity rights or property rights. In general, reports of such forced labour may be divided into three categories: forced portering, other forced labouring and different kinds of obligatory guard duty.

"17. As has been previously reported by the Special Rapporteur, much of the forced portering in Myanmar has occurred in connection with military campaigns against insurgent forces in various of the states of the Union of Myanmar. Although cease-fire talks between the Government and the main insurgent groups were agreed upon in late 1993 and early 1994, reports on forced portering for the Army still flow in from different sources. For example, in May 1994 the Myanmar Army is said to have arrested hundreds of persons in Tachilek in Shan State in order to use them as Army porters in the battle against Khun Sa and the Ming Tai Army. Porters were reported to have been forcibly recruited from all public places and also from private homes in the areas of Kalaw, Taunggui and Tachilek. Fighting between the Myanmar military and the Ming Tai Army is reported to have been intense with high casualty figures on both sides, including the deaths of many porters caught in the cross-fire. The Myanmar authorities have also reportedly failed to protect civilians from being forced to porter for the Ming Tai Army. Moreover, the Myanmar Army has allegedly regularly been taking internally displaced persons from a camp established by the Myanmar Army at Loi Hsa Htoong near the border with Thailand for purposes of portering military materiel as needed.

"18. Forced portering has been reported especially in the areas of conflict in the Karen, Karenni, Shan and Mon regions. Persons taken for portering are reported to have been rounded up by the military in various places, such as schools, buses and market places. Convicts are also said to be used as Army porters, especially at the front lines of the fighting. Reports indicate that porters are forced, under very poor conditions, to carry heavy loads of Army materiel and supplies for the troops. They are said to be given very small or spoiled food rations, little water and no medical care if ill or wounded. Large numbers of porters are reported to have died from ill-treatment, illness and malnutrition. Irrespective of their condition, those who can no longer respond to the heavy physical demands of portering are reportedly routinely abandoned without food, or simply executed on the spot. Porters who attempt to escape are reportedly shot.

"19. Allegations have also been made that elderly persons, women and children have been taken as Army porters. These persons are often said to be used as human shields in military operations.

"20. Of a similar nature to forced portering in support of military activities, the Special Rapporteur has received information alleging the use of civilian labour, under coercive measures, for other purposes. Reports indicate that villages near Army camps are obliged to supply daily workforces to assist with the construction of Army barracks, fences, land clearance, wood-cutting operations, agricultural projects and other activities in direct support of the Army camps.

"21. In connection with certain large development projects initiated by the Government of Myanmar, some of them with the assistance of foreign aid, it has been alleged that civilians have been forced to contribute non-recompensed labour. Such projects include the building of hospitals, roads, railways, gas pipelines, bridges, and fisheries. Reports indicate that people from villages in the areas of various projects are frequently obligated to contribute their labour and other resources, often under threat of violation of their personal integrity rights.

"22. Many reports of considerable detail have been received alleging a variety of violations of human rights on a massive scale in connection with the construction of a railway between the city of Ye in Southern Mon State and the city of Tavoy in Tenasserim (Taninthari) Division. The Government reportedly began construction of the railway in November 1993. According to reports received, each family from the villages along the line and also from surrounding areas is obliged to supply one worker for 15 days at a time in rotating shifts. Almost all the civilian families in Ye Township, Thanbyuzayat Township and Mudon Township of Mon State, as well as Yebyu Township, Tavoy Township, Launglon Township and Thayet Chaung Township of Tenasserim Division, are said to have been forced to contribute labour for the railway's construction. The workers are reportedly required to bring their own food, provide their own shelter, ensure their own health and medical needs, use their own tools and, in some cases, also supply materials for the construction of the railway. Allegations have also been made that the military supervising the construction of the railway demands money for the use of bulldozers available at construction sites; the fuel needed for use of the bulldozers is also said to be sold by the military. Despite articles in the official government press stating that wages have been paid to local persons participating in ground-levelling and other work associated with the construction of the railway (e.g., an article published in the 31 July 1994 edition of the New Light of Myanmar), reports received consistently estimate that over 100,000 persons have had to contribute their labour for the railway project without any compensation. Elderly persons, children and pregnant women are also reported to have been seen as labourers along the railway. Several persons are also reported to have died from

illness and accidents caused by poor conditions at construction sites. Forced labour is said to be concentrated in seven main control centres from Ye to Zimba, namely: Paukpingwin, Kinbun, Natkyizin, Paya Thone Su, Yapu, Kyanor and Zimba. Each of the aforementioned centres is alleged to control 7,000 to 8,000 forced labourers daily. The land along the railway's route is said to have been confiscated from its owners without compensation. Myanmar Army battalions (especially Light Infantry Battalion Nos. 343, 407, 408, 409 and 410, together with regular Infantry Battalion Nos. 61 and 104) are reported to be responsible for the construction of the railway. The railway is expected to be completed sometime during 1996.

"23. As other examples of forced labour allegedly being used in relation to major development projects, information has been received relating to a road project started in December 1993 between Bo Pyin and Lay Nya in Mergui/Tavoy District. Every family from the villages along the road have reportedly to participate in its construction by building 10 feet of the road. Forced labour is also said to be used in the construction of an international airport at Bassein and a new military airfield in Laboutta Township. In addition, many other smaller development projects in urban areas, such as the restoration of tourist sights in Mandalay, are reported to rely upon forced labour.

"24. Another form of forced labour which has been reported to the Special Rapporteur alleges the requirement of lengthy guard duty by civilians along roads and railways in many of the regions where insurgencies have been taking place. Reports indicate that civilians from nearby villages are often required to serve 24 hour guard duties without compensation and on threats of violations of their personal integrity rights. In addition, such 'guard duty' is often said to include contribution of physical labour for reparations to the roads and railroads. Furthermore, some reports allege that civilians used for such duties, in particular women and children, are also required to sweep roads for land-mines; it has been alleged that villagers have been forced to walk or ride in carts in front of military columns in order to 'detect' mines.

E. Violations of the freedom of movement

"25. Reports continue to be received alleging the forced relocation and internal displacement of persons on a wide scale: in the past six years, it has been estimated that over 1 million persons have been forcibly relocated, without compensation, to new towns, villages or relocation camps or have been internally displaced owing to armed conflict with various insurgent groups. In the regions of the country with predominantly non-Burman populations and where insurgencies

have been taking place, the inhabitants of small villages are still said to be forced to relocate to larger villages or to temporary relocation camps for purposes of enabling government forces better to control the populations. In those cases when the inhabitants of a village refuse to relocate, they are said to be first threatened in various ways prior to being forcibly evicted and having their homes destroyed.

"26. Forced relocations and evictions have also been reported in connection with major development projects. According to several non-governmental sources, the gas pipeline project from the Martaban Gulf to Thailand led to the forcible relocation of villages in Mergui/Tavoy District in December 1993: villagers around B'saw Law were allegedly forced to move to Kaleingung; villagers around Shwetapi were allegedly forced to move to Huan Gui; and villagers in the Baw Law Gui area were allegedly forced to move to Ye Byu. All the relocation sites are said to be along a government-controlled road near to the coast.

"27. In connection with the reports of forced relocations of persons' residences, information has been received by the Special Rapporteur that other restrictions are placed on the liberty of movement of relocated persons. For example, some persons are said to have been placed in 'relocation camps' which are surrounded by high fences and guarded by Government forces. Reports allege that a curfew from 0600 to 1800 hours is in effect in these camps, despite the fact that the official curfew order was lifted by the Government of Myanmar on 10 September 1992. Persons held in the relocation camps, or who are otherwise apparently required to remain within the confines of the villages to which they have been forcibly relocated, are reportedly prohibited from returning to tend to their farms or to collect property which they were forced to leave behind. In some places, persons needing to go outside a village or a camp (e.g., for purposes of work) are reported to need special permission, which is issued for one day at a time against a fee, from the local Army headquarters. In certain rural areas, persons are reportedly prohibited from spending the night in temporary shelters at their farms.

"28. While most reports concerning alleged violations of freedom of movement detail incidents of forced relocation, the Special Rapporteur has also received reports alleging forced assembly and participation in public meetings organized by the Government. Such reports have mostly related to meetings of the Union Solidarity Development Association organized since the beginning of 1994 in different parts of Myanmar (e.g., Toungoo, Monywa, Mandalay and Lokaw). People from the surrounding areas were reportedly forced to attend these meetings under various threats, such as deprivation of electricity or water supplies, monetary fines or physical abuse. Students are said to have been told by their teachers that if they failed to attend the rallies they would each receive 15 lashes of a cane. The Union Solidarity Development Association rally held on 7 February

1994 in Prome town in Pegu District is reported to have been preceded by chaos when large numbers of people who had been brought into a fenced compound the night before were not allowed to leave the compound for purposes of going to the toilet: in the hysteria which accompanied a fight between civilians and security forces, 2 men are reported to have been trampled to death while over 20 other people were said to have been wounded.

F. Violations of the right to property

"29. Many reports received by the Special Rapporteur allege various kinds of violations of property rights, especially by the Myanmar military forces. These reports include allegations of regular looting of villages in the countryside, the arbitrary and unlawful institution of a wide variety of fees for various purposes and the application of military orders against civilians requiring them to provide specified goods without adequate compensation.

"30. Myanmar Army troops are frequently reported to have entered villages and to have confiscated, without compensation, different kinds of valuables in the forms of non-perishable personal property, food supplies and livestock. Among the goods reportedly confiscated are many items which cannot be said to be necessary for purposes of providing public security, for example women's sarongs, jewellery, tape-recorders and alcohol.

"31. Various kinds of fees are said to be regularly demanded from both individuals and villages as a whole. The most widespread fee is said to be the 'porter fee' which is allegedly demanded each month from every family: in towns, the fees are reported to be about 100 kyats per month, while in the countryside they are reported to be between 200 and 400 kyats per month. Recent reports have also alleged the application of other kinds of fees, such as 'courier fees' and taxes on tools, carts and other goods. As noted above, villagers in the areas of development projects are also said to be forced to participate in the funding of these projects; fines are also reportedly assessed if a family is unable to supply the demanded amount of forced labour or a minimum amount of demanded goods. People who are unable to pay assessed fees or fines are reportedly threatened with being taken away to be used as Army porters or for other purposes of long term and heavy forced labour.

"32. Reports received in the last several months allege that the Myanmar Army has started to demand 'compensation' from local villagers for vehicles and other military property damaged by land-mines. Fines of 100,000 kyats are said to have been demanded from the village closest to the place of an incident, with 50,000

kyats being demanded from as many as 10 or 12 of the surrounding villages. For example, in Thaton Township a truck was reportedly destroyed by a land-mine on 29 January 1994: the two nearest villages, Tor Klor Khee and Tor Klor Po Khee, were said to have been fined 300,000 kyats by Myanmar Army Infantry Battalion No. 120. Village headmen in Thaton Township have also reportedly been forced to sign documents taking all responsibility for security in the area and to pay fines of 50,000 kyats if shelling by insurgent forces occurs or to pay fines of 100,000 kyats if Army trucks are damaged by land-mines.

"33. Other reported incidents of 'compensation' being required from villagers following loss of property by the military include reports of cases where owners of cattle which have been killed by Army land-mines close to Army camps have had to pay compensation for the destroyed land-mines. In one reported incident, villagers had to pay 'compensation' to members of the Armed forces for the bullets fired at them when, in fear of being taken as porters, the villagers tried to escape the soldiers.

"34. Farmers are also said to have been forced to sell parts of their crops to government-related agencies for prices well below market price, in addition to paying the fixed government tax on these crops. As a result, it has been reported that some farmers no longer cultivate their fields in order to avoid the constant confiscations of their crops or the obligations to sell parts of their crops well below market value. In addition, reports have also described how soldiers sometimes deliberately destroy rice paddies and other crop fields. For example, on 21 February 1994, Light Infantry Battalion No. 32, led by Captain Myo Lwin Thet Lwin, allegedly burned down the houses of four villagers in Taree Hta Gaun village in Kya In Seik Gyi Township, Dooplaya District, destroying in the process the stored crops of rice, betelnut and pepper.

"35. With respect to real property, reports indicate that Myanmar military forces frequently confiscate land in all parts of the country, without paying any compensation. Such confiscations have been reported in relation to the realization of development projects, the creation of State farms, or for the personal benefit of military commanders. For example, in Tacheilek, Shan State, it has been alleged that senior members of the Myanmar Army confiscated paddy fields, divided them into blocks and sold them back to farmers or to officers under their command.

G. The situation of refugees from Myanmar

"36. According to information received by the Special Rapporteur, approximately 75,000 refugees from Myanmar are estimated to live in camps inside Thailand

along the border with Myanmar. An unknown number of persons, possibly as many as 100,000, are said to be internally displaced on the Myanmar side of the border. These persons are reported to have fled their villages in fear of ill-treatment, forced portering, forced labouring or other human rights violations. Some 200,000 Muslim refugees from the northern Rakhine State are still in Bangladesh after fleeing their homes in Myanmar. Many of them reportedly allege that they were forcibly relocated or that their land was confiscated for government construction projects, prawn cultivation or timber projects during 1990-1992.

"37. Recently, thousands of Mon refugees were repatriated from Loh Loe in Thailand to Halockhami inside Myanmar. On 21 July 1994, the refugee camp inside Myanmar was reportedly attacked and partly destroyed by approximately 300 soldiers of the Myanmar Army's Infantry Battalion No. 62 under the command of Deputy Battalion Commander Lt. Col. Ohn Myint. Fifty refugees were said to have been taken hostage by the troops while all the Mon refugees (approximately 5,000 to 6,000 persons) in the camp fled back into Thailand. Although reports indicate that most of the hostages were later released (after allegedly having been used as human shields and porters), 19 of those taken hostage are still believed to be detained."

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**HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND
REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES**

Situation of human rights in Myanmar

Note by the Secretary-General

Addendum

The Secretary-General has the honour to transmit to the members of the General Assembly an addendum to the interim report prepared by Mr. Yozo Yokota, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar, in accordance with paragraph 20 of Commission on Human Rights resolution 1994/85 of 9 March 1994 and Economic and Social Council decision 1994/269 of 25 July 1994.

ANNEX

Addendum to the interim 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 1994/85 and Economic and Social Council decision 1994/269

1. The Special Rapporteur submitted to the Government of Myanmar, on 5 October 1994, a summary of allegations he had received concerning human rights violations in Myanmar (for the text, see A/49/594, para. 9). In his accompanying letter, the Special Rapporteur requested the Government of Myanmar's responses to five specific questions (see A/49/594, para. 8).
2. By note verbale dated 4 November 1994, the Permanent Mission of the Union of Myanmar to the United Nations Office at Geneva transmitted the responses of the Government of Myanmar to both the Special Rapporteur's summary of allegations received and the five specific questions put in his letter of 5 October 1994.
3. The following is the full text of the Government of Myanmar's response to the summary of allegations received by the Special Rapporteur:

OBSERVATIONS AND REBUTTALS ON THE SUMMARY OF ALLEGATIONS

"A. Extrajudicial, summary or arbitrary execution

"1. 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.

"2. With regard to the allegations against some members of the Tatmadaw (Myanmar Armed Forces) in Kayin State in the first paragraph under this heading, the events mentioned have not been found in either military or civilian reports. Neither have any reports of such events ever been received from the local populace.

"3. Since names such as 'Lu Thaw Township' and 'Mudraw District' that appear in the allegations are used only by Kayin armed groups, these allegations could only be the fabrications of the Kayin armed groups.

"4. In alleged cases of murder and rape there exist no specific details of which particular Tatmadaw member perpetrated rape against which particular Kayin woman. If there could be a precise and concrete evidence and proof, the guilty person will be uncovered and action will surely be taken in accordance with law.

"5. In Shan State, air strikes were made only on strongholds of the Ming Tai Army armed drug traffickers during the military operations against them by the Tatmadaw. The strikes were carried out only during the time of the operations in the months of May and June 1994 and there were no air strikes on 10 July 1994 as alleged.

"6. Within the area of operation, the reason that the populace have fled was not because they were forced to do so by the Tatmadaw. The villagers from around this area were sympathizers and supporters of Khun Sa and his group, and were actively involved in such activities as poppy cultivation, opium production and drug trafficking. When the Tatmadaw columns approached the area, they fled because they were afraid that legal action would be taken against them.

"7. Members of the Tatmadaw have to observe not only the Defence Services Act and the Defence Services Rules, but also the Civil and Criminal Procedures. A member of the Tatmadaw who breaks the law is punished by both the military and civil courts. According to the Defence Services Act, murder and rape are crimes for which the maximum sentence of the death penalty can be meted out.

B. Arbitrary arrest and detention

"8. 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. (Reference: paragraph 5)

"9. Daw Aung San Suu Kyi is restrained after 20 July 1994 in accordance with section 10 (b) and section 14 of the Law to Safeguard the State against the Dangers of Those Desiring to Cause Subversive Acts. Under section 10 (b) of the said law, the Central Body, consisting of the Minister for Home Affairs as Chairman and the Minister for Defence and the Minister for Foreign Affairs as members, may restrain a person against whom action is taken, up to one year, for safeguarding the State against danger. If it is necessary to continue the restraint of the person against whom action is taken, on the completion of one year, the Central Body may continue the restraint, with the prior sanction of the Council of Ministers, year by year, up to five years. Hence, a person against whom action is taken may be restrained for one year in accordance with section 10 (b) of the Law to Safeguard the State against the Dangers of Those Desiring to Cause Subversive Acts, and restraint may be continued against that person, year by year, up to five more years in accordance with section 14 of the said law.

(Reference: paragraph 7)

"10. The allegation that seven persons, who were passively observing a Swiss national displaying a banner in front of Yangon City Hall and demanding the release of Daw Aung San Suu Kyi on 27 May 1994 were reported to have been arrested, is not true. No one was arrested nor interrogated.

(Reference: paragraph 8)

"11. On 4 July 1994, security personnel of Yangon Airport caught Khin Zaw Win with seditious anti-government literature and computer disks and confidential data from the Ministry of Energy, together with 62 polished rubies and sapphires and undeclared foreign currency, which he was trying to smuggle out of the country. Since December 1992, Dr. Khin Zaw Win and his colleagues . U Khin Maung Swe, U Sein Hla Oo and Daw San San Nwe - met with foreign journalists and contacted diplomats of some foreign embassies to send news comments that were against or were critical of the Government in order to make foreign Governments misunderstand the Government of Myanmar. They also made frequent contacts

with a representative sent by the All-Burma Student Democratic Front terrorist group and the expatriate Sein Win group to exchange information and provide news and manuscripts for publications of these terrorist groups in the jungles. They also distributed seditious documents from the expatriate groups, some of which were seized from their houses by the authorities.

"12. Accordingly, the Mingaladon Township Court found Dr. Khin Zaw Win guilty of illegal acts:

"(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.

"13. 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 was sentenced on 6 October 1994 to two years' imprisonment with labour.

(Reference: paragraph 9)

"14. On 21 July 1994, a Tatmadaw column found 105 huts belonging to the family quarters of the Mon armed group near Halockhami village while performing duties for the prevalence of peace and security in that area. They cleared the huts and caught four members of the Mon armed group. On 22 July 1994, the Tatmadaw column returned to Thanbyuzayat. On the way back, they discovered about 1,000 timber logs felled by the Mon armed group, which were about to be smuggled out. At that site, seven civilians were held for questioning. They were later released and only the four members of the Mon armed group were detained. The Tatmadaw column only entered and cleared a camp of the family members of the Mon armed group, situated near the Halockhami Mon camp. The Tatmadaw column never entered the Halockhami camp. The column was just performing its duty for the prevalence of peace and security of the area.

(Reference: paragraph 10)

"15. The Mingaladon Township Court found U Khin Maung Swe, U Sein Hla Oo, Daw San San Nwe and her daughter Ma Myat Mo Mo Tun 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 their 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.

"16. 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.

"17. The above-mentioned persons had the right of defence and the right to have legal defence counsel for their cases.

"18. 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.

"19. When legal action was taken against Dr. Khin Zaw Win and his colleagues, Daw San San Tin was not included.

(Reference: paragraph 12)

"20. Thet Khine was a member of the 'Burma Communist Party' underground movement. He attempted to cause injury to himself while serving his sentence in Insein Prison. He was hospitalized, but did not die in Insein Prison on 15 July 1994 as alleged. He is still living.

"C. Torture and other cruel, inhuman or degrading treatment

"21. Torture and other cruel, inhuman or degrading treatment are illegal in the Union of Myanmar. Under section 330 of the Penal Code, whoever voluntarily causes hurt for the purpose of extorting confession shall be punished with imprisonment for a term which may extend to seven years and shall be liable to fine. Under section 24 of the Evidence Act, a confession made by an accused

person is irrelevant in a criminal proceeding, if the making of confession appears to the court to have been caused by any inducement, threat or reward.

"22. Under section 43 of the Police Act, whoever commits torture on any detainee is liable to both imprisonment and fine. Under the Myanmar Police Manual, police officers of all ranks are rigorously required not to do anything that might tarnish the image of the police force even with the slightest show of harshness or violence in the treatment of persons in custody. The maltreatment of defenceless persons will lead to the dismissal of the guilty police officer. It is, therefore, clear that torture and other cruel, inhuman or degrading treatment are prohibited by the relevant laws in Myanmar.

(Reference: Paragraph 15)

"23. There exist some members of Tatmadaw who break the law and actions have been taken against them. But with regard to the allegation that 12 women from Won Mon village and Won Tse village circle in Laikha Township were gang-raped by some Tatmadaw personnel, no reports from civil or military have been received and no information about the alleged incidence has been received from the local populace. Here again, no concrete proof has been provided.

D. Forced labour

"24. With regard to allegations of forced portering, the use of civilians as labourers in Myanmar has been practised since the time of the colonial rule, under the laws promulgated by the British. Following independence from the British, successive Governments have continued this practice according to the law.

"25. An abstract of the instructions concerning the use of civilian labourers by the Tatmadaw is provided herewith: Members of the Tatmadaw who are on active duty and who are unable to perform certain tasks can hire civilian labourers to assist them. The labourers must be paid from the time they leave their respective homes until they return on completion of their duty. Apart from the daily wages, they are entitled to receive rail and steamer travelling warrants or cash to cover the actual cost of transport to and from their homes and the operation area. The respective military unit has the responsibility of providing accommodation, messing, medical cover, and social welfare benefits for the hired labourers. Daily wages for these persons must be commensurate with those prevailing in the area.

"26. According to instructions issued by the Office of the Quartermaster General on 30 March 1993, a civilian labourer is to receive a daily wage of 20 kyats. In addition to the daily wage, the following daily rations are to be issued:

(a) Rice: 28 ounces;

(b) Cooking oil: 1.75 ticals

(c) Salt: 1.75 ticals

(d) Split peas: 5 ticals

(e) Saltfish: 5 ticals (in areas where saltfish is not available, four ounces of canned food may be substituted).

"27. Civilian labourers used in operation areas are looked after by the Tatmadaw. Besides giving out daily wages, the Tatmadaw provides medical care for sickness and injuries. A compensation equivalent to 36 times a month's earning is paid to the family on the death of a labourer. These matters are carried out systematically according to the Defence Services Council Order No.17/90 issued by the Office of the Quartermaster General on 3 September 1990.

"28. It can therefore be seen that the Tatmadaw is using civilian labourers or porters systematically, according to the law.

"29. The allegations that the Tatmadaw has recruited porters by force from big cities such as Tachileik, Kyaington and Taunggyi to use in the military offensive against the drug warlord Khun Sa are false.

"30. The reason why the Tatmadaw has to use such recruited civilian labourers is that there exist armed groups that terrorize and endanger the lives of Myanmar citizens. As the terrain of Myanmar is mountainous and thickly forested, many places are not accessible to vehicles. In order to overcome the difficulty, the State Law and Order Restoration Council has been inviting armed groups to return to the legal fold. As a result, 13 such groups have done so and the problem of having to use recruited civilian labourers or porters no longer exists in the areas once occupied by them. The porter problem continues to be present only in the Kayin, Karenni and Mon regions.

"31. For the United Nations to help in the elimination of the use of porters, it would be helpful to provide support for the regional development projects and anti-narcotic endeavours undertaken by the Government of Myanmar.

Furthermore, it is not helpful to the process of reconciliation, if certain outside organizations continue to provide support to the Kayin and Mon armed groups. The Government of Myanmar wishes to promote brotherhood among its peoples and solve all problems peacefully. Without outside influences complicating the issues, unfounded allegations will soon fade away.

"32. Regarding allegations of other forced labouring, it has always been a tradition in the Myanmar culture of donating labour in the building of pagodas, monasteries, roads and bridges. A belief persists that doing so leads to mental and physical well-being. Those who can afford to, donate money, while those who cannot, donate their labour. It is widely accepted that voluntary work for the good of the community is not tantamount to forced labour or a violation of human rights.

"33. There have been allegations of violation of human rights in connection with the construction of railway lines. Rail links are part of development projects that benefit the local populace and people take part enthusiastically and conscientiously in the construction works. As such, it cannot be construed as forced labour.

"34. Since the State Law and Order Restoration Council assumed State responsibilities, Myanma Railways has been building new railroads. From that time until December 1993, 294.06 miles of new railway lines have been laid down. The construction was divided into 13 sectors, of which 4 were undertaken by the workers of the Myanma Railways.

"35. The following amounts of money have been paid by the Government for the contributors of labour and for other community development projects of the respective areas:

(a) Tadar U Myo Thar sector: K6 lakh for Ngazun Township and K8 lakh for Tadar U Township;

(b) Aungban-Pinlaung sector: K100 lakh for the villagers and K28.43 lakh for compensation for land taken up by the railway line;

(c) Pinlaung-Loikaw sector: K100 lakh for the villagers and K9.12 lakh for compensation for land and houses taken up by the railway line;

(d) Chaung U-Magyee Bok sector and Pakokku-Minywa sector: K82.9 lakh for the villagers.

"36. A medical doctor was assigned to each of the sectors by the Myanma Railways during the construction of the railway lines and the Chief Medical Officer tours the area often in order to provide health care for the local populace.

"37. At present, there are three sectors of railway lines under construction. They are:

(a) Pakokku-Gangaw-Kalay sector (212.12 miles long): a total of K181.7 lakh has been paid out to the villagers of Pakokku subsector and K118.4 lakh for the Kalay subsector;

(b) Shwenyaung-Namhsan sector (153.62 miles long): K103.8 lakh has been paid out to the villagers;

(c) Ye-Dawai sector (100.08 miles long): K124.6 lakh has been paid out to the villagers.

"38. Health care has been provided as in the other areas.

"39. In case of injuries and casualties arising from the construction works, provisions have been made by the Myanma Railways for adequate monetary compensation.

"40. Regarding allegations about minors used as labourers along the railway line, these allegations were made in general with no reference to specific name, address or place. As such, no action can be taken. The Union of Myanmar acceded to the Convention on the Rights of the Child on 16 July 1991 and the Child Law was promulgated on 14 July 1993. A National Committee, State/Division and District Level Committees concerning the rights of the child have formed, and there have been no complaints about forced child labour as alleged.

"41. If a person is found guilty of forcing a child to work under life-threatening or dangerous conditions, or making a child engage in work that would result in contracting disease, the person will be sentenced to six months' imprisonment or a fine of K10,000 or both.

G. The situation of refugees from Myanmar

"42. The Buthidaung and Maungdaw areas in Rakhine State share a common border with Bangladesh and, from time to time, people from the Bangladesh side cross over and settle in these areas. They are drawn for reasons such as the spacious land, the presence of relatives, the fertile land for agriculture.

"43. In early 1992, the Government of Myanmar started construction projects for the development of the border areas. For some reason, these projects created concern among some in the regional community as well as members of the kalasoe armed groups which were based in the other country and who would infiltrate into Myanmar from time to time. Consequently, giving the reason of having to contribute labour for the construction projects, they started to cross over to the other side individually or in groups. About that time, news spread that relief goods were being distributed freely in the other country. Thus, starting from the second week of January 1992, whole families began to cross over. Also during 1991 when authorities concerned took normal measures throughout the country for the issuing of Citizen Identity Cards, some persons from these areas who dare not face scrutiny also fled over to the other side. At no time was there any forced relocation.

"44. The programme for voluntary repatriation to Myanmar of the area residents began in September 1992 after talks between the Myanmar and Bangladesh authorities. Starting from February 1994, a liaison office of the Office of the United Nations High Commissioner for Refugees (UNHCR) was opened in Yangon and, shortly after that, UNHCR field officers were on the ground to assist with the voluntary and safe repatriation. The process of receiving returnees from Bangladesh is going smoothly. There have been 17 high-level meetings of the Myanmar and Bangladesh authorities regarding the repatriation process. As at 5 October 1994, 81,212 people have returned out of their own will; 273,704 people have been screened by the Bangladesh authorities and as at 27 February 1994 the number screened and received by the Myanmar side was 135,316. The programme is targeted to be completed during 1995.

"45. The people living in camps inside Thailand along the border with Myanmar are the family members of the armed groups. They live in the areas along the border line where the armed groups operate and they make frequent cross-overs to the other side. When armed clashes occur near the border, these family members of the armed groups cross over the border and camp out temporarily on the other side.

"46. With regard to the alleged attack on the Halockhami Mon camp by a Tatmadaw column, the true events are as follows: On 21 July 1994, a Tatmadaw column sited and cleared 105 huts belonging to the family quarters of the Mon armed group. Four members of the Mon armed group were captured at the site. Upon questioning, it was revealed that there was a big camp with nearly 2,000 persons at the base of a hill to the north-west, and that there were about 40 members of the armed group on the hill. As the Tatmadaw column proceeded to that area, it clashed with the armed group. Further skirmishes took place on 22 July 1994. During these encounters, one member of the Tatmadaw gave his life

while two others were wounded. The Tatmadaw column did not move into the Halockhami Mon camp, but returned to Thanbyuzayat. On the way back, they discovered about 1,000 timber logs felled by the Mon armed group which were about to be smuggled out. At the site, seven civilians were held for questioning. They were later released, and only the four members of the Mon armed group were detained. The Tatmadaw column only entered and cleared a camp occupied by over 300 family members of the Mon armed group, situated near the Halockhami Mon camp. They never entered the Halockhami camp. The Tatmadaw column was only performing its duty for the peace and security of the area and there has never been any ill-treatment or human right violations against the area residents. The people living in this camp crossed over into the neighbouring country for reasons of their own.

"47. According to the Thai newspapers, it is learnt that about 5,000 Mons crossed over into Thailand. The so-called 'Mon refugees' returned to Myanmar from 9 to 15 September 1994 because of persuasion by the Thai authorities, and because of shortage of food supplies."

4. The following is the full text of the Government of Myanmar's response to the five specific questions the Special Rapporteur put to the Government of Myanmar in his letter dated 5 October 1994 (see A/49/594, para. 8):

"Responses to the queries made by the Special Rapporteur on the situation of human rights in Myanmar

(Response to question 1)

"1. The Myanmar authorities, in the statements made since action had to be taken against Daw Aung San Suu Kyi, made known the reasons for restraining her:

(a) That she 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 a 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 under section 10 (b) of the Law, and with the 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.

(Response to question 2)

"10. Regarding her physical well-being, other than being allowed to move outside her compound, she is free to live as she wishes within her property and enjoy all other privileges. She lives as she pleases, listens to the radio, watches television, reads, writes, exercises, sings and plays the piano and guitar. She has always had one maid to help her.

"11. She has no social difficulties. She can meet freely with her immediate family, and since the beginning of her restraint, her husband, Mr. Michael Aris, has visited her nine times, her elder son Alexander five times, and her younger son Kim eight times. She is allowed to write freely to her family and receive correspondence and parcels from them.

"12. She can meet freely with relatives who come to meet and live within her compound. She can also invite revered monks to her house to offer soon alms to them.

"13. Apart from giving Congressman Bill Richardson the opportunity to meet with Daw Aung San Suu Kyi two times when he last visited Myanmar, arrangements were made for her mother-in-law, Mrs. Evelyn Aris, on her arrival in Yangon on 28 October 1994, to spend a week together with Daw Aung San Suu Kyi.

"14. Daw Aung San Suu Kyi's health is in a good state.

(Response to question 3)

"15. The Chairman of the State Law and Order Restoration Council, Senior General Than Shwe, and First Secretary Lieutenant General Khin Nyunt, met with Daw Aung San Suu Kyi on 20 September 1994. Subsequently, another meeting took place between Lieutenant General Khin Nyunt and Daw Aung San Suu Kyi on 28 October 1994. Brigadier General Than Oo, the Judge Advocate General, and Brigadier General Tin Aye, the Inspector General of the Defence Services, were also present at the meeting. Such meetings are expected to take place again. Meetings with Daw Aung San Suu Kyi are regarded as purely an internal affair of Myanmar.

(Response to question 4)

"16. In its Declaration No.11/92 of 24 April 1992, the State Law and Order Restoration Council declared that it would convene a national convention within six months for the purpose of laying down basic principles to draft a new constitution, and that it would meet within two months with the leaders of the representatives elect of the political parties and independent representatives elect.

"17. A 15-member Steering Committee was formed on 28 May 1992, to coordinate with the representatives elect concerning the convening of a national convention. The coordinating meetings were held on 23 June, 30 June and 10 July 1992. Representatives from the National League for Democracy, Shan Nationalities League for Democracy, National Unity Party, Union Pa-O National Organization, Mro alias Khami National Solidarity Organization, Shan State Kokang Democratic Party, Lahu National Development Party and one independent representative attended these meetings, at the end of which a report on the type and number of delegates to attend the National Convention was submitted.

"18. The State Law and Order Restoration Council formed a National Convention Convening Commission according to Declaration No.13/92 of 2 October 1992. The duties and responsibilities of the Commission are as follows:

(a) To convene a national convention for laying down basic principles in order to draft a constitution;

(b) To ensure that the delegates keep to the following objectives during their discussions:

(i) Non-disintegration of the Union;

(ii) Non-disintegration of national unity;

- (iii) Perpetuation of national sovereignty;
- (iv) To establish and promote a genuine multi-party democratic system;
- (v) To uphold the noble values of justice, liberty and equality;
- (vi) For the Tatmadaw to take part in the national political leadership role of the State;

(c) To make arrangements for the delegates to be able to present their views, suggestions and proposals systematically.

"19. The Convening Commission for the National Convention, in order to be able to carry out its duties effectively, formed a National Convention Convening Work Committee and a Management Committee for Convening the National Convention.

"20. The National Convention Convening Commission, on the basis of the discussions at the coordinating meetings, decided that the following categories of representatives should attend the National Convention:

- (a) Representatives from political parties;
- (b) Representatives-elect;
- (c) Representatives of national racial groups;
- (d) Representatives of peasants;
- (e) Representatives of workers;
- (f) Representatives of the intelligentsia and technocrats;
- (g) Representatives of state service personnel;
- (h) Other invited personages.

"21. The State Law and Order Restoration Council issued Declaration No.14/92 on 5 November 1992, stating that the National Convention would be held on 9 January 1993.

"22. Fifteen chapters to be included in the constitution were agreed upon during the plenary session of the National Convention held from 9 January to 7 April 1993.

"23. One hundred and four principles which will serve as the basis for the new constitution were agreed upon during the plenary session of the National Convention held from 7 June to 16 September 1993.

"24. The plenary sessions held from 18 January to 9 April 1994 produced chapters on the State, the State structure and the Head of State.

"25. The plenary session reconvened on 2 September 1994, and the Chairman of the National Convention Convening Work Committee clarified basic facts and suggestions concerning the self-administered areas, legislature, executive branch and judiciary.

"26. At present, the delegates attending the National Convention are preparing papers reflecting their views and suggestions to submit to the National Convention Convening Work Committee.

"27. Once all the papers from the various delegate groups have been submitted to the National Convention Convening Work Committee, they will be presented at the plenary session. Subsequently, the details of the basic principles will be worked out."

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Agenda item 114 (c)**

**HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND
REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES**

Situation of human rights in Myanmar

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report prepared by Professor Yozo Yokota, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar, in accordance with paragraph 16 of the Commission on Human Rights resolution 1993/73 of 10 March 1993 and Economic and Social Council decision 1993/278 of 28 July 1993.

ANNEX

Interim report on the situation of human rights in Myanmar prepared by Professor Yozo Yokota, Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1993/73 and Economic and Social Council decision 1993/278

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I. INTRODUCTION

1. On 10 March 1993, at its forty-ninth session, the Commission on Human Rights adopted resolution 1993/73 entitled "Situation of human rights in Myanmar" without a vote. In paragraph 16 of the resolution, the Commission decided to extend for one year the mandate of the Special Rapporteur to establish or continue direct contacts with the Government and the people of Myanmar, including political leaders deprived of their liberty, their families and their lawyers, and requested him to report to the General Assembly at its forty-eighth session and to the Commission at its fiftieth session. The present report, which

was finalized on 26 October 1993, is being presented in accordance with that request.

2. In that resolution, the Commission noted the visit of the Special Rapporteur in December 1992 and deplored the continued seriousness of the situation of human rights in Myanmar, in particular the fact that a number of political leaders, including Daw Aung San Suu Kyi and other leaders of the National League for Democracy, remained deprived of their liberty, and that in spite of the provisions of Commission resolution 1992/58 of 3 March 1992 requesting the Myanmar authorities to extend their full and unreserved cooperation to the Special Rapporteur, he was denied access to some persons, in particular detainees, including Daw Aung San Suu Kyi, and that a number of persons wishing to provide testimony were subjected to intimidation or harassment.

3. In the resolution the Commission expressed its deep concern at the violations of human rights in Myanmar, which remained extremely serious, in particular those concerning the practice of torture, summary and arbitrary execution, forced labour, including forced portering for the military, abuse of women, politically motivated arrests and detentions, the existence of important restrictions on the exercise of fundamental freedoms and the imposition of oppressive measures directed, in particular, at minority groups which have resulted in flows of refugees towards neighbouring countries and the absence of guarantees for the physical integrity and well-being of returnees to Myanmar.

4. The Commission also noted with concern that the meetings of the National Convention to prepare the basic elements for the drafting of a new constitution have excluded most of the representatives duly elected in 1990 and that one of the objectives of the Convention has been to maintain the participation of the armed forces (Tatmadaw) in a leading role in the future political life of the State.

5. The Commission urged the Government to take every appropriate measure 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 convening the Parliament elected in May 1990, lifting restraining orders placed on a number of political leaders, releasing those who are detained, ensuring that political parties can function normally and lifting restrictions on the right of association and assembly, as well as the right to freedom of opinion and expression, to restore the protection of persons belonging to minority groups especially in the framework of citizenship laws and to put an end to violations of the right to life and integrity of the human being, to the practices of torture, abuse of women, forced labour, enforced disappearances and summary executions.

6. At its substantive session of 1993, the Economic and Social Council adopted decision 1993/278 approving Commission resolution 1993/73.

Visit to Myanmar by the Special Rapporteur

7. In September 1993, the Special Rapporteur addressed a letter to the Government of Myanmar requesting to visit the country from 9 to 16 November 1993. He requested the honour of audiences with high governmental officials, meetings in circumstances providing full confidentiality with political leaders, 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, non-governmental and intergovernmental, whom he may deem necessary to the carrying out of his mandate or who express the will to meet with the Special Rapporteur. Visits to prisons and other centres of detention, with confidential contact with those detained, were also requested.

8. 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.

9. By a letter dated 15 September 1993, the Government replied that the Special Rapporteur would be welcome in Myanmar.

10. By a letter dated 8 October 1993, the Government further replied that the proposed dates for the visit of 9 to 16 November 1993 would be agreeable.

11. The Special Rapporteur also foresees carrying out a visit to Thailand from 16 to 20 November 1993.

II. MEMORANDUM OF ALLEGATIONS TO THE GOVERNMENT OF MYANMAR

12. By a letter dated 30 September 1993 to the Minister for Foreign Affairs of the Union of Myanmar, the Special Rapporteur transmitted the following memorandum of allegations received by him of human rights violations reported to have occurred in Myanmar:

A. Arbitrary detention

"1. In regard to arbitrary detention, the Special Rapporteur welcomes reports that over 1,700 persons detained under the emergency regulations have been released since April 1992.

"2. Allegations have nevertheless been received that under the persistent State Law and Order Restoration Council (SLORC) orders and other emergency decrees, numerous persons have been arrested for criticizing SLORC, the army (Tatmadaw) or for openly criticizing the process being undertaken in the National Convention for the drafting of a new constitution and the transfer of power to a civilian government. Reports indicate that up to 60 persons may have been detained since July 1993 for engaging in political activity although many of these have now been released.

"3. Some persons were reportedly detained without charges, while others have reportedly been sentenced to lengthy terms in trials which did not afford the minimum standards of judicial guarantees as set out under articles 10 and 11 of the Universal Declaration on Human Rights. In this regard, it has been alleged that in December 1992 the following persons were arrested for printing and distributing leaflets criticizing the National Convention: U Aung Myint, aged 57, Daw Khin Mar Aye, aged 53, and Htay Myint (alias Khin Soe), aged 37.

"4. In January 1993, 14 persons were allegedly arrested for having distributed leaflets which were, according to the Government, 'aimed at obstructing the National Convention and undermining peace and tranquillity in the country'. In August, Dr. Aung Khin Sint, the elected NLD representative for the Mingala Taungnyunt-1 constituency and his assistant, U Than Min, were allegedly arrested for being 'engaged in unscrupulous activities with intent to undermine the National Convention'.

"5. The Special Rapporteur has received allegations of arrests of the following persons in the Yangon area in August 1993 in connection with the National Convention: Ma Thi Da; Nay Thin Myint; Bo Lay; Thet Oo; Tin Htune; Khin Maung; Kyaw Than; Kyi Myint and Than Min.

"6. These persons are allegedly being detained in Insein prison. It is not known if formal charges have been drawn or if a minimum level of judicial guarantees has been accorded. It is also not known if the families of these persons have been notified.

"7. Other reports have been received, in some cases supported by photographic evidence, of large portions of entire villages being detained for 'defying Governmental authority' by having refused displacement or, as in the case

of over 100 villagers in the Irrawaddy Delta, for refusing to turnover rice crops to the military.

"8. The Special Rapporteur would appreciate the Government providing information regarding the detained persons described above, their places of detention, the formal charges lodged against them, the judicial guarantees accorded them before, during and after trial, the sentences received and whether these persons are allowed regular visits by their families and legal counsel.

B. Torture, cruel, inhuman or degrading treatment

"9. Extensive allegations have been received that torture and other cruel, inhuman or degrading treatment has continued to be used by the Myanmar army (inter alia, the 99th Light Infantry Division and the 301st Battalion), police and intelligence services, that such practices have been used routinely in the interrogation of persons and the treatment of porters, forced labourers and members of ethnic minorities. It has been alleged that the practices in prisons include poor sanitary conditions, shackling, beatings, sleep, food and water deprivation, electric shock, the use of falanga, near suffocation and psychological torture, including threats of death to the individual and his family.

"10. In the context of military operations, forced relocation, portering and forced labour, the practices allegedly involve the carrying of heavy supplies up mountains and in extreme weather conditions, beating, stabbing, pouring salt or other toxic material into open wounds, drowning, rape, burning and mutilation before execution. It has also been alleged that men, women and adolescents of ethnic minorities continue to be used as mine sweeps and to be forced to precede army battalions so that they will not be attacked by opposition forces.

"11. Please respond to these allegations, indicating what steps have been undertaken to comply with the prohibition against these practices as encompassed by article 5 of the Universal Declaration of Human Rights, article 3 common to the Geneva Conventions of 1949, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173 of 9 December 1988) and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX) of 9 December 1975). Please indicate whether dissemination of these principles within the operational security forces has been undertaken. Please detail any independent or Government investigations which may have been carried out in regard to these allegations, whether any military or security personnel have been

tried and sentenced, dismissed from duty or otherwise disciplined for their part in any established violations.

C. Disappearances

1. Disappearance after mass demonstrations and in connection with the National Convention

"12. Since he was appointed in March 1992, the Special Rapporteur has continually 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 new township, Hlaing Thaya.

"13. Several friends and relatives of missing persons told the Special Rapporteur during his visit to Myanmar that they had not been able to transmit cases to him or to the Working Group on Enforced or Involuntary Disappearances because of a lack of knowledge of the available international mechanisms, a lack of experience in preparing the information for cases and a serious concern for their own physical safety.

"14. It has been reported that many of the persons detained recently for their activities in connection with the National Convention have been held in incommunicado detention and that generally these detentions remain unacknowledged for at least a period of time after the detention.

"15. Please indicate whether any steps have been taken by the Government to investigate the whereabouts of the alleged missing persons; if there are any institutions or Governmental organs set-up to address the question of disappearances, whether any legal or administrative procedures for the purpose of clarification (such as habeas corpus) are available to the relatives of missing persons, the number of times these remedial procedures have been used and to what effect. Please indicate whether any regulations exist requiring security forces and/or those responsible for prisons or other detention centres to maintain a register and to report the particulars of all persons under detention.

"16. Please indicate whether there is a prohibition under law against unacknowledged or incommunicado detention and whether certificates of death

are required by law, whether the cause of death is mandatory on the certificate and if the certificate is accessible to the relatives of the deceased.

2. Disappearance in the context of forced portering

"17. Other reports continue to be received of persons disappearing after having been abducted by the army throughout the country to function as porters for the army or as labourers on construction projects.

"18. Please comment on these general allegations indicating whether security force personnel are under an obligation to report to their superiors or to an administrative body the names of all persons detained by them or placed under their custody for whatever reason.

D. Summary or arbitrary execution

"19. As noted in his report to the Commission on Human Rights at its forty-ninth session, the Special Rapporteur welcomed the fact that all death sentences have been commuted to life imprisonment. 1/ Reports however, of extra-judicial executions have been continually received since the 1992 visit to Myanmar by the Special Rapporteur. These have allegedly been carried out particularly against ethnic minorities. In 1993, the Tatmadaw did not launch a dry-season offensive, yet extra-judicial executions by the Tatmadaw of hundreds of ethnic civilians were reported to have taken place outside areas of conflict.

"20. The reports focused on executions of civilians accused of being insurgents or of providing aid to insurgents, of civilians in one village as retaliation for attacks on the Tatmadaw in another area, of whole families or even entire villages that resisted relocation. In other cases, some persons were allegedly executed when they resisted becoming porters for the army or labourers on military construction projects. Some village head-men were also reportedly executed for not providing the requisite number of porters or labourers as demanded by the army.

"21. Among the allegations received were the extra-judicial executions of scores of Mon persons resisting relocation in five villages in Yebyu Township in February 1993 and in seven villages in Thanbuzayat Township in March 1993. Eye-witness accounts were received from Klaingbwe Township of retaliation killings of Kayin people and from Kyauk Kyi Town, in Nyaunglebin District, Pegu Division, of Kayin persons resisting relocation. In this case, the allegations

were consistent with the copies of relocation orders allegedly issued by the army, which were received by the Special Rapporteur.

"22. Eye-witness accounts from Papun, Pa'an and Thaton Districts are consistent in alleging that hundreds of Karen villagers were shot or beaten to death by the Tatmadaw, including children and persons over the age of 65 accused of being insurgents, many while portering, refusing to relocate, refusing to give rice, livestock or money to the army, for escaping rape or in retaliation for or in lieu of another family member or villager.

"23. The Special Rapporteur has also received allegations that similar extra-judicial executions of the Shan and Kayah ethnic groups are taking place and that extra-judicial executions of hundreds of Myanmarese Muslim porters continue.

"24. The Special Rapporteur would appreciate receiving information describing any investigations into these allegations undertaken by the Government. Please detail any steps taken internally by the military or by the civilian authorities, legal or otherwise, to prevent or curtail the occurrence of extra-judicial executions in contravention of article 3 of the Universal Declaration of Human Rights and article 3 common to the Geneva Conventions. Please indicate whether any military personnel have been tried and sentenced, dismissed from duty or otherwise sanctioned for their part in any verified violations, if the Code of Criminal Procedure provides for sanctions for these violations, what remedies it may provide for the relatives of the victims and if any such petitions have been brought and to what effect.

E. Repatriated Muslims from Northern Arakan State

"25. It is reported that over 35,000 Myanmar Muslims have now been repatriated or returned, the most recent of these repatriations with the participation of the United Nations High Commissioner for Refugees screening for the voluntary character of the repatriations. Reports concerning the status of the repatriated persons assert that they have not been allowed to return to their villages of origin and have been forcefully resettled in villages prepared by the Government.

"26. It is further reported that their residency and/or nationality status remains unclear, that most have not received identification cards and therefore are not free to travel, enrol in learning institutions or reportedly, in some cases, apply for jobs. It has been alleged that they are segregated from other groups and are not allowed to travel freely.

"27. Reports continue to be received of wide-scale forced recruitment of Muslims from Arakan State for portering and labour.

"28. Please comment on the above-mentioned allegations indicating in detail the sites of resettlement, what the nationality and/or residency status is of the returnees and repatriates and what rights under law are applicable to them.

F. Labour rights

"29. In regard to International Labour Organization (ILO) Convention No. 87 on Freedom of Association and Protection of the Right to Organize of 1948, which was ratified by Myanmar in 1955, the following comments and observations made during the course of the eightieth session of the ILO Committee on the Application of Standards, held at Geneva in June 1993.

"30. A Government representative stated the position of the Government that the purpose of the National Convention for the drafting of a new constitution was to lay down the basic principles (of a new constitution) that would ensure fundamental rights, including those of workers. After the emergence of the new constitution, various laws would have to be reviewed so as to be brought into line with it. However, during the transitional period, the workers' rights were being ensured by the legislation still in force. At the same time, labour laws reflecting the democratic principles pertaining to workers had been drafted.

"31. He stated that new labour laws reflecting the principles of the Convention, to which the Government had referred in last year's report, and which replaced old ones concerning the formation of workers' organizations, had been submitted to the appropriate authorities and were now under consideration. His Government would inform ILO in due course of progress in the framing of the new Constitution and the new labour laws.

"32. The Government representative opposed the allegation that elected representatives had been imprisoned and stated that the single trade union no longer existed and that steps had been taken to adopt legislation which would take into account the principles of freedom of association. The Government representative also stated that the 'so-called trade union operating on the border areas was a creation of terrorist groups outside the territory of Myanmar and did not represent any worker in Myanmar'.

"33. The workers were of the opinion that there still was no freedom of association in the country and that there was hardly any trade union movement; trade unionists

who criticized the Government were allegedly imprisoned. It was further noted that the members of Parliament freely elected in May 1990 had not been allowed to convene and that many were in prison, had been disqualified or had fled the country.

"34. It was pointed out that the extant legislation (1976), which the Government representative had cited as being in force during the transitional period, provided for a monopoly of trade union rights as well as for a monopoly of the practice of trade union activities, which represented a 'clear infringement of the Convention'. The arrest of some labour activists was pointed out, as well as the continued practice of forced labour.

"35. Please indicate what measures have been taken to comply with the obligations undertaken under ILO Convention No. 87 and explain what workers rights are protected under the present legislation and what lawful trade unions or other syndicates presently exist. Further indicate, please, if the right of five or more persons to congregate and associate freely is presently protected under law. Please indicate what measures have been taken to comply with the obligations under ILO Convention No. 29 prohibiting the practice of forced portering and other forced labour, what prohibition against forced portering or labour exists under the present law and what rights of redress are available to alleged victims of such practices. Please indicate the number of times that these procedures for redress have been resorted to and to what effect.

G. Rights of the child

"36. In 1989, Myanmar became a party to the Convention on the Rights of the Child. At the time of its ratification, a number of understandings and reservations were deposited pertaining to article 37 thereof on the prohibition of torture, cruel, inhuman or degrading treatment in regard, inter alia, to the treatment of children during interrogation. In his report to the Commission on Human Rights at its forty-ninth session, the Special Rapporteur recommended that the Government consider withdrawing its reservations and understandings to article 15 of the Convention on the Rights of the Child regarding freedom of association and to article 37 regarding the prohibition of torture of minors. 2/

"37. Please indicate what steps have been taken in response to those recommendations.

H. The National Convention

"38. In regard to the National Convention, it has been reported that of the 702 delegates from 8 categories of people, 49 were selected by the 10 political parties remaining after the elections, 106 were elected representatives and the remainder of the delegates from the other six categories were chosen by the State Law and Order Restoration Council (SLORC).

"39. It has been further reported that the draft principles or guidelines for discussion during the Convention were to remain within a framework of the following objectives: (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 the Tatmadaw in a leadership role in the national politics of the future; and that this framework for discussion was determined by SLORC and that the discussions were to remain exclusively within these guidelines. Wearing badges, distributing leaflets or disseminating propaganda were reportedly prohibited.

"40. It has been further reported 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 (U Tha Zan Hla) was from the National League for Democracy (NLD), the party that won the majority in the May 1990 elections. In the elected representatives group, where 89 of the remaining 105 delegates were from NLD, no NLD representatives were selected as chairmen.

"41. It has been further alleged that since the beginning of the National Convention, numerous participants have been disqualified or arrested for allegedly contravening these guidelines and particularly for having questioned the leadership role foreseen for the Tatmadaw. When the Convention reconvened in June 1993, statements were allegedly read out by Chairman Major General My Nyunt and U Aung Toe to the effect that, there should be a strong President who should be able to carry out his responsibilities 'without constraints' in working for the development of the country, and that this person should be 'an indigenous citizen who is loyal to the nation and its citizens'. Several persons have allegedly since been arrested for challenging these concepts, and some have been charged with participating in activities intending to undermine the National Convention (see paras. 1-8 above).

"42. The Special Rapporteur would appreciate information from the Government regarding these allegations, indicating what steps have been taken to comply with the results of the elections of May 1990.

I. Rights devolved from citizenship status

"43. Information received by the Special Rapporteur has indicated that the citizenship laws of Myanmar are unclear, vague, inconsistent, inaccessible to the public and inequitably applied. 3/ Inability to obtain nationality or not belonging to one of the many tiers of residency status applied throughout Myanmar, have allegedly excluded entire groups, particularly from the ethnic minorities, from enjoying a range of civil, political, social, cultural and economic rights and protections.

"44. Among the rights allegedly rendered inaccessible, is the right to education. The right of every citizen to education was incorporated into the 1974 Constitution. Under the 1980-1981 regulations of the Ministry of Education regarding access to university, the applicant must satisfy four requirements: being a 'Burmese National'; passing prescribed exams; having a 'good character'; and being in good health. These requirements have allegedly been used to ban students disapproved of by the authorities. Particularly cited as being singled out for such discrimination are the ethnic Indians, Bangladeshi and Chinese, even when they, and at times even their parents, were born in Myanmar. Only those with full citizenship are reportedly allowed to prepare for certain higher professional careers, including medicine and technology. Ethnic minority students have also reportedly found it difficult or impossible, particularly without proper identification cards, to travel to the major cities to attend institutions of higher learning.

"45. The Special Rapporteur would appreciate information from the Government delineating the differences among the various nationality and residency statuses and the corresponding rights and obligations.

J. Steps to improve the human rights situation

"46. The Special Rapporteur would appreciate receiving information regarding any steps taken by the Government to improve the situation of human rights in Myanmar since his last visit.

K. Social, cultural and economic rights

"47. Please detail any steps taken by the Government to increase the enjoyment of

the social, cultural and economic rights of the people of Myanmar including any recent economic developments which the Government may wish to bring to the attention of the Special Rapporteur."

III. INFORMATION RECEIVED SUBSEQUENT TO THE MEMORANDUM OF ALLEGATIONS OF 30 SEPTEMBER

A. Arrests and detentions

13. Information was received regarding the arrests of 14 persons in connection with the National Convention. The Special Rapporteur on the situation of human rights in Myanmar and the Chairman of the Working Group on Arbitrary Detention transmitted, on 12 October 1993, to the Minister of Foreign Affairs of Myanmar, the following letter regarding these arrests and the trials of some of those arrested:

"We have the honour to address you jointly in our respective capacities as Special Rapporteur on the situation of human rights in Myanmar and as Chairman-Rapporteur of the Working Group on Arbitrary Detention, appointed by the Commission on Human Rights in its resolutions 1993/73 and 1991/42 of 5 March 1991, respectively.

"In this connection, we wish to draw your attention to information we received regarding the following persons:

1. MA THI DA NLD Member
2. U KHIN MAUNG NLD representative from Kyu Athada
3. U KYI MYINT NLD representative from Latha
4. U KYAW THAN NLD representative
5. U LWIN OO NLD representative from Kyu Athada
6. U WIN KYI NLD representative from the Third Kamandeen
7. NE THIN MYINT NLD member
8. BO LAY Student

9. THET OO Student
10. NE WIN Student
11. U THIN THUN National Convention Representative
12. U HAN SIEN National Convention Representative
13. MYU WIN
14. THAN MYIN

"It has been brought to our attention that the above-mentioned persons were allegedly arrested on or about 3 September 1993 and detained at Insein Prison on charges of: (a) printing material without a permit; (b) distributing illegally printed matter; (c) committing acts against State security and, in the case of Ma Thi Da, for maintaining contacts with illegal organizations.

"It has further been reported that Ma Thi Da and Myu Win were brought to trial, the latter on 7 July 1993 where he was subsequently sentenced to a five-year term of imprisonment. The other above-cited persons are reportedly to stand trial beginning on 11 October 1993.

"Without in any manner wishing to prejudge the decision eventually to be taken by the Working Group as regards the arbitrary character or otherwise of the arrest and detention of the above-mentioned persons, we should like to appeal to your Government to do its utmost to ensure that the judicial guarantees provided for by the Myanmar Penal Code and the Code of Criminal Procedure and applicable to all persons detained for the Commission of a crime for which the punishment may be imprisonment for more than one year, and the relevant international standards, be applied to the above-mentioned persons, in particular the rights to be formally charged, to be informed of the charges being brought, to be defended by a counsel of his own choosing, to be granted a just and fair trial by a competent court and to have the right to appeal to a court in which a fair and impartial judgement may be held.

"In regard to the minimum basic international standards for judicial guarantees, we would like to recall in particular those embodied in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

"It would be most appreciated if your Government could provide us forthwith with any information concerning the legal situation of the above-mentioned persons."

14. In this regard, the following information on the laws relevant to the above-mentioned cases had been provided during the previous reporting period by the Government of Myanmar:

- (a) Under section 61 of the Code of Criminal Procedure, no police officer shall detain in custody a person arrested without warrant for a period longer than 24 hours in the absence of a special order of a magistrate under section 167;
- (b) If the investigation cannot be completed within this period, and it appears there are grounds to believe that the accusation or information is well-founded, the dossier of the case and the arrested persons are to be presented to the magistrate. For offences punishable with up to seven years, the person may be held for a period of up to 15 days. For offences where the term of imprisonment may be for more than seven years, the person may be held for a period of up to 30 days;
- (c) Under paragraph 1198(3) of the Myanmar Police Manual, while under detention, a person is entitled to meet with and seek advice from a lawyer and is to have access to his family.

B. Courts and trials

15. The courts in Myanmar are constituted under the Judiciary Law of 1988. Under this law, appeals and revisions of the order and judgement of a court are permitted.

16. The administration of justice in Myanmar is based on the following principles:

- (a) Administering justice independently according to law;
- (b) Protecting and safeguarding the interests of the people and aiding in the restoration of law and order and peace and tranquillity;
- (c) Educating the people to understand and abide by the law and cultivating in the people the habit of abiding by the law;
- (d) Working within the framework of law for the settlement of cases;
- (e) Dispensing justice in an open court unless otherwise prohibited by law;

(f) Guaranteeing in all cases the right to defence and the right of appeal under the law;

(g) Aiming at reforming moral character in meting out punishment to offenders.

17. After the 15- or 30-day investigatory period, a case must be sent to trial. Under section 340 of the Code of Criminal Procedure, a person has the right to engage a lawyer for his defence if he has not done so during the investigation by the police. The accused may apply for bail.

18. Cases are categorized as either summons cases or warrant cases. Summons cases are generally not of a serious nature and are punishable by a term of not more than six months. These cases are generally adjudicated within one day.

19. Warrant cases are those related to an offence punishable by death (although in December 1992, the Government commuted all death sentences to a life term), transportation (commutation) or imprisonment for a period of more than six months. The procedure for these cases is contained in Chapter XXI of the Code of Criminal Procedure. The case of the prosecution is heard first. Then the defence may be heard. There is a right to recall and cross-examine witnesses, all evidence should be taken in the defendant's presence or in some cases, when this right is dispensed with by the Code of Criminal Procedure, in the presence of the defendant's counsel. A language understood by the defendant must be used, and all proceedings must be recorded by the court. There is a right to not self-incriminate and there is no double jeopardy section (403). There is also the right to appeal.

C. Law Safeguarding the State against the Dangers of Subversive Elements

20. The Law Safeguarding the State against the Dangers of Subversive Elements was enacted in 1975. 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, the Council of Ministers has formed a Central Body consisting of the Minister for Home Affairs, the Minister for Defence and the Minister for Foreign Affairs. These policies and guidelines to be adhered to in restricting the fundamental rights of citizens are laid down in section 9 of the law.

21. The Central Body is imbued with the following powers:

- (a) Arresting and detaining a person against whom action is taken for a period not exceeding 60 days at a time, for a total of up to 180 days;
- (b) Restraining a person against whom action is taken for up to one year.

22. 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, for a total of up to five years. Restrictions as to movement, residence and possession of articles is permitted under this law.

D. Repatriation of Muslims of Myanmar

23. The Special Rapporteur has been informed that through recent discussions between the Government of Myanmar and the United Nations High Commissioner for Refugees, it has been agreed, in principle, that the United Nations Office of the High Commissioner for Refugees (UNHCR) will soon be allowed to establish a presence in the Rakhine State. The purpose of the presence of UNHCR will be to assist and coordinate the voluntary repatriation and safe resettlement of the persons from Myanmar returning from the UNHCR-assisted camps in Bangladesh.

24. Other information received regarding the situation of repatriated persons includes reports that in some cases the returnees have been allowed to go back to their original villages. Other reports indicate that some of the villages, largely built of mud, disintegrated during the absence of the inhabitants, and that for this reason, they have in some cases, taken up residency in other villages. Still other reports indicate that during the absence of these persons, some of their homes and villages were appropriated by the military or others from the Rakhine State, and thus, upon their return, some of the Muslims of Myanmar were forced to take up alternative residency.

E. Social and economic rights

25. The Special Rapporteur has been informed that all schools and institutions of higher learning have now been reopened and have remained open throughout the normal term.

IV. RESPONSE BY THE GOVERNMENT OF MYANMAR TO THE MEMORANDUM OF THE SPECIAL RAPPORTEUR

26. By a note verbale dated 17 October 1993, the following response was received from the Government of Myanmar to the memorandum of allegations of the Special Rapporteur:

A. Arbitrary detention

"Reference to paragraph 2

"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.

"Reference to paragraphs 3 and 4

"2. Legal Action was taken against the following persons:

- (a) Dr. Aung Khim 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 [Associations] 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 maintenance of public law 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

(b) Than Min (alias) Tin Tun Aung

(c) Thet Oo

- (d) Ko Lay (alias)Aung Naing Oo
- (e) Nay Win (alias)Nay Tin Myint
- (f) Lwin Oo
- (g) Kyaw Than
- (h) Ma Thida
- (i) Han Sein
- (j) Kyi Myint
- (k) Tin Tun (alias) Rashid

Name of defendant

Charges

- (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 Secret Act. Section 5 (1) (4)

He infringed the above Law by making use of an official document in committing the above-mentioned illegal acts.

B. Matters concerning arrests or detention and trial of cases

[The Government of Myanmar also included in its report an explanation of the pertinent laws regarding arrests or detention and trial of cases. These laws have been summarized in paras. 14 to 22 above.]

C. Disappearance

"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 that 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.

"8. In the case of the death of any person, it is mandatory to state the cause of death on the death certificate. In cases where the cause of death is not yet known, the police has to forward a report of the case to a magistrate under section 174 of the Code of Criminal Procedure, and the magistrates are empowered to hold

inquests under section 176 of the Code of Criminal Procedure to make known the cause of death.

D. Summary or arbitrary executions

"9. All the 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.

E. Repatriated Muslims from Northern Arakan State

"10. In pursuance of the agreement reached between the Union of Myanmar and the People's Republic of Bangladesh, repatriation of the Myanmar residents in Bangladesh started on 22 September 1992. For the facilitation of systematic and orderly repatriation, five reception centres, namely, Taungbro, Ngakhura, Pyinphyu, Kanyinchaung and Magyichaung, were established on the Myanmar side on 15 May 1992. Since 22 September 1992, a total of 9,209 households and 41,098 persons, comprising 20,103 males and 20,995 females, were repatriated as at 12 October 1993.

"11. The returnees were resettled in their original villages. They were not sent to other places and were not resettled to the regions other than their own villages or origin. At present, for the development of the country, priority is being given to the development of border areas and national races. In implementing the development programmes, the people in the border areas contributed their voluntary labour of their own accord. It is the custom and culture of indigenous races of Myanmar to give voluntary services in nation-building works.

"12. The State had spent 100 million kyats for the development of border areas and national races in the Buthidaung and Maungdaw regions in Rakhine State. The Muslims in Rakhine State give voluntary services of their own accord to the development of border areas. They were neither forced to serve as porters nor hard labourers. Therefore there are no grounds whatsoever for those complaints. The voluntary services given by the people in the regions were stopped in 1991. After that, delegations of the United Nations, UNHCR and Bangladesh visited the villages of the returnees for first-hand knowledge of the situation.

"13. Without legal permission, no one is allowed to cross the borderline. The Muslims in Rakhine State had crossed the borderline without legal permission.

F. Labour rights

"14. With regard to the comments and observations made during the course of the 80th Session of the International Labour Conference in the Committee on the Application of Standards held at Geneva in June 1993, the following is a reply to those comments in a question and answer form:

"Q. There continues to be no freedom of association in the country or hardly any trade union movement.

"A. The Government is in no way whatsoever exercising prohibition or restriction in this matter. No restrictive legislation has been promulgated. Many associations are operating such as medical doctors and nurses associations, arts and crafts associations, artists and artistes associations, reporters and journalists associations and the like.

"Q. Trade unionists who criticized the Government were allegedly imprisoned. Members of Parliament freely elected in May 1990 had not been allowed to convene, many were in prison, had been disqualified or had fled the country.

"A. Those who are imprisoned are the people who had committed crimes, not the trade unionists. The allegation does not bear any iota of truth. Only those who had committed crimes were sent to prison, and the criminals and those who breached the law fled to the country so as to escape the legal proceedings and punishment.

"15. As regards the accusation of 'a clear infringement of the Convention', the Government of the Union of Myanmar had already reported and stated at several

ILO sessions since 1989 that 'with the abolition of the one-party political system, the Unitary Workers' Organization no longer exists and that the said 1976 legislation organizing the single trade union system has automatically become obsolete'. How can extinct legislation infringe the provisions of the Convention when there is no longer a monopoly of trade union rights and the practice of such activities in a country? Hence, no infringement of the Convention. The Trade Union Act of 1926 is still in existence, and since it has become old, new legislation has been drafted and submitted to the concerned authority for vetting and scrutiny. A new Trade Union Act will come into being in the not too distant future.

"Q. Please indicate:

- (a) What measures have been taken to comply with the obligations undertaken under ILO Convention No. 87;
- (b) What workers rights are protected under present legislation;
- (c) What lawful trade unions or other syndicates presently exist.

"A. (a) The reply to (a) is in the last paragraph (see para. 15 above)

(b) and (c) Workers are enjoying many rights, such as social security, under the Social Security Act, 1954; compensation, under the Workmen's Compensation Act, 1923; leave and holidays, under the Leave and Holidays Act, 1951; welfare, health and safety under the Factories Act, 1951; and other rights under present, existing labour legislation.

G. Forced portering and forced labour

"16. Concerning the allegation of the continued use of forced portering and forced labour, a brief explanation is required. The International Confederation of Free Trade Unions (ICFTU) had made a representation under article 24 of the ILO Constitution, alleging non-observance of the Forced Labour Convention No. 29, 1930. The Governing Body of ILO considered receivability and the representation was set up, comprising Ms. L. Caron (Government member, Canada), Mr. B. Noakes (Employer member, Australia) and Mr. P. S. Sundaram (worker member, Sri Lanka). On 4 March 1993, the said Committee asked to supply observations on the representation and a statement of observations had been presented to the Committee. The Myanmar delegation to ILO had personally appeared before the

Committee in June 1993 and presented a rebuttal. But the Committee further requested detailed information on the matter.

"17. In compliance with the request of the Committee, a detailed report has been prepared after fielding the three independent observation teams to the areas mentioned in the ICFTU allegation to find out the truth of the matter. The areas visited by the independent observation teams were:

- "(a) Ok Ta Da Village in Mon State (traced in Paung Township);
- "(b) Moe Kaung Village in Mon State (traced in Thaton Township);
- "(c) Thein Yazat Village in Mon State (traced in Kyaikto Township);
- "(d) Pyu Township in Bago (Pegu) Division;
- "(e) Hline Bwe Township, Kayin (Karen) State.

"18. The findings of or the testimonies obtained by the three observation teams revealed that what have been alleged proved to be no better than the preconceived fabrication of false accounts intended to invite misconception and misunderstanding. A detailed statement to that effect is to be presented to the above-mentioned Committee of ILO very soon.

H. Rights of the child

"19. In acceding to the Convention on the Rights of the Child in July 1991 the Union of Myanmar had made reservations relating to articles 15 and 37 of the Convention. Arrangements are being made by the Myanmar authorities concerned to withdraw the reservations made on these two articles.

I. The National Convention

"20. In its Declaration No. 11/92 of 24 April 1992, the State Law and Order Restoration Council declared that it would convene a National Convention within six months and that it would meet within two months with the leaders of representatives-elect of the political parties and independent representatives-elect.

"21. A 15-member Steering Committee was formed on 28 May 1992 to coordinate with the representatives-elect concerning the convening of a National Convention.

"22. In accordance with Order No. 9/92 of 28 May 1992, the following political parties and an independent representative-elect were represented at the Coordinating Meeting, held from 23 June to 10 July 1992:

Name of party. Number of representatives

- | | | |
|-----|---|----|
| (a) | National League for Democracy | 15 |
| (b) | Shan Nationalities League for Democracy | 6 |
| (c) | National Unity Party | 3 |
| (d) | Union Poah Nation Organisation | 1 |
| (e) | Mro (or) Khami National Solidarity Organisation | 1 |
| (f) | Shan State Kokang Democratic Party | 1 |
| (g) | Lahu National Development Party | 1 |
| (h) | Independent Representative | 1 |

Selection of National Convention Delegates

"23. At the Coordinating Meeting it was decided that delegates attending the National Convention should be classified under eight categories of representatives. They are:

Categories Number of persons

1. Representatives from political parties 49
2. Representatives-elect 107

3. Representatives of national racial groups 215
4. Representatives of peasants 93
5. Representatives of workers 48
6. Representatives of the intelligentsia and Technocrats 41
7. Representatives of State Service Personnel 92
8. Other invited personages 57

[Total] 702

Categories 3 to 5: representatives of national races, peasants and workers

"24. In nominating delegates under categories 3 to 5 to represent the national races, peasants and workers, selection committees comprising 15 members each for State/Division, District and Township levels were formed. Each committee was chaired by a Governmental General Administrative Officer and other members were from the administrative departments concerned and had an intimate knowledge of national racial groups, peasants and workers, as well as local personages who had earned the respect and trust of the national racial groups, peasants and workers.

"Category 6: representatives of the intelligentsia and technocrats

"25. In nominating delegates to represent the intellectuals and the intelligentsia, selection committees composed of senior administrative officials, academicians and intellectuals were formed.

"Category 7: representatives of State Service personnel

"26. In nominating delegates to represent the State Service personnel, selection bodies were formed at various Government ministries and departments to select the delegates.

"Category 8: other invited personages

"27. Of the 57 personages invited to attend the National Convention, 38 were representatives from 8 special regions of 8 armed groups who have returned to the

legal fold to join hands with the Government in carrying out the border area development programmes being implemented by the Government.

"28. The remaining 19 invitees were personages who are well known for their political, economic, social and administrative experience.

"29. From the foregoing it is apparent that the delegates under categories 3 to 8 were not, repeat not, chosen by the State Law and Order Restoration Council.

Selection of the panel of chairmen

"30. At the National Convention it was decided after due consultation that each category would nominate five delegates to act as Chairmen in the deliberations. Since there were eight categories, 40 delegates were nominated to serve on the panel of chairmen. Accordingly, delegates under category 1 (representatives from political parties) and delegates under category 2 (representatives-elect) were entitled to be represented by 10 delegates as Chairmen on the Panel. As a large majority of the delegates under category 1 and category 2 represented the political parties, and with a view to maintaining and nurturing unity and amity among the 10 political parties, it was decided that each political party should nominate a delegate to serve on the Panel of Chairmen. Hence, each of the 10 political parties was able to nominate a delegate on the Panel. Accordingly, U Tha Zan Hla of the National League for Democracy is one of the Chairmen on the Panel to represent his own party.

Objectives of the National Convention

"31. The purpose of convening the National Convention is to lay down the basic principles for the elaboration of a new and enduring democratic State Constitution. As such, there is no place for playing party politics or for party propaganda, as those can be detrimental to the unity prevailing among the delegates and, above all, it can defeat and jeopardize the objectives of the National Convention.

"32. The principles of non-disintegration of the Union, national solidarity, national sovereignty, establishment of a multi-party democratic system and the universal values of justice, liberty and equality are universally accepted general principles. And the Tatmadaw has played a crucial role throughout Myanmar's contemporary history. In the struggle for independence the Tatmadaw fought hand-in-hand together with the people, a struggle in which many indigenous Myanmar national races participated. Born out of national struggle for national independence some 50 years ago, the Tatmadaw follows the tradition of serving

the people's interests loyally and faithfully. The Tatmadaw has played an important role not only in the struggle for national independence but also in preventing the Union from disintegrating in times of crises and in safeguarding national sovereignty and integrity. In 1948 and 1949, in 1958, 1962 and 1988 the Tatmadaw was called upon to shoulder national responsibilities to protect and safeguard the nation. As it represents the single disciplined organization in the nation, it is incumbent upon it to play a leading role in national politics. It is therefore only natural that in the transformation of one system to another the Tatmadaw should also take part in the political process of the country. Its participation in this process is in consonance with the national aspirations of the people.

Badges, distribution of leaflets etc.

"33. There were no restrictions whatsoever with regard to wearing badges. In fact, various delegates representing various political parties wore their badges. Also, there were no restrictions regarding distribution of leaflets and dissemination of propaganda which did not go beyond the framework of the six objectives.

"Alleged disqualification or arrest of some delegates

"34. 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 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.

J. Rights devolved from citizenship status

"35. The weakness of the Union Citizenship Act (1948), enacted after Myanmar gained independence, became evident with the passage of time. Thus, the Union Citizenship Act (1948) was revoked and the Myanmar Citizenship Law was promulgated on 15 October 1982. Under the new Myanmar Citizenship Law, there are three categories of citizen, namely, citizen, associate citizen and naturalized citizen. The rights to be enjoyed by those citizens and the punishment if citizenship is acquired through unlawful means, the decision-making body, the right to appeal, the right of defence against action taken and the right to clarify in case of doubt in the citizenship are clearly mentioned in the Law section-by-section. Thus, the complaints made about the Myanmar Citizenship Law are not valid.

"36. A total of 82,541 foreigners were granted citizenship under the Union Citizenship Act (1948). Under the new law, 19,290 associate citizenships and 1,245 naturalized citizenships were granted to a total of 20,535 foreigners. The remaining cases are under scrutiny for further processing.

"37. The right to study for basic education at the primary, middle and high school levels is given, even to foreigners. The citizens and the foreigners residing permanently in Myanmar-Naing-Ngan have the right to study for higher education. The right to study for professional lines at institutes of medicine, technology, etc. is given only to those whose parents are citizens and who themselves are citizens, as is the case in other countries. Every citizen can work for his or her livelihood and enjoys benefits without any discrimination. Every citizen is free to travel to any place in the country, however, it is necessary for him or her to carry a citizen identity card, issued by the authorities, while travelling."

V. PRELIMINARY OBSERVATIONS

27. The Special Rapporteur welcomes the cooperation of the Government of Myanmar in responding to the memorandum of allegations and in agreeing to the visit of the Special Rapporteur from 9 to 16 November 1993, and expresses the hope that he will be accorded free and confidential access to all persons he deems useful in carrying out his mandate.

28. In regard to arrests and detentions, the Special Rapporteur has noted that over 1,000 persons detained during the mass demonstrations of 1988 and 1990 have now been released; however, arrests of many persons attempting to voice political dissent have been reported in 1993.

29. Although martial law was lifted in December 1992, the persons cited (see para. 13 above) were all arrested in 1993 in Yangon under still existing emergency decrees, such as the Unlawful Association Act 17 (1), the 1950 Emergency Provisions regarding acts detrimental to the security of the Union, section 17/20 of the Registration of Printers and Publishers Law and sections 5 (1) and (4) of the Burma Official Secret Act. They have been tried in civilian courts, but for offences under these emergency laws.

30. The legal causes of action against these persons (based on existing emergency legislation and SLORC decrees) appear to have arisen from their publication or circulation of documents pertaining to the process of the National Convention or for their criticism of the National Convention. However, the Special Rapporteur has not been informed what the specific acts are which constitute the crimes.

31. The above-mentioned existing laws place severe restrictions on freedom of expression, prohibit assembly of more than five persons in any one place, prohibit all criticism of the State Law and Order Restoration Council, the army (Tatmadaw) and the proceedings and content of the National Convention.

32. Further information provided to the Special Rapporteur concerning the trials of these and other persons, indicates that legal counsel was put at the disposal of the defendants. It is not clear how counsel was chosen, what the affiliation was of the lawyers provided or what role the lawyers had been permitted to carry out before, during or after the trials. It was further reported that the trials that had taken place had not been open, as is normally prescribed by law.

33. The Special Rapporteur has been informed that the persons tried at Insein Prison on 11 October 1993 have been sentenced to 20 years of imprisonment. Among these is Aung Khin Sint, National League for Democracy elected-member of Parliament and representative to the National Convention. His assistant, Than Min, was also arrested and tried for circulating illegal documents "issued by terrorist groups", in which delegates were asked to recall their responsibilities. He has reportedly been sentenced to 20 plus 18 additional years of imprisonment. It is not known whether appeals to a higher court have been or will be permitted in these cases.

34. The Special Rapporteur requests the Government of Myanmar to allow an international presence at any possible future trials concerning the persons cited above or of others tried under the emergency decrees. The Special Rapporteur urges the Government of Myanmar to release Daw Aung San Suu Kyi and to ensure that there are no threats or acts of intimidation or reprisal towards her.

35. In regard to torture and cruel, inhuman or degrading treatment, the Special Rapporteur received numerous allegations that this practice has continued to occur in the Union of Myanmar. It arises in a number of contexts. During interrogation, the practice is said to be routine and takes the form of poor sanitary conditions, being shackled, beatings, sleep, food and water deprivation, electric shock, the use of falanga, near suffocation, and psychological torture, including threats of death to the individual and his family. During forced portering and forced labour, the practice includes beating, kicking, burning, whipping, sleep, food and water deprivation, denial of medical treatment, carrying heavy loads in rugged terrain and in extreme temperatures. The repeated rape of women has been alleged. In some cases it has reportedly been carried out as a method of reprisal. During forced relocations in the context of military operations, similar forms of torture have been reported.

36. Numerous cases of disappearances alleged to have occurred in 1988 and in December 1991, reportedly remain unclarified. It is alleged that the whereabouts of hundreds of persons, including monks, workers, writers, professors and others, have never been established, and it is believed that some remain in unacknowledged detention, while others may have been killed and buried in mass graves. The Government has not indicated whether legal or administrative procedures for the purpose of clarification, such as habeas corpus petitions, are available to the relatives of the missing persons, and if available, how many times in the last year these remedial procedures have been used and to what effect. Disappearances have most frequently occurred since the last visit to the Union of Myanmar by the Special Rapporteur, in the context of recruitment for forced labour and forced portering.

37. The Government has stated that under the existing laws disappearances cannot occur because all detentions and arrests must be carried out in accordance with the law, which requires a register of all detainees to be kept and submitted to the relevant authorities.

38. As stated in his report to the Commission on Human Rights at its forty-ninth session, the Special Rapporteur took note of the fact that all death sentences had been commuted to life imprisonment. Nevertheless, reports continue to be received of extrajudicial executions carried out by the army (Tatmadaw) in the context of forced portering and labour, and carried out most frequently against ethnic minorities. The reports focused on executions of civilians accused of insurgency, of those refusing to be recruited for portering or other labour, or killed in reprisal for others refusing recruitment or, in some cases, for another village refusing relocation.

39. The Government reply in regard to extrajudicial executions indicates that it is mandatory to state the cause of death on the death certificate. If the cause of death is not known, the police are required to forward a report to a magistrate, who has the discretionary power to hold inquests into the cause of death.

40. The Government stated that all allegations regarding summary or arbitrary executions were totally false and unfounded and that while undertaking the three main causes: 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 the future". The Government stated its belief that these allegations "are based upon false information given by insurgents, persons communicating with insurgents and persons who are endeavouring to bring down the Government of the State Law and Order Restoration Council".

41. Over 35,000 Myanmar Muslims who had fled to Bangladesh from Northern Rakhine State have now returned or repatriated. The repatriations took place with the participation of the Office of the United Nations High Commissioner for Refugees (UNHCR). The Special Rapporteur has received numerous and varied reports concerning the conditions of resettlement. Some reports have indicated that they have not been allowed to return to their villages of origin and have been resettled in villages set up by the Government. Other reports indicate that many of the villages of origin were appropriated by military personnel and/or by Burmese civilians. Still other reports state that they have been allowed to return to their original villages but that in some cases, the homes (constructed mostly of mud), had fallen apart during their prolonged absence.

42. The residency and citizenship status of the returnees remain unclear, and most have not received identification cards. The Special Rapporteur was told that they were not entitled to freedom of movement, to enrol in institutions of higher learning or to take up certain professions.

43. The Government replied that they had been resettled in their original villages and that "priority is being given to development of border areas and national races". Since 22 September 1992, a total of 9,209 households and 41,098 persons had been repatriated as at 12 October 1993.

44. The Special Rapporteur is pleased to note that through recent discussions between the Government of Myanmar and the UNHCR, it has been agreed, in principle, that UNHCR will soon be allowed to establish a presence in the Rakhine State. The purpose of the presence of UNHCR will be to assist and coordinate the voluntary repatriation and safe resettlement of the persons of Myanmar returning from the UNHCR assisted camps in Bangladesh.

45. It has been reported to the Special Rapporteur that there has been no progress made in allowing freedom of association or trade union activity and that a monopoly of trade union rights, as well as trade union activities, still exists. The arrest of some labour activists was reported to the Special Rapporteur, as was the continued practice of forced labour.

46. The Government responded that the people in the border areas contribute their voluntary labour and that it is the custom and culture of indigenous races of Myanmar to give voluntary services in nation-building works. In regard to Muslims in Rakhine State, the Government stated that "they give voluntary services to the development of border areas" and that "such voluntary service was stopped in 1991".

47. In regard to the Convention on the Rights of the Child and to reservations made by the Government relating to articles 15 and 37 of the Convention, the Government stated that arrangements are being made by the Myanmar authorities to withdraw the reservations on these two articles.

48. The Special Rapporteur has been informed that schools and universities were re-opened for the normal school term.

49. In regard to the National Convention for the drafting of a new constitution, no evident progress has been made towards turning over power to the freely elected civilian Government. The fifteen-member Steering Committee set out the agenda, the terms of reference and the topics to be discussed. Each of the eight categories represented at the Convention elected 5 delegates (total of 40 delegates) to be on the Panel of Chairmen to direct the Convention. Out of the ten nominees allowed the political parties and representatives-elect, one member of the National League for Democracy, the party that won 80 per cent of the vote in the national elections, has been named as a Chairman.

50. The Government stated that in the National Convention, there was no place for party politics or propaganda as those could be detrimental to unity and could defeat and jeopardize the objectives of the National Convention. Persons voicing dissent in regard to the National Convention have been arrested and sentenced to long prison terms.

51. The Government has stated that because the Tatmadaw had, inter alia, prevented the Union from disintegrating and had safeguarded national sovereignty and integrity, and as it represented the single disciplined organization in the nation, it was incumbent upon it to play a leading role in national politics and that "(I)n the transformation of one system to another the Tatmadaw should also take part in the political process of the country".

52. The Special Rapporteur plans to visit the Union of Myanmar from 9 to 16 November 1993 and Thailand from 16 to 20 November 1993, at which time he will have the opportunity to examine further these issues related to the situation of human rights in Myanmar.

Notes

- 1/ See E/CN.4/1993/37, paras. 69 and 70.
- 2/ Ibid., para. 242 (c).
- 3/ Ibid., para. 226.

[illegible]

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**HUMAN RIGHTS QUESTIONS:
HUMAN RIGHTS SITUATIONS
AND REPORTS OF SPECIAL
RAPPORTEURS AND
REPRESENTATIVES**

Situation of human rights in Myanmar

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the preliminary report prepared by Professor Yozo Yokota (Japan), Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar, in accordance with paragraph 3 of Commission resolution 1992/58 of 3 March 1992 and Economic and Social Council decision 1992/235 of 20 July 1992.

ANNEX

Preliminary report on the situation of human rights in Myanmar prepared by Professor Yozo Yokota. Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1992/58

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I. 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"; noted also 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 on 10 June 1992 appointed Professor 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 session of 20 July 1992, the Economic and Social Council adopted decision 1992/235 approving Commission resolution 1992/58.

5. The present preliminary report is submitted to the Secretary-General of the United Nations for dissemination to all States Members of the United Nations.

II. BACKGROUND

A. General

6. 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 Subcommission on the Prevention of Discrimination and Protection of Minorities at its fortieth and forty-first sessions, in 1988 and 1989, respectively. The Commission continued in 1991 its consideration of the situation in Myanmar under the procedure established in resolution 1503.

7. 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

8. 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.

9. 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, 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.

10. According to article 201 of the Constitution, ethnic minorities had, in theory, the right to secede from the Union, but, under article 202, that right was not to be exercised until 10 years from the date of entry into force of the Constitution.

11. In March 1948, an armed insurgency against the then Government of Burma was begun by the Communist Party of Burma. From 1948 until 1961, various minority ethnic groups joined the armed insurgency.

12. In March 1962, General Ne Win took power in a coup d'etat. 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".

13. On 28 March 1964, the Law to Protect National Unity was promulgated, banning all political parties except the Burma Socialist Programme Party.

14. In 1974, a new Constitution was drafted. However, one-party rule continued.

15. 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. 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.

16. From March to June 1988, serious clashes between students and workers and the military took place. 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.

17. 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.

18. Clashes continued between demonstrators and the army and riot police (Lon Htein). 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.

19. 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.

20. 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.

21. 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).

22. On 23 September 1988, Senior General Saw Maung, as Chairman of SLORC, made a statement I/ to the effect that three conditions for the holding of elections would have to be -net:

"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."

23. 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.

24. On 20 July 1989, Daw Aung San Suu Kyi was detained by government forces. Numerous other political leaders, including most of the important opposition to SLORC, were also arbitrarily detained and many of them remain so to date.

25. In May 1990, general elections were held. Widespread allegations of irregularities were reported. Nevertheless, the opposition (NLD) was reliably reported to have won the elections overwhelmingly.

26. SLORC set up an Election Commission to scrutinize the results of the elections and all expense accounts of all elected representatives. When this process is completed (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.

27. 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 Declaration 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 preparation of the Coordination Meeting for the Convening of the National Convention. Leaders of lawfully existing political parties were to attend in numbers as designated by the Steering Committee. The nomination list of those representatives was 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 the representatives attending the meeting, submitting the report on the meeting to SLORC within one month of the meeting and carrying out all administrative functions.

28. 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 has been suspended at present as the refugees appear unwilling to return to Myanmar without adequate international monitoring. According to some reports, however, including government announcements, a small number of refugees have recently spontaneously returned.

C. The legal framework

29. As a Member State of the United Nations, the Union of Myanmar is bound to respect the human rights obligations contained in the Charter. Those obligations are expressed in the Preamble, Article 1 (c) and Article 55 (c). Further specificity to those obligations has been provided by, inter alia, the Universal Declaration of Human Rights (General Assembly resolution 217 A (III)); the United Nations Declaration on the Elimination of All Forms of Racial Discrimination (resolution 1904 (XVIII)); the Declaration on the Elimination of Discrimination against Women (resolution 2263 (XXII)); the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (resolution 36/55); the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (resolution 3452 (XXX)); the Declaration on the Rights of the Child (resolution 1386 (XIV)); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict (resolution 3318 (XXIX)). In addition to its obligations under the Charter of the United Nations, other conventional obligations include those arising under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the 1926 Slavery Convention (as amended

by its Protocol of 7 December 1953), and the 1989 Convention on the Rights of the Child. It is also to be noted that Myanmar is a member of the International Labour Organisation (ILO) and is a party to its conventions concerning forced labour (No. 29) and concerning freedom of association and protection of the right to organize (No. 87).

30. On 24 August 1992, the Union of Myanmar acceded to the four Geneva Conventions of 1949 relative to the humanitarian laws of armed conflict. The treaty obligations undertaken by ratification are not retroactive in nature and may not be applied to actions that allegedly occurred prior to ratification.

31. In addition to its treaty obligations, Myanmar is obliged to respect the relevant rules of international customary law together with applicable general principles of law. Among these may be said to be the guarantees of article 3, common to the four Geneva Conventions of 1949, which, according to the International Court of Justice, reflect "certain general and well-recognized principles, namely: elementary considerations of humanity, even more exacting in peace than in war". 2/ Thus, the fundamental guarantees contained in common article 3 are applicable in all situations pertaining in the Union of Myanmar.

32. The Union of Myanmar is not a party to the International Covenant on Civil and Political Rights and its Optional Protocol nor to the International Covenant on Economic, Social and Cultural Rights, nor is it a party to the 1951 Convention relating to the Status of Refugees or to the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

III. MEMORANDUM OF THE SPECIAL RAPPORTEUR TO THE GOVERNMENT OF MYANMAR

33. The following questions were addressed to the Government of Myanmar by the Special Rapporteur:

(a) With regard to preparations for the National Convention for drafting a new democratic state constitution, please indicate the nature and advancement of these preparations and in particular: the members of the Steering Committee that will steer the holding of the Coordination Meeting for the Convening of the National Convention; the purpose of the Coordination Meeting; which political parties and how many members from each party will participate; how it is determined if these parties and each individual representative from each party is "lawfully standing" (as prescribed by SLORC Order No. 9/92 dated 28 May 1992); what the role and

competency will be of the Steering Committee in the preparation, holding and aftermath of the Meeting and the Convention; the projected timetable for the holding of the Convention; the projected timetable for the drafting of the new constitution and the projected timetable for the transfer of power to a civilian government?

(b) With regard to the political leaders deprived of liberty, would the Government please provide: a copy of the list of persons in detention and of those released during the course of 1992 indicating which among these persons were/are active members of their political parties and those who stood for the general elections; the charges brought in each case of arrest or detention; whether the person was brought before a magistrate prior to trial and within how much time subsequent to arrest; whether a trial was held for each case of detention or arrest; how the courts were constituted and what the trial procedures are under the law; whether pre-trial and/trial counsel were provided; what provisions for notification of detention to relatives exist under the law; whether each detainee was or is allowed visits by relatives and a lawyer; whether final sentence was passed in each case and who is responsible for determining the length and kind of sentence according to what provision of law?

(c) The recent decision of the Government of Myanmar to sign and ratify the four Geneva Conventions of 1949 is highly welcomed. What steps have been taken to adhere to the two Protocols Additional to the Geneva Conventions, particularly the Second Protocol Additional to the Conventions? Please indicate any steps taken to adhere to any of the international human rights instruments, particularly the Covenants on Civil and Political Rights and on Social, Cultural and Economic Rights and the Convention on Torture.

(d) Concerning the Muslim people of Northern Arakan State: please indicate what is the residency status under law of this population (i.e., citizens, legal residents, immigrants, illegal residents); what provision(s) of law determine(s) this status; what provision(s) of law provide(s) for freedom of religious belief and religious expression and to what extent is religious expression limited under the law? Please explain the reasons for the flow of the Muslim population from Arakan State to Bangladesh and why the flow has greatly increased in the last year; the problem of "human traffic"; the bilateral solutions undertaken by the Government of Myanmar to stop the movement of this population to Bangladesh; how many persons have returned or been repatriated to Myanmar from Bangladesh and the aid provided by the Government of Myanmar to those who have returned to Myanmar.

(e) Please describe any other recent steps taken by the Government of Myanmar in the field of human rights that the Government wishes to bring to the attention of

the Special Rapporteur.

IV. RESPONSE OF THE GOVERNMENT OF MYANMAR TO THE MEMORANDUM OF THE SPECIAL RAPPORTEUR

34. The following responses to the Special Rapporteur's memorandum were received:

(a) On 26 October 1992, the Government of Myanmar responded by a note verbale that with regard to allegations of ill-treatment of the ethnic and religious minorities by the Myanmar armed forces and the paramilitary security forces, the Government rejected the allegations as untrue. They responded that those forces were required by law to observe a strict code of conduct. With regard to other allegations of ill-treatment of porters by the armed forces, the Government responded that investigations revealed those allegations to be unsubstantiated and unfounded; with regard to detentions of persons, action was said to have been taken for violations of existing laws.

(b) On 23 October 1992, the Government responded to the memorandum of the Special Rapporteur (and on 26 October 1992 it again responded completing its answers to the memorandum). The full text of that response is contained in the appendix to the present report. (With regard to the annexes supplementing the responses of the Government of Myanmar and citing the pertinent SLORC Orders, these documents are maintained by the secretariat and are available for consultation upon request.)

V. PROPOSED VISIT TO MYANMAR BY THE SPECIAL RAPPORTEUR

35. The Special Rapporteur has envisaged a visit to Myanmar from 7 to 15 December 1992. He has requested the honour of audiences with high governmental officials, meetings in circumstances providing confidentiality with political leaders, including those in detention or under restriction such as Daw Aung San Suu Kyi, and full and free access to other individuals, non-governmental and intergovernmental organizations that may be deemed necessary to carry out the mandate of the Rapporteur. Unrestricted visits to prisons and other centres of detention have also been requested.

36. The Rapporteur has further requested full access to all areas of the country in which information may be gathered that is deemed necessary for the completion of his mandate.

37. The Rapporteur has also envisaged carrying out visits to Thailand (from 5 to 7 December 1992) and Bangladesh (from 15 to 18 December 1992) for the purpose of gathering information and testimony from refugees regarding the situation in the country of origin (Myanmar), as well as from other individuals and groups who may provide information pertinent to the situation of human rights in Myanmar.

38. As regards the situation of human rights in Myanmar, which will be examined carefully by the Special Rapporteur during his visit, the Special Rapporteur has been made aware of hundreds of cases of violations of human rights that have been received by the United Nations Centre for Human Rights alleged to have occurred in Myanmar. -Many of these allegations have been channelled to the Special Rapporteurs or Working Groups on thematic issues as follows .

A. Arbitrary detention

39. The United Nations Centre for Human Rights has received information concerning 914 cases of alleged arbitrary detentions reported to have occurred in Myanmar. The persons reportedly detained include members of Parliament, political party leaders, writers, students, business persons, teachers, Buddhist monks, civil servants, farmers and peddlers.

40. In cases where the legislative basis for detention has been indicated, section 10 (a) of the 1975 State Protection Law, section 5 (j) of the Emergency Provisions Act, section 17.1 or 17.2 of the Unlawful Association Act, section 19.1 of the Provisional Arms Act and the Printers and Publishing Law have most frequently been cited.

41. According to information provided by the Government of Myanmar, 427 persons previously under detention have been released since April 1992 in accordance with Declaration 11/92.

42. The Special Rapporteur was informed that in the case of Daw Aung San Suu Kyi, the Government of Myanmar has allowed the family to visit her in restrictive detention and to bring necessary foodstuffs.

B. Disappearances

43. The Working Group on Enforced or Involuntary Disappearances maintains files on two outstanding cases of enforced or involuntary disappearances alleged to have occurred in Myanmar as well as one case clarified in 1992 by the Government of Myanmar. In addition, the Working Group has been seized of numerous other cases in which the relatives of the disappeared persons have been unable, or have felt too intimidated, to provide all essential elements necessary for the Working Group to process the cases under the Working Group's methods of work. A preponderance of cases received allege that victims belong primarily to the Muslim population of Northern Rakhine State and to the Karen community.

44. Cases of disappearances have allegedly occurred in the context of forced relocations of entire villages by the army, round-ups reportedly for forced recruitment of porters or minesweeps for the army or for recruitment of young men to serve in the army. It has been reported that in many cases the males have either already been recruited or fled for safety at the approach of the army. In such cases, the women and young girls have been left at considerable risk and many of the alleged violations concern this vulnerable group.

45. One example is the case of a 12-year-old girl from Bawli Bazaar, Akyab, Northern Rakhine State. In January 1992, allegedly during a period of increased forced recruitment of civilians by the army to build roads and level hills, five soldiers came to the girl's family home reportedly to recruit males. Upon finding the young girl, it is alleged the five soldiers took turns raping her and then abducted her. She has not been heard of since despite a long search undertaken by her family.

C. Torture, cruel, inhuman or degrading treatment

46. The Centre for Human Rights has been seized of more than 100 well-documented cases of alleged torture or cruel, inhuman or degrading treatment alleged to have been committed by the SLORC army in the context primarily of forced recruitment and forced labour. Again, the preponderance of cases, particularly those alleged to have occurred in 1992, pertain to victims belonging to the Muslim population of the Northern Rakhine State as well as those belonging to the Karen community.

47. Examples of torture include cases such as porters being forced to carry loads they cannot bear. When they are too sick or weak to continue, they are allegedly beaten with rifle butts, kicked and left by the wayside. Those too weak to move have reportedly been burned alive and any who survive have been left to die.

48. In another reported case, soldiers from the 82nd Company based in Thentarang Camp went through the Hangdaung village recruiting people for forced labour. A dozen females, including old women and children, were tied together and taken away. During the journey, the old women were allegedly frequently beaten for their inability to keep up. Upon reaching a camp, the females were separated "by beauty". The old women and youngest girls sat under guard, while the others were taken into rooms and raped without stop for several days and denied food or sleep.

49. In another case demonstrating a continual pattern of abuse, many women of Hashuradha village in Maungdaw, Northern Rakhine State, stated in 1992 that for the past two years, soldiers had entered their homes on many occasions and raped them repeatedly.

50. Torture of detainees to extract confessions has also been reported. The torture has been said to have occurred primarily during periods of prolonged incommunicado detention and several of the security forces, including the regular army, have allegedly been involved. The use of electric shocks, using prisoners as "motorcycles", burnings and continual beatings have been described in cases received.

51. In one reported case in Immuddinpara, Rama Musleroi, Bauthidaung, a young man returned from forced portering to find that his sister and brother had been abducted by security forces. Because he was a village headman, he believed he would be safe in approaching the army with regard to his siblings. He disappeared. About three weeks later, his body and that of his brother were found by the man's wife. His genitals had been cut off, his eyes gouged out, both hands cut off and his torso had been sliced in two.

52. Cruel, inhuman or degrading treatment has also been reported during periods of detention. Deprivation of food, sleep and light have been reported in various cases. Situations of forced portering have been described as including almost constant cruel and inhuman treatment. Forcing persons to bear undue weights, to withstand physical conditions without proper food and clothing, lack of medical attention if porters fall ill and the constant use of ankle chains have been reported.

D. Summary or arbitrary execution

53. Information concerning numerous well-documented cases of summary and arbitrary execution alleged to have occurred in Myanmar, and particularly affecting the Muslim people of Northern Rakhine State, has been received at the

Centre for Human Rights. In some cases, trials are said to have been held; however, reports indicate that many trials have been carried out without the proper judicial guarantees. In other cases, no trial has been held. One such report alleges that, on 20 September 1991, in Law Kyar Village, Phru So, Kayah State, a young man was summoned by Burma Infantry Regiment No. 102. The soldiers allegedly accused him of being a rebel agent, took him into the forest and executed him.

54. Large numbers of reported cases of arbitrary executions allegedly occurred in the context of forced portering. In reports received from Kiladaung Village, Maungdaw, Northern Rakhine, numerous persons who tried to escape were beaten or shot to death. It is alleged that porters are always threatened that if they escape their families will be killed.

55. Other arbitrary executions have been reported in the context of forced 'relocations of persons, sometimes entire villages. In one case received, villagers from Ludengpara, Buthidaung, were forced by soldiers to move out of the village in February 1992. Over 120 women, many with children, were tied together and moved. Along the way, many of the women could not continue and children began to cry. It is alleged that crying babies and children were taken from the mothers and thrown over the roadside. Over 20 children were allegedly lost in one night.

VI. PRELIMINARY OBSERVATIONS AND RECOMMENDATIONS

A. Preliminary observations

56. Since the Special Rapporteur intends to visit Myanmar and the bordering States in December, it is not feasible to reach conclusions for the present report on the many allegations on violations of human rights that have been reported to him. The initial written/exchange with the Government/ however/ allows for preliminary observations as to that material. It is hoped that information gathered during the Special Rapporteur's visit, as well as continued dialogue with the Government of Myanmar, will facilitate conclusions to be included in the Special Rapporteur's comprehensive report to the forty-eighth session of the Commission on Human Rights.

57. By note verbale, the Government informed him that, 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, had been rescinded. It also indicated that by SLORC Order No. 10/92 of 10 September 1992 the curfew imposed from 11 p.m. to 4 a.m. had been lifted.

58. 'The Special Rapporteur has also been informed that other SLORC Orders still in effect include, inter alia, 1/91, prohibiting civil servants from participating in politics and their dependents or persons under their guardianship from participating directly or indirectly in activities aimed at opposing the Government; 2/88, prohibiting the assembly of five or more persons; and 3/90, relating to the right to assemble and campaign, which 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 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 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".

59. With regard to the memorandum addressed to the Government of Myanmar (see para. 33), it should be noted that the fourth section, concerning the Muslim population of Northern Rakhine State, was not directly answered. The response indicates that the Constitutions of 1947 and 1974, which contain adequate provisions for all citizens to profess the religion of their choice, are no longer operative. No other legal basis attesting to the existence of religious tolerance or freedom in Myanmar has been detailed. Further, although the Special Rapporteur appreciates the constitutional safeguards presented, it should be noted that while the Constitution accords rights and protections regarding religious freedoms to all "citizens", the response of the Government (appendix, para. 36) elucidates that "those Muslims of Bengali stock living on the Myanmar-Bangladesh border are not Myanmar citizens according to the Myanmar Citizenship Law". The Special Rapporteur hopes that further exchanges with the

Government of Myanmar will shed light on the legal status, rights and protections of the Muslim population of Northern Rakhine State. With regard to the de facto situation of the Muslim population, while the Special Rapporteur also appreciates the statement of the Government that "many national races ... have lived together in amity and harmony for a long time" and that the fact that "the four major religions have existed and flourished in peace is an eloquent testimony to the existence of religious freedom in Myanmar", the situation of 250,000 Muslim refugees in Bangladesh who refuse to return to Myanmar without adequate international monitoring of a safe return and reinstallation continues to be a matter of concern to the Special Rapporteur and he looks forward to an ongoing dialogue with the Government on the question.

60. With regard to the question of "matters concerning arrests or detention and trial of cases", the Special Rapporteur wishes to note that again the question posed by him was not specifically answered. The Code of Criminal Procedure and the criminal procedures used in detentions and trials of cases as detailed in the response of the Government are not the authority upon which any of the persons listed in annexures F or G were detained or tried. All of the listed persons were detained under section 5 (j), (a) or (b) of the Emergency Provision Act of 1950 or section 17 (1) of the Unlawful Association Act. In the Government's response, the Law Safeguarding the State against the Dangers or Subversive Elements of 1975 was not detailed and its role in any actual detentions and trials was not explained. The Special Rapporteur looks forward to an ongoing dialogue with the Government on further questions of laws regarding arrests, detentions, restrictions and trials and hopes that a copy in English of the Emergency Provisions Act will be provided to him.

B. Preliminary recommendations

61. The Special Rapporteur congratulates the Government of Myanmar on its recent accession to the four Geneva Conventions of 1949 and urges the Government to sign and ratify Protocol II additional to the Geneva Conventions of 1949 Relative to Conflicts of a Non-International Character and Protocol I Relative to Armed Conflicts of an International Character.

62. The Special Rapporteur further urges the Government of Myanmar to sign and ratify the Covenants on Civil and Political Rights and Economic/ Social and Cultural Rights/ the Optional Protocol to the Covenant on Civil and Political Rights, as well as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

63. The Special Rapporteur encourages the Government of Myanmar, in a spirit of humanitarian goodwill, to invite the presence in Myanmar of the International Committee of the Red Cross and the United Nations High Commissioner for Refugees in order to carry out their purely humanitarian tasks.

64. The Special Rapporteur urges the Government of Myanmar to continue its policy of allowing Daw Aung San Suu Kyi to receive visits from her family and to receive all resources necessary for her well-being. The Special Rapporteur encourages the Government to extend this policy to other persons in detention or restriction.

Notes

1/ State Law and Order Restoration Council Chairman, Commander-in-Chief of the Defence Services, General Saw Maung's Addresses, p. 29.

2/ 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.

APPENDIX

Memorandum on the human rights situation in Myanmar by the Government of Myanmar

A. Preparations for the National Convention

1. Preparations are now in full swing for the convening of the National Convention in order to lay down the basic principles for the drafting of a firm and strong constitution.

2. In accordance with the programme of action spelt out in its Declaration No. 1/90 of 27 July 1990, the Government issued Declaration No. 11/92 on 24 April 1992, which maps out the programme to be implemented in a specific time-frame in respect of the National Convention that will set out the basic principles for a new constitution (annex A).

3. In accordance with the programme of implementation, a 15-member

Steering Committee was established on 28 May 1992 by Notification No. 35/92. (Please see annex B for members of the Steering Committee.) With a view to holding the Coordination Meeting for the convening of the National Convention, Order No. 9/92 was issued on 28 May 1992. It sets out the number of elected representatives of the lawfully existing political parties to attend the Coordination Meeting. It also sets out duties to be carried out by the Steering Committee for the successful holding of the Coordination Meeting (annex C).

4. The Coordination Meeting met in June and July to discuss and coordinate the category and number of delegations to be invited to the National Convention. It completed its coordination work on 10 July 1992. General agreement was reached at the Coordination Meeting that elected representatives, representatives of the political parties, the national races, peasants, workers, the intelligentsia and technocrats, civil service personnel and specially invited persons are to be included to participate in the National Convention. Terrorist groups that renounce the path of armed struggle and return to the legal fold will also have an opportunity to participate. There is also complete convergence of views that the constitution to be drafted should uphold and safeguard the following three main national causes:

- (a) Non-disintegration of the Union;
- (b) Non-disintegration of national solidarity;
- (c) Perpetuation of national sovereignty.

5. The National Convention is expected to be convened at the end of the year or by the beginning of 1993 at the latest.

6. In order that the National Convention may be convened systematically, successfully and smoothly, an 18-member Convening Commission for the National Convention has been formed by Order No. 13/92 of 2 October 1992 setting out the duties and functions of the Commission (annex D).

7. The Convening Commission, in order to carry out its duties and functions more effectively and successfully, formed a 36-member Management Committee for Convening the National Convention on 1.5 October 1992 (annex E).

B. Members of political parties against whom action has been taken during 1992 and list of persons in detention and those released during 1992

8. For members of political parties against whom action has been taken during 1992, please see the table in annex F.
9. For the list of persons in detention and of those released during 1992, please see the table in annex G. [The above-mentioned lists are maintained by the secretariat and are available for consultation upon request. The Government indicated that action against 6 persons had been taken in 1992 and that out of 68 persons in detention in 1992, 29 were still in detention and 39 had been released. Note by the secretariat.]

Matters concerning arrests or detention and trial of cases

(a) Arrest and detention

10. In the Union of Myanmar, arrest or detention of a person is made in accordance with the provisions contained in the Code of Criminal Procedure. Under section 54 of the Code any police officer may, without an order from a magistrate and without a warrant, arrest any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned. Therefore, a police officer may not arrest a person without an order or a warrant from a magistrate for an offence that is not cognizable.
11. However, under section 61 of the Code of Criminal Procedure no police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a magistrate under section 167, exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the police station, and from there to the magistrate's court.
12. Whenever a person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of 24 hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer-in-charge of the police station or the police officer making the investigation shall immediately submit to the nearest magistrate a copy of the diary of the case, and shall, at the same time, forward the arrested person to such magistrate. The magistrate may authorize the detention of the arrested person in custody for not more than 15 days in the case of an arrested person accused of an offence punishable with imprisonment for a term of less than seven years. If the offence is one punishable with imprisonment for a term of not less than seven

years, the total period of detention shall, in no case, exceed a total of 30 days.

(b) Right of the accused while in custody

13. During the investigation by the police the arrested and detained person has the right to engage a lawyer, if he so desires. Under paragraph 1198 (3) of the Myanmar Police Manual, the arrested and detained person may, while in police custody, meet and seek advice from his lawyer or his relatives and friends. He may be provided with food of his liking by his relatives and friends.

14. Under section 496 of the Code of Criminal Procedure, he has the right to apply for granting of bail to the police officer either through his lawyer or by himself during the investigation by the police. If the offence alleged against him is a bailable one according to the second schedule of the said Code he shall, as of right, be released on bail. Even in non-bailable cases mentioned in the above schedule the arrested and detained person has the right to apply freely for bail to the magistrate concerned during the police investigation and the court may grant him bail according to the merits of the case. Even in cases where a person is accused of an offence punishable with death or transportation for life, the Court may grant bail to him if there is no ground to believe that he is guilty of such an offence.

15. If there is no case against the arrested and detained person he shall be released. If a case is made against him, he is sent up for trial to the court concerned.

(c) Courts and judicial principles

16. The courts in Myanmar are constituted under the Judiciary Law of 1988, in the following order:

- (a) The Supreme Court;
- (b) State or divisional court;
- (c) District court;
- (d) Township court.

An appeal or revision of any judgement or. order of the township court goes to the state or divisional court, or the district court; an appeal or revision of the

judgement or order of the state or divisional court, or the district court goes to the Supreme Court.

17. The administration of justice in Myanmar is based on the following principles:

- (a) Administering justice independently according to the law;
- (b) Protecting and safeguarding the interests of the people and aiding in the restoration of law and order and peace and tranquillity;
- (c) Educating the people to understand and abide by the law and cultivating in the people the habit of abiding by the law;
- (d) Working within the framework of law for the settlement of cases;
- (e) Dispensing justice in open court unless otherwise prohibited by law;
- (f) Guaranteeing in all cases the right of defence and the right of appeal under the law;
- (g) Aiming at reforming moral character in meting out punishment to offenders.

(d) Trial of cases

18. After completion of investigation by the police within the 30 days allowed by section 167 of the said Code, the case is sent up for trial to the Court concerned. The accused has the right under section 340 of the said Code to engage a lawyer for his defence if he has not done so during investigation by the police. If the accused has not been granted bail during investigation he may apply again for bail to the trial court

19. Procedures for trial of cases differ according to the classification of cases. Cases are classified as summons and warrant cases. Summons cases are those cases relating to an offence punishable with imprisonment for a term not exceeding six months. Warrant cases are those cases relating to an offence punishable with death, transportation or imprisonment for a term exceeding six months.

20. Summons cases not being of a serious nature are mostly adjudicated .the

day the cases are sent up for trial.

21. The procedure for trial of warrant cases is prescribed in chapter XXI of the Code of Criminal Procedure. In a warrant case the evidence produced in support of the prosecution is first taken and the accused has the right to cross-examine each and every witness so produced. If a prima facie case is made a formal charge is framed against the accused. After the charge is framed the accused has the right to recall and cross-examine for the second time any of the prosecution witnesses examined previously by the prosecution and the defence. Then the accused has the right to give evidence on his own behalf and produce witnesses in his support. Except as otherwise expressly provided all evidence shall be taken in the presence of the accused or when personal attendance is dispensed with under the Code of Criminal Procedure in the presence of his counsel.

22. When the accused is examined, the whole of the examination, including every question put to him and every answer made by him, shall be recorded in full and such record shall be shown or read to him, or if he does not understand the language, shall be interpreted to him in a language which he understands and he shall be at liberty to explain or add to his answers. The court may at any stage of the trial put any question to the accused and when he declines to give evidence the court may ask questions generally. The accused will not render himself liable to punishment if he refuses to answer or give false answers. No oath is given when he declines to give evidence on his own defence. Any person aggrieved by an order of the trial court may appeal against such order to the relevant appellate court.

23. Under section 403 of the said Code a person who has once been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence.

(e) Trial of cases by military tribunals

24. With a view to more effectively carrying out security tasks ensuring the rule of law and prevalence of peace and tranquillity military tribunals were formed in 3 of the 10 military regions in Myanmar under Martial Law Order No. 1/89 dated 17 July 1989 by the State Law and Order Restoration Council.

25. The procedure for the trial of cases by the military tribunals was prescribed under Martial Law Order No. 2/89 dated 18 July 1989 by the State Law and Order Restoration Council for speedy disposal of criminal cases.

26. Only those cases which affect the security, rule of law and peace and tranquillity of the State and also cases that affect the moral character of the people are tried by military tribunals. The number of cases tried by the military tribunals compared to criminal cases tried by civil courts is negligible. Later, martial law power exercised in various townships where the rule of law and maintenance of peace and tranquillity have improved was revoked township by township. ,

27. In view of the improvement and stability of the general situation in the State and in view of the interest of the people, the State Law and Order Restoration Council has now revoked all the Martial Law Orders by Order No. 12/92 on 26 September 1992. As a result, at present all cases are being tried by civil courts.

(f) Law safeguarding the State

28. In order to prevent the infringement of the sovereignty and security of the State or public peace and tranquillity and to safeguard the State against the dangers of subversive elements, the Law Safeguarding the State against the Dangers of Subversive Elements was enacted in 1975. 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 the Council of Ministers has formed a Central Body consisting of the Minister for Home Affairs, the Minister for Defence and the Minister for Foreign Affairs. The policies and guidelines to be adhered to in restricting the fundamental rights of citizens are laid down in section 9 of the Law.

29. The Central Body in passing restriction orders for safeguarding the State against dangers has the following powers:

(a) Arresting and detaining a person against whom action is taken for a period not exceeding 60 days at a time up to a total of 180 days;

(b) Restraining a person against whom action is taken up to one year. 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.

30. A person may be restrained under the aforesaid Law in the following manner:

- (a) Prescribing the area within which he shall not reside;
- (b) Prescribing the area in which he shall reside;
- (c) Restricting his movements, as may be necessary;
- (d) Prohibiting the possession or use of articles prescribed.

C. Myanmar's accession to the four Geneva Conventions

31. On 24 August 1992, Myanmar acceded to the four Geneva Conventions of 1949.

32. We are making an in-depth consideration of the provisions in the two Additional Protocols to the four Geneva Conventions.

33. Myanmar is not yet a party to the Covenants on Civil and Political Rights and on Social, Cultural and Economic Rights and the Convention on Torture.

D. Muslim people of Northern Rakhine State

(a) Residency status under law

34. Among the Muslims of Bengali stock living along the border area in the Rakhine State there are those who hold registration cards issued in accordance with the 1949 National Registration Act for those living within the Union of Myanmar. There are also those who are listed in the list of household members without, however, possessing any registration cards.

35. The national registration card does not determine the citizenship of the holder of the card. It is a certificate that establishes the identity of the holder and the fact that he resides within the Union of Myanmar.

36. Those Muslims of Bengali stock living on the Myanmar-Bangladesh border are not Myanmar citizens according to the Myanmar Citizenship Law. They have guest status with the right to apply for citizenship. In order to become a citizen, they must apply for citizenship in accordance with the relevant provisions, of the Citizenship Law. According to the Election Law of the Pyithu Hluttaw, they have the right to vote without, however, the right to be elected.

(b) Legal provisions that determine residency status

37. The legal provisions that determine the status of citizenship are governed by the 1948 Citizenship Act (concerning the choice to become a Myanmar citizen) and the 1948 Union of Myanmar Citizenship Act, which have been revoked, and the Myanmar Citizenship Law of 15 October 1982, which is still in force.

(c) Laws that provide for freedom of religious belief and religious expression

38,. Both the 1947 and 1974 Constitutions contained adequate provisions for all citizens to profess the religion of their choice. Although the two Constitutions have become inoperative, the fact that many national races of different faiths in Myanmar have lived together in amity and harmony for a long time and that the four major religions have existed and flourished in peace is an eloquent testimony to the existence of religious freedom in Myanmar.

39. People of Islamic faith have never been subjected to persecution, torture or discrimination in Myanmar, which is predominantly Buddhist. They have lived harmoniously with the national races of different faiths. The General Secretary of All Myanmar Moulvis Headquarters, in addressing about 350 Muslims who had gathered at the Zafar Shah Mosque in Dagon Township, Yangon, on 24 July 1992, recounted from his personal experience after visiting the border area that there was no persecution of Muslims in Rakhine State. The authorities, for their part, have taken adequate measures in order that the people of Islamic faith are treated on an equal footing with other faiths. For instance, Id al-Adha is designated as one of the official holidays of Myanmar and the religious organizations of Islamic faith are allowed to broadcast their sermons over the Myanmar radio and television on that day. The authorities have never failed to extend necessary facilities to the people of Islamic faith in Myanmar.

40. In February of this year, the Minister for Religious Affairs attended the ceremony held for the laying of cornerstones for the annex to the Muslim Home for the Aged Women of Cholia Muslim Religious Fund Trust. When copies of the Holy Koran imported by the Amin Hawa Waqf were distributed in March of this year to the representatives of various states and divisions, the Minister for Religious Affairs himself honoured with his presence the ceremony held for that purpose. The then-Chairman of the State Law and Order Restoration Council also sent a special message to that ceremony.

41. In May 1992, 200 Hajj pilgrims went to Makkah and the authorities provided the necessary assistance both before and after the pilgrimage.

42. The Chairman of the State Law and Order Restoration Council General Than Shwe on 8 July 1992 sent a message to Myanmar hajjis at the ceremony to honour Hajj pilgrims organized by the Amin Hawa Wagf of the Islamic Religious Welfare Foundation. In his message he stated that "the people of Myanmar Naing-Ngan have enjoyed religious freedom as an inalienable right since the time of their forefathers and so the peoples of the different faiths have been living in unity here because every citizen realizes this very well". At another ceremony, held on 9 July 1992 to honour Hajj pilgrims of 1992 and organized by the Myanmar Muslim National Affairs Organization, the Chairman of the State Law and Order Restoration Council General Than Shwe sent a second message to Myanmar hajjis. In his second message he stated that "Myanmar history shows that all nationals in Myanmar have lived together in weal and woe and enjoyed freedom in the profession of whatever religious faith he or she believes".

43. Myanmar hajjis recounted their experience in Cholia Hall in Pabedan, Yangon, on 25 July. The Chairman of the Myanmar Muslim National Affairs Committee speaking on that occasion spoke of the freedom of religion in Myanmar, citing as an instance the Government's permission for the Hajj pilgrimage to Saudi Arabia. The Myanmar Muslim National Affairs Committee General Secretary also elaborated some points regarding the freedom of faiths in Myanmar and called on those who had fled to Bangladesh not to believe unfounded reports of the foreign media and to come back to their own region.

44. While the authorities in Myanmar are making every effort to fulfil the religious needs of the Islamic faith in Myanmar, Islamic organizations for their part are endeavouring to strengthen friendly ties between the Islamic faith and other religions. One such event took place in Mandalay in March 1992 under the sponsorship of the Myanmar Muslim National Affairs Organization of the Union of Myanmar. It was a get-together of all religions for the Upper Myanmar Zone. The get-together was attended by, in addition to ; the representatives of the sponsoring organization, representatives of Buddhist, Muslim and Hindu organizations, as well as by the Deputy Commander of the Central Command and the Secretary of the Mandalay Division Law and -o?> Order Restoration Council.

45. At the 74th General Meeting of the Myanmar Naing-Ngan Christian Council, held in conjunction with a get-together to honour the Minister for Religious Affairs, Maj.-Gen. Myo Nyunt, held in May 1992 at Myanmar Naing-Ngan Institute of Christian Theology on Seminary Hill in Insein Township, the Chairman of the Christian Council thanked the State for religious freedom in the country.

46. The Minister for Religious Affairs, speaking on that occasion, said that all

citizens were free to profess the religion of their choice, practise and preserve their own language, literature, traditions and customs and culture and to make efforts for their own religious code of conduct and ethics to flourish. He also pointed out that the Government was at present providing all-round assistance to all the religions and was also helping to solve their problems. He said that monetary assistance was also provided to Christians like the rest of the people of other religions. He also disclosed that books on Christian religious literature were permitted to be published in accordance with policy and that religious meetings, discussions and training courses were permitted to be held.

47. At a Hindu traditional ceremony of offering Mingaladipa lights of Goddess Lakshmi held in Yangon on 26 July 1992, the Minister for Religious Affairs, who attended the ceremony, stated that the Government was providing monetary assistance to support Hinduism and that the Religious Affairs Department was making arrangements for Hindu religious activities. He stated on that occasion that freedom to profess the faith of one's choice enjoyed by all nationals in Myanmar and the assistance provided by the Government were an offshoot of "metta" (loving kindness).

(d) Reasons for the flow of Muslim people from Rakhine State to Bangladesh

48. Since the first Anglo-Myanmar War in 1824 Muslims of Bengali stock had entered Rakhine State illegally from across the border. After annexation of Myanmar Naing-Ngan the British Administration adopted a policy of liberalizing immigration regulations in order to import labour from India to Myanmar with the result that there was an exodus of people from the Indian subcontinent to settle in Myanmar. Over the course of years, the number of such immigrants increased, culminating in illegal settlements creating problems for the local populace. Recently the immigration officials conducted routine checking of the national registration cards in the area. Those who did not want to submit themselves to examination of their registration cards fled to the other side of the border. Among those who fled were mostly poor people who were lured by stories that relief food and goods were being distributed on the other side. Some left because they had been threatened by terrorist insurgents to burn down their houses. There were also those who left after having committed crimes.

(e) Aggravation of the problem

49. The problem was exacerbated in 1991 by the broadcasts made by the BBC and the Voice of America and by certain foreign media that carried exaggerated and distorted news concerning the situation at the Rakhine-Bangladesh border. In

addition, some people with biased views, within and outside the country, also spread false and exaggerated news, creating a wedge not only between Myanmar and Bangladesh but also among the Muslim community, thereby aggravating the problem.

(f) Bilateral solutions undertaken by the Government of Myanmar to stop the movement of these people to Bangladesh

50. Myanmar has faithfully carried out the Myanmar-Bangladesh Agreement on Border Arrangements and Cooperation of December 1980 and the Border Ground Rules.

51. In keeping with the Agreement, border area supervision bodies were formed to prevent undesirable incidents on the border. The agreed rules govern border-crossing, black-marketeering and illegal trading and subversive activities, hot pursuit of insurgents across the border and so on. On 7 February 1981, the Government of Myanmar issued procedures to be followed regarding Myanmar-Bangladesh border affairs. Therefore, an adequate mechanism is in place to tackle bilaterally any problem that may arise between the two countries.

52. In November 1991, the Bangladesh Foreign Minister Mostafizur Rahman visited Myanmar to discuss the problem of those who had fled to Bangladesh and all related aspects of the matter with Foreign Minister U Ohn Gyaw.

53. The slander campaign by foreign public media was stepped up perceptibly, especially after the visit of the Bangladesh Foreign Minister, prompting Myanmar authorities to respond to their biased and unsubstantiated reports and broadcasts. On 16 January 1992 and on 21 February 1992, the Ministry of Foreign Affairs issued press releases to put the matter in its true perspective (annex H). On 19 March 1992, Minister for Foreign Affairs U Ohn Gyaw held a special press conference regarding the Myanmar-Bangladesh border situation and explained the true situation at the border as well as Myanmar's stance on the matter (annex I).

54. On 29 March 1992, the Minister for Foreign Affairs and the Deputy Minister for Information took foreign ambassadors, military attaches and foreign journalists on a fact-finding mission to the Myanmar-Bangladesh border area to enable them to witness the real situation prevailing there. The ambassadors, military attaches and journalists met with the local populace from 14 villages of Kyeinchaung Village Tract and raised questions concerning the situation in the area, freely and frankly.

55. The United Nations Under-Secretary-General for Humanitarian Affairs,

Mr. Jan Eliasson, visited the Myanmar-Bangladesh border area in April 1992. Mr. Eliasson and his party met with the local populace and studied the situation in the border area firsthand.

56. In April 1992, a Myanmar delegation led by the Minister for Foreign Affairs U Ohn Gyaw visited Dhaka and held discussions with the Bangladesh delegation headed by Foreign Minister Mr. Mostafizur Rahman on the problem of refugees who had fled to Bangladesh from Rakhine State. The following are the salient points of the agreement reached (please see annex J for the joint statement):

(a) The two sides reiterated their firm conviction of the need to resolve the problem amicably and peacefully through bilateral negotiations on the basis of mutual understanding/ accommodation, trust and goodwill and to maintain peace and tranquillity on their borders;

(b) Repatriation in batches of all persons, inter alia, carrying Myanmar citizenship identity cards/national registration cards; those able to present any other documents issued by relevant Myanmar authorities; and all those persons able to furnish evidence of their residence in Myanmar such as addresses or any other relevant particulars;

(c) Both sides agreed that repatriation should be safe and voluntary;

(d) The two Governments agreed to take all necessary measures to enhance security and tranquillity in their borders in full compliance with the Agreement on Border Arrangements and Cooperation (Border Ground Rules) signed by the two countries in 1980.

(g) How many persons have returned or been repatriated to Myanmar from Bangladesh

57. In accordance with the Agreement reached between Myanmar and Bangladesh in April 1992, five reception camps have been opened since 15 May 1992 in Maungdaw Township.

58. On 22 September 1992, nine families, consisting of 25 men and 21 women, were repatriated for the first time at Kanyin Chaung Camp on the Myanmar side. On 1 October 1992, two women were repatriated. On 12 October 1992, 34 men and 29 women were sent back to Kanyin Chaung Reception Camp. Thus a total of 111 persons have so far been repatriated.

(h) Aid provided by the Government of Myanmar to those people who have returned to Myanmar

59. Medical examinations as well as necessary medical treatment were given to those who returned. Relief goods, food, clothing, pots, pans and plates were also distributed to them. Arrangements are being made for their safe return s to their homes.

E. Other recent steps taken by the Government of Myanmar in the field of human rights

60. The recent steps undertaken by the Government to create an atmosphere and conditions conducive to the establishment of a democratic system in Myanmar include the following:

- (a) The suspension of all offensive operations in Kayin State and other parts of the country to consolidate national solidarity and unity;
- (b) The release from detention and the lifting of restrictions of individuals against whom action had been taken under existing laws and who no longer pose a threat to the security of the country;
- (c) The reopening of universities, colleges and other institutes of ' higher learning that had been temporarily closed;
- (d) The rescinding of the curfew order in the entire country;
- (e) The revocation of the Martial Law Order that had been in force since July 1989;
- (f) The reconstitution of township-level Law and Order Restoration Councils that are responsible for local administration with civilian service personnel in anticipation of the future democratic administrative structure;
- (g) The creation of a separate Ministry of Development of Border Areas and National Races in order to implement more effectively measures for the welfare of the national races living in the remote regions of the country.