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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 30 of General Assembly resolution 65/241.



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

### *Summary*

This is a key moment in Myanmar's history and there are real opportunities for positive and meaningful developments to improve the human rights situation and deepen the transition to democracy. The new Government has taken a number of steps towards these ends. Yet, many serious human rights issues remain and they need to be addressed. The new Government should intensify its efforts to implement its own commitments and to fulfil its international human rights obligations. The international community needs to continue to remain engaged and to closely follow developments. The international community also needs to support and assist the Government during this important time. The Special Rapporteur reaffirms his willingness to work constructively and cooperatively with Myanmar to improve the human rights situation of its people.

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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 and extended most recently by the Human Rights Council in its resolution 16/24. The current Special Rapporteur, Tomás Ojea Quintana (Argentina), officially assumed the function on 1 May 2008.

2. The present report is submitted pursuant to Human Rights Council resolution 16/24 and General Assembly resolution 65/241, and covers human rights developments in Myanmar since the Special Rapporteur's fourth report to the Council in March 2011 (A/HRC/16/59) and his report to the Assembly in September 2010 (A/65/368).

3. The first regular session of Myanmar's new national Parliament was convened on 31 January 2011 and ended on 23 March. On 30 March, the State Peace and Development Council was officially dissolved and power was transferred to the new Government; the new President, two Vice-Presidents and 55 other cabinet members were sworn into office in an inauguration ceremony in Nay Pyi Taw. Myanmar thus reached the last step of its seven-step road map to a "genuine, disciplined, multi-party democratic system".

4. President Thein Sein's inaugural speeches to Parliament on 30 March, to cabinet members and Government officials on 31 March and to chief ministers of regional and State governments on 6 April set out a number of commitments to reform and outlined the new Government's public policy agenda. Of note, the safeguarding of fundamental human rights and freedoms, respect for the rule of law and an independent and transparent judiciary, respect for the role of the media, good governance, the protection of social and economic rights, the development of infrastructure and delivery of basic services, including in ethnic areas, and the improvement of health and education standards, were among the priorities identified.

5. From 16 to 23 May 2011, the Special Rapporteur travelled to Bangkok, Chiang Mai and Mae Hong Son, in Thailand, to meet with various stakeholders, including representatives of ethnic minority groups, community-based and civil society organizations, diplomats and other experts. The Special Rapporteur thanks the Government of Thailand for facilitating his visit, including a meeting with the Minister for Foreign Affairs, Mr. Kasit Piromya.

6. From 21 to 25 August 2011, following an exchange of communications with the Government arising from his previous visit, in February 2010, the Special Rapporteur conducted his fourth mission to Myanmar at the invitation of the Government. In Nay Pyi Taw, the Special Rapporteur met with the Minister for Foreign Affairs, the Minister for Home Affairs, the Minister for Defence, the Deputy Chief of Police, the Minister for Social Welfare, Relief and Resettlement, who also holds the position of the Minister for Labour, the Attorney General, the Chief Justice of the Supreme Court, the Union Election Commission and with some of the presidential advisers. He also met the Speakers and members of the Pyithu and Amyotha Hluttaws, including representatives of ethnic political parties, and observed the second regular session of the Pyithu Hluttaw. He delivered a lecture on international human rights at a training course organized by the Ministry of Home Affairs, which was attended by officials of different ministries and townships. In Yangon, the Special Rapporteur met Daw Aung San Suu Kyi to discuss a range of important human rights issues, conducted a visit to Insein prison, where he met with

seven prisoners of conscience, met with representatives of civil society organizations, former prisoners of conscience and the United Nations country team, briefed the diplomatic community and held a meeting with director-generals of different ministries, at the conclusion of his mission.

7. Following legislative elections, held on 7 November 2010, and the formation of the new Government on 1 April 2011, the Special Rapporteur notes that a number of steps have been taken that have the potential to deepen Myanmar's transition to democracy and to improve the human rights situation. As such, at the end of his mission to the country, the Special Rapporteur welcomed the Government's stated commitments to reform and the priorities set out by President Thein Sein, which included the protection of social and economic rights; the protection of fundamental human rights and freedoms, including through the amendment and revocation of existing laws; good governance and fighting corruption, in cooperation with the people; respect for the rule of law; and an independent and transparent judiciary. He also welcomed the President's emphasis on the need for peace talks with armed groups and the open door for exiles to return to the country. The Special Rapporteur reiterates, however, that these commitments must be translated into concrete action.

8. The Special Rapporteur thanks the Government of Myanmar for its invitation and for the cooperation and flexibility shown during his visit, particularly with respect to the organization of his programme. In addition to the visit, he continued to engage with the Government through meetings with its ambassadors in Geneva and Bangkok, and through written communications.

9. These communications include a joint urgent action letter with the Special Rapporteurs on torture and other cruel, inhuman or degrading treatment or punishment and on the promotion and protection of the right to freedom of opinion and expression, regarding the hunger strike by political prisoners in Insein prison, on 1 June 2011; and a joint urgent action letter with the Chair-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteurs on the right to freedom of opinion and expression, on the situation of human rights defenders, on torture and on violence against women, its causes and consequences, on the case of Hnin May Aung, on 21 July 2011. In addition, on 30 June 2011, the Special Rapporteur sent a letter to the Government requesting an update on the status of the prisoners of conscience mentioned in his previous reports.

10. The Special Rapporteur would like to thank the Office of the United Nations High Commissioner for Human Rights (OHCHR), in particular at Geneva, Bangkok and New York, for assisting him in discharging his mandate.

## **II. Assessing the transition to democracy**

11. In its resolution 16/24, the Human Rights Council requested the Special Rapporteur to make "an assessment of any progress made by the Government in relation to its stated intention to transition to a democracy". As a thorough assessment may be beyond the scope of the present report, the Special Rapporteur proposes to address a number of key issues, which, in his view, are essential features of democratic transition in Myanmar: the functioning of key State institutions and bodies; the situation of ethnic minorities, including ongoing tensions in ethnic border areas and armed conflict with some armed ethnic groups; the human rights situation; and truth, justice and accountability.

12. The Special Rapporteur holds the view that central to any democratic transition, anchored in important human rights principles, including participation, empowerment, transparency, accountability and non-discrimination, is the effective functioning and integrity of State institutions and bodies.

13. Many critics have noted that the new Government is comprised of many officials from the previous military Government. Together with military appointees who automatically occupy a quarter of seats, it is reported that 89 per cent of all seats in the legislature are occupied by people with affiliations to the former Government. Yet, the political landscape has changed. The new Government is nominally civilian and there is an emergence of different actors and parties engaging in the political process. Additionally, decision-making has supposedly been decentralized to various ministries, and new institutions and bodies, such as the National Defence and Security Council and the Supreme State Council, have been created. These developments could further the process of transition, and they require close observation, to see how they unfold.

14. Given their central role in any democracy, the Special Rapporteur has paid particular attention to the establishment and functioning of the new national, regional and State legislatures. He is encouraged that the national legislature (comprised of the upper and lower houses — the Amyotha Hluttaw and Pyithu Hluttaw) has begun exercising its powers within the framework of the Constitution and notes what seems to be an opening of space for different actors and parties to engage in the political process. For instance, Government ministers have appeared before Parliament to answer questions, and parliamentary debates are covered by the official media.

15. During its first regular session, important and sensitive issues relevant to the promotion and protection of human rights were discussed, including land tenure rights and land confiscation; the registration of associations and other local organizations, as well as trade unions; discrimination against ethnic minorities in civil service recruitment; the need for the teaching of ethnic minority languages in schools in minority areas; the question of amnesty to Shan political prisoners; and the granting of national identification cards to the Rohingya. Parliamentary committees, in which opposition party members comprised one third of membership, were established, including the Bill Committee, the Rights Committee, the Public Accounts Committee and the Government's Guarantees, Pledges and Undertakings Vetting Committee.

16. During its second regular session, which began on 22 August 2011, additional committees, including the Fundamental Rights, Democracy and Human Rights Committee, were formed. Important issues were also debated, including the provision of medicines to hospitals, the rebuilding of primary schools in certain constituencies, a private school registration bill and environmental conservation. A member of the Pyithu Hluttaw presented motions to release all prisoners of conscience and to deliberate the creation of a "prison bill for the twenty-first century", which would guarantee human dignity to all prisoners. The Speaker of the House rejected the latter motion, stating that the Ministry of Home Affairs was already drafting a revised prisons act.

17. While welcoming these developments, the Special Rapporteur notes the crucial need to clarify a number of the Parliament's practices and its internal rules and procedures, including how often it will meet, the right of members to place items for legislation and policy debate on the parliamentary agenda, and the precise role and

functions of the various committees established. Also of importance is the need to establish clear rules governing parliamentary immunity, particularly the specific instances in which such immunity could be lifted. In this respect, he notes that laws signed by then Senior General Than Shwe, in November 2010, stipulate that parliamentarians will be allowed freedom of expression unless their speeches endanger national security or the unity of the country or violate the Constitution. The Special Rapporteur notes that these are broad categories that are not clearly defined and could be used to limit debate. Members of Parliament should be able to exercise their freedom of speech in the course of discharging their duties. This is essential to ensure a properly functioning parliamentary culture — one in which transparent, open and inclusive debates can be held on all matters of national importance — an issue that the Special Rapporteur emphasized to the Speakers and Members of Parliament.

18. There is also a strong need to enhance the capacity and functioning of the new institution and its members. This was echoed by many interlocutors from different sectors during the Special Rapporteur's mission to Myanmar, some of whom acknowledged a serious lack of knowledge and expertise of parliamentary practices among Members of Parliament and the need for support by professional parliamentary staff. Accordingly, the Special Rapporteur strongly encourages the Parliament to proactively seek cooperation and assistance from the international community in this regard.

19. Another key institution is the judiciary. The Special Rapporteur observes that the judiciary's capacity, independence and impartiality remain outstanding issues in Myanmar. The Special Rapporteur notes that there do not appear to be any major structural transformations within the judiciary. The new Chief Justice was formerly one of the justices on the Supreme Court, and the new Attorney General was previously a Deputy Attorney General, with no further information on new appointments to the courts.

20. Concerns regarding the functioning of the judiciary also remain. The Special Rapporteur continues to receive information of criminal cases being heard behind closed doors. In one case, the family of former army captain, Nay Myo Zin, was barred from the closed court inside Insein prison, on 2 June 2011. Nay Myo Zin, who left the army in 2005 and then volunteered for a blood donor group headed by a member of the National League for Democracy, had been charged under the Electronics Act. During the proceedings, judges heard a statement from Deputy Police Commander, Swe Linn, who had conducted the search at his house, in early April 2011, and found a document in his e-mail inbox entitled "National Reconciliation". On 26 August 2011, he was sentenced to 10 years in prison. According to reports, he appears to have been subjected to torture resulting in shattered lower vertebrae and a broken rib, which led to his attending court on a hospital stretcher. His requests for external hospitalization have also been reportedly denied.

21. Another concern regarding fair trials is the access to counsel. During the Special Rapporteur's meeting with Daw Aung San Suu Kyi and the Executive Committee of the National League for Democracy, he was informed of the problem of the arbitrary revocation of licences of lawyers who defend prisoners of conscience. The Special Rapporteur urges the Government to reconsider these revocations and to guarantee the effective right to counsel and to allow lawyers to practise their profession freely.

22. The Special Rapporteur therefore encourages the Government of Myanmar to implement his previous recommendations on the judiciary, the fourth core human rights element as contained in his earlier report (A/63/341), and to undertake the series of measures proposed, in order to enhance its independence and impartiality. These include guarantees for due process of law, especially public hearings in trials against prisoners of conscience. These and other measures are detailed in the Basic Principles on the Independence of the Judiciary (1985); the Basic Principles on the Role of Lawyers (1990); the Guidelines on the Role of Prosecutors (1990); the Procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary (1989); and the Beijing Statement of Principles of the Independence of the Judiciary (1997). He also encourages the Government to seek technical assistance, particularly in the area of capacity-building and training of judges and lawyers.

23. Further, the Special Rapporteur is concerned at allegations of widespread corruption, which, according to many sources, is institutionalized and pervasive. According to studies by civil society organizations, payments are made at all stages in the legal process and to all levels of officials, for such routine matters as access to a detainee in police custody or determining the outcome of a case. As Myanmar achieves greater economic development, there will likely be more conflicts and contests that will need to be resolved in the courts. The Special Rapporteur therefore welcomes the Government's stated commitment to combating corruption and urges that priority attention be given to the judiciary in this respect.

24. The Special Rapporteur notes that Myanmar has yet to establish complete civilian control over the military, another key feature of democratic transition. While there have been developments, such as changes within its leadership and the abolishment of supra-ministerial policy committees, he notes the military's role in the legislatures (with military appointees occupying 25 per cent of seats), as well as the role of the new Commander-in-Chief, General Min Aung Hlaing, who independently administers and adjudicates all matters pertaining to the armed forces and must be consulted by the President on appointments of the Ministers for Defence, Home Affairs and Border Affairs (as provided in the 2008 Constitution). Additionally, the Constitution establishes permanent military tribunals, separate from oversight of the civilian justice mechanism, for which the Commander-in-Chief will exercise appellate power. Further, and as outlined in greater detail below, the Special Rapporteur has continued to receive reports of human rights violations committed by the military, particularly in ethnic border areas. The Special Rapporteur refers to his third core human rights element and encourages the adoption by the military of the measures proposed, which could help to address the above concerns.

25. The Special Rapporteur's previous report to the Human Rights Council (A/HRC/16/59) stated that the national elections, held in November 2010, failed to meet international standards and highlighted restrictions on the freedoms of expression, assembly and association. The Special Rapporteur's previous report to the General Assembly (A/65/368) stated that the electoral legal framework and its implementation by the Election Commission and other relevant authorities in many ways handicapped party development and participation, in the context of Myanmar's first election in over two decades. During his visit to Myanmar, the Union Election Commission acknowledged difficulties and flaws in the conduct of the elections, partly due to the number of polling stations and the inexperience of officials. The

Special Rapporteur was also informed that 29 complaints had been filed with the Election Commission, with decisions made in several cases. No further information was provided although it was noted that such decisions had been published in the official gazette.

26. Since the elections, the Special Rapporteur has received reports that the Union Election Commission, despite new members appointed by Parliament, continues to discourage the role of parties in the political process. For example, on 6 July 2011, three elected representatives of the Rakhine Nationalities Development Party were disqualified, by tribunal, following complaints by Union Solidarity and Development Party representatives. The Election Commission also ordered the Rakhine Nationalities Development Party representatives to pay compensation of 1.5 million kyat (about US\$ 1,765) each to the representatives of the Union Solidarity and Development Party, reportedly for attacking the previous military Government and the Union Solidarity and Development Party in their election campaigns during 2010.

27. With by-elections expected later this year for some 40 Pyithu Hluttaw, Amyotha Hluttaw and State or regional Hluttaw seats, the Special Rapporteur strongly urges the Union Election Commission to learn lessons from the November 2010 elections and to play a role in ensuring that the upcoming by-elections are held in a more participatory, inclusive and transparent manner. Complaints filed to the Election Commission should be addressed in a timely, open and transparent manner. Significant improvements to the electoral process would be important for Myanmar's democratic transition.

28. Finally, one new institution that has received positive attention is the new Presidential Advisory Board, whose members include U Myint, as head of the Economic Advisory Group, Sit Aye, who heads the Legal Advisory Group and Ko Ko Hlaing, who heads the Political Advisory Group. The Special Rapporteur met with some of the presidential advisers during his mission and held a frank and fruitful exchange of views, including on important future initiatives. He believes that they have played a key role in advising the President on the challenges facing Myanmar and the priorities for reform. He therefore encourages them to continue their important functions and to provide suggestions on how to translate or implement commitments into concrete action.

### **III. The situation of ethnic minorities**

29. The situation of ethnic minority groups, including armed conflict in the border areas, presents serious limitations to the Government's intention to transition to democracy. In his previous reports, the Special Rapporteur highlighted concerns regarding the systematic and endemic discrimination faced by ethnic and religious minority groups, in particular in northern Rakhine and Chin States. Such concerns included policies preventing the teaching of minority languages in schools, the denial of citizenship to and restriction of movement of the Rohingya, restrictions on the freedom of religion or belief and economic deprivation. The Special Rapporteur has called upon the Government to ensure that ethnic minorities are granted fundamental rights.

30. The Government has said that parliaments are the only venue for discussion on national reconciliation. While ethnic political parties are represented in the national, regional and State legislatures, the November 2010 electoral process excluded

several significant ethnic and opposition groups that need to be included in any meaningful dialogue. In addition, only a few members of ethnic political parties have been nominated as Chief Minister of a State or region. These venues alone are therefore not sufficient for resolving the situation of ethnic minorities. A comprehensive plan by the Government is needed to officially engage these groups in serious dialogue and resolve long-standing and deep-rooted concerns. More broadly, the Special Rapporteur reiterates that ending discrimination and ensuring the enjoyment of cultural rights for ethnic minorities is essential for national reconciliation and would contribute to Myanmar's long-term political and social stability.

31. The ongoing tensions in ethnic border areas and armed conflict with some armed ethnic groups, particularly in Kachin, Shan and Kayin States, continue to engender serious human rights violations, including attacks against civilian populations, extrajudicial killings, sexual violence, arbitrary arrest and detention, internal displacement, land confiscations, the recruitment of child soldiers and forced labour and portering. The Special Rapporteur also continues to receive disturbing reports of landmine use by both the Government and non-State armed groups, and subsequent casualties throughout the country. For example, on 23 June 2011, a 72-year-old man lost his right foot after stepping on a landmine outside Shwe Aye Myaing village, Kawkareik Township; and on 20 June 2011, a 21-year-old man in Gklaw Ghaw village, Kawkareik Township, had to have his right leg amputated after stepping on a landmine.<sup>1</sup>

32. Since 9 June 2011, armed clashes have erupted between the Myanmar military and elements of the Kachin Independence Army, one of the largest and most powerful armed ethnic groups, marking an end to a ceasefire in place since 1994. According to reports, there are over 15,000 internally displaced people near the border with China, with several thousands more hiding over the border. Their conditions are believed to be perilous, with little aid available in the remote mountainous area. The United Nations approached the Government, offering assistance to all those in need. According to reliable sources, the Government's position is that assistance is currently provided at the local level, and when needed they will seek further assistance from relevant partners. Allegations of abuses against civilian populations throughout Kachin State include reports of 18 women and girls having been gang-raped by army soldiers, and of four of those victims being subsequently killed.

33. Fighting that erupted immediately after the November 2010 elections continues in southern and central Kayin State, in areas controlled by factions of the Democratic Karen Buddhist Army that refused to transform into border guard forces. Recently, former units of the Democratic Karen Buddhist Army that had agreed to the border guard forces scheme have defected and joined with the Karen National Liberation Army. An estimated 8,000 people have been displaced in this region, drastically increasing their vulnerability to human rights abuses, such as arbitrary detention and arrest by the military, and risks from landmines.

34. In northern Kayin State and eastern Bago Division, internal displacement and severe food shortages continue. Despite fewer reports of targeted attacks on civilians, it appears that ration re-supply operations have continued as normal, including the use of civilian porters to carry equipment and walk or drive ox-carts in front of military trucks, to clear for landmines.

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<sup>1</sup> Karen Human Rights Group, Update No. 79, 27 June 2011.

35. On 13 March 2011, the military broke a 22-year ceasefire with the Shan State Army-North, with the mobilization of and attacks by 3,500 new troops. According to community-based organizations with whom the Special Rapporteur met in Chiang Mai, in May 2011, more than 100,000 civilians have been affected, with increases in forced labour, forced relocation, property confiscation, arbitrary arrest, torture, extrajudicial killings on suspicion of support for the opposition and the gang rape of three women, details of which he finds particularly abhorrent.

36. In Mon State, authorities under the Southeast Command announced an order via loudspeakers and posted notices in public locations in various townships, to members of ceasefire groups, to turn in their weapons to police stations or Military Affairs Security offices by 3 July 2011. However, no weapons were reported to have been handed over.

37. The Special Rapporteur welcomes President Thein Sein's commitment to keep the door open to peace and his statement of 17 August 2011 on the need for peace talks with armed groups. He notes, in this respect, Notification 1/2011, issued on 18 August 2011, inviting armed groups to peace talks. He also welcomes as a first step the establishment by Parliament of the Committee for Eternal Stability and Peace in the Union of Myanmar, on 31 August 2011, which aims to mediate between the Government and ethnic armed groups. He urges the Government to accelerate efforts towards finding a durable political resolution rather than a military solution to the complex undertaking of forging a stable, multi-ethnic nation. The Special Rapporteur also reiterates his call for the Government and all armed groups to ensure the protection of civilians, in particular children and women, during armed conflict. He calls upon the Government to abide by international humanitarian law, especially the four Geneva Conventions, to which Myanmar is party. In particular, common article 3 of the Geneva Conventions provides for the protection of civilians from inhumane treatment and violence to life and person. He further reiterates his previous recommendation that the Government sign and ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (Mine Ban Treaty) immediately and work with international organizations to develop a comprehensive plan to end the use of landmines and to address their legacy, including the systematic removal of mines and rehabilitation of victims.

#### **IV. Human rights situation**

38. Respect for human rights, including both broad categories of civil and political rights and economic, social and cultural rights, is a crucial feature of any democratic transition. The Special Rapporteur notes that the Government has made important commitments and taken a number of steps that have the potential to improve the human rights situation.

39. In his inaugural speech to Parliament on 30 March 2011, President Thein Sein emphasized the safeguarding of the fundamental rights of citizens, noting that the Government will "guarantee that all citizens will enjoy equal rights in terms of the law" and will "amend and revoke the existing laws and adopt new laws as necessary to implement the provisions on fundamental rights of citizens or human rights". On 8 June 2011, during the adoption of the outcome of Myanmar's universal periodic review by the Human Rights Council, Attorney General Tun Shin reaffirmed Myanmar's commitment to the promotion and protection of human rights. In this respect, the

Special Rapporteur is encouraged to note that Myanmar accepted 74 recommendations out of 190 received and urges the Government to ensure their implementation.

40. Despite these positive statements, there are ongoing and serious human rights concerns that need to be addressed.

## A. Prisoners of conscience

41. Of key concern to the Special Rapporteur and to the international community is the continuing detention of a large number of prisoners of conscience. There are at least 1,995 such prisoners of conscience, according to current estimates. While the Government continues to assert that there are no political prisoners in Myanmar, the Special Rapporteur has consistently held that these are individuals who have been imprisoned for exercising their fundamental human rights or whose fair trial or due process rights have been denied. Their continued detention, in his view, is an important barometer of the current condition of civil and political rights in the country.

42. On 16 May 2011, President Thein Sein announced an amnesty that commuted death sentences to life imprisonment and reduced all prisoners' sentences by one year. The measure resulted in the release of an estimated 100 prisoners of conscience, including 23 members of the National League for Democracy. While encouraged by this political decision, the Special Rapporteur notes that it fails to resolve the problem that prisoners of conscience, who should be released, continue to be arbitrarily detained, which disappoints international and national expectations.

43. On 30 June 2011, the Special Rapporteur requested updates on the status of the prisoners of conscience that he has mentioned in previous reports and statements, including information about whether they remain in detention and where, whether their sentences have been or will be reduced, and the overall state of their health.<sup>2</sup> In its response of 3 August 2011, the Government stated that one individual could not be verified, one had been listed twice, 14 had been released, while the rest remained in prison.

44. The Special Rapporteur would like to remind the Government of the human dimension of its continuing to hold prisoners of conscience, many with unacceptably long sentences. Two of the longest-serving prisoners are Thant Zaw and Nyi Nyi Oo, members of the youth group of the National League for Democracy who were wrongfully convicted of bombing a Tanyin petroleum factory in July 1989. Now in their mid-40s, they have spent the past 22 years in prison, much of the time reportedly in solitary confinement. In the absence of any actual evidence of involvement in the bombing, confessions were extracted under torture at Aung Thabyay interrogation centre and used to convict them on murder charges in a closed court military tribunal hearing at Insein prison, without their having access to legal counsel, and for which they were sentenced to death. The Karen National Union

<sup>2</sup> These include Ashion Pyinya Sara, Aung Thein, Aung Tun Myint, Bo Min Yu Ko, Pone Na Mee (Mya Nyunt), Tin Min Htut, May Win Myint, Than Nyein, General Sao Hso Ten, Hla Hla Win, Hla Myo Naung, Htay Kywe, Kay Thi Aung, Khin Maung Shein, Ko Mya Aye, Kyaw Ko Ko, Kyaw Kyaw, Kyaw Min, Ma Khin Khin Nu, Min Ko Naing, Zarganar, Mya Than Htike, Nilar Thein, Nyi Nyi Htwe, Nyi Pu, Pho Phyu, Phyo Wai Aung, Sandar, Su Su Nway, Than Myint Aung, Than Tin, Thant Zin Oo, Thurein Aung, U Gambira, Khun Htun Oo, Myint Aye, Ne Win, Oakkantha, Tin Yu, Win Zaw Naing and Zaw Naing Htwe.

subsequently claimed responsibility for the bombing. In August 1989, military intelligence arrested Ko Ko Naing, a “bomb expert” of the Karen National Union, who confessed to the crime and exonerated the members of the National League for Democracy from any involvement. On 1 September 1989, the Government held a press conference announcing Ko Ko Naing’s guilty verdict. On 5 September 1989, Thant Zaw and Nyi Nyi Oo were again brought to a military tribunal and tried concurrently with 14 other activists for participating in anti-regime underground movements and received sentences of 20 years for high treason. Their total sentences were later commuted to 30 years’ imprisonment. Thant Zaw is currently incarcerated at Thayet prison, 547 kilometres from his family in Yangon. Nyi Nyi Oo is currently incarcerated at Taungoo prison, 281 kilometres from his family in Yangon. Both men have suffered poor health in recent years. They should be released immediately and unconditionally.

45. Since the start of his term as mandate holder in 2008, the Special Rapporteur has consistently called for the immediate and systematic release of prisoners of conscience (his second core human rights element, see A/63/341). The Special Rapporteur was informed in his meetings that the Ministry of Home Affairs is investigating the status of prisoners in lists provided by various sources. Nevertheless, he would like to see a concrete and time-bound plan for their release, with special attention to be given to elderly prisoners and those with health problems. In all meetings with Government interlocutors during his mission to Myanmar, he conveyed his firm belief that the release of prisoners of conscience is a central and necessary step towards national reconciliation and would bring more benefit to Myanmar’s efforts towards democracy. He stressed that the release must be without any conditions that may result in new ways of diminishing the enjoyment of human rights.

## **B. Conditions of detention and treatment of prisoners**

46. The Special Rapporteur remains concerned about the conditions of detention and the treatment of prisoners. He notes continuing allegations of torture and ill-treatment during interrogation, the use of prisoners as porters for the military or “human shields”, and the transfer of prisoners to prisons in remote areas where they are unable to receive family visits or packages of essential medicine and supplemental food.

47. In January 2011, an estimated 700 prisoners, from approximately 12 prisons and labour camps throughout Myanmar, were reportedly sent to southern Kayin State by the Myanmar military with the cooperation of the Corrections Department and the police, to serve as porters. Also in the same month, around 500 prisoners were sent to northern Kayin State and eastern Bago region. They replaced 500 prisoners who were sent to the same region the previous year. International humanitarian law provides for the humane treatment of persons under the control of an armed force and specifically prohibits “violence to life and person” murder, cruel treatment and torture and humiliating and degrading treatment of those persons having no active part in the hostilities.<sup>3</sup>

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<sup>3</sup> Human Rights Watch and Karen Human Rights Group, *Dead Men Walking: Convict Porters on the Front Lines in Eastern Burma*, July 2011, available from: [www.hrw.org](http://www.hrw.org).

48. In Insein prison, the Special Rapporteur met with seven prisoners of conscience: Aung Thein, Tin Min Htut, Ma Khin Khin Nu, Phyo Wai Aung, Win Zaw Naing, Sithu Zeya and Nyi Nyi Tun. He heard disturbing testimonies of prolonged sleep and food deprivation during interrogation, beatings, and the burning of bodily parts, including genital organs. He heard accounts of prisoners being confined in cells normally used for prison dogs, as a means of punishment. As in his previous meetings with prisoners, he was told of inadequate access to medical care, where prisoners had to pay for medication at their own cost.

49. The Special Rapporteur sent a joint urgent appeal letter to the Government on 21 July 2011 regarding the case of Hnin May Aung (also known as Noble Aye), a member of the All Burma Federation of Student Unions and 88 Generation Students, who is serving an 11-year sentence for violation of section 5/96 (4) of the Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention against Disturbance and Oppositions (No. 5), section 505 (b) of the Penal Code, and section 6 of the Law Relating to the Forming of Organizations. Hnin May Aung is serving her sentence in the remote Monywa prison in Sagaing region, 517 miles from Yangon where her family lives. She was held incommunicado in a punishment cell, essentially solitary confinement, with a ban on family visits for writing an open letter addressed to President Thein Sein, strongly denouncing statements, made on 2 June 2011 by Vice-President U Tin Aung Myint Oo to United States Senator John McCain, that there are no political prisoners in Myanmar. When Hnin May Aung's father attempted to visit her on 7 July, he was told by the warden of the jail and an intelligence officer that her family visits had been banned because she had violated prison regulations. The warden did not explain which rule had been violated. Her father was also unable to deliver a package of supplementary food and essential medication to Hnin May Aung, who suffers from jaundice.

50. The Special Rapporteur reminds the Government that it has a duty to ensure Hnin May Aung's right to physical and mental integrity. He recalls paragraph 1 of Human Rights Council resolution 8/8, which "condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment". Furthermore, article 7 of the Basic Principles for the Treatment of Prisoners provides that "efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged" (as affirmed by the General Assembly in its resolution 45/111). He also draws attention to principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the Assembly in its resolution 43/173, which states that "a detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world". Attention is also drawn to rule 37 of the Standard Minimum Rules for the Treatment of Prisoners, adopted on 30 August 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which provides that "prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits".

### **C. Other issues related to civil and political rights**

51. In his previous reports and in his meetings with various Government interlocutors, the Special Rapporteur highlighted several domestic laws that continue to be used to restrict fundamental freedoms, among which: the State Protection Act (1975), the Unlawful Association Act (1908), sections 143, 145, 152, 505, 505 (b) and 295 (A) of the penal code, the Television and Video Law (1985), the Motion Picture Law (1996), the Computer Science and Development Law (1996), and the Printers and Publishers Registration Act (1962). The Government has said that it is in the process of reviewing legislation to bring relevant laws into line with the Constitution, and ostensibly with international human rights standards as the Special Rapporteur repeatedly recommended (his first core human rights element). He notes that, despite assurances that this review process was already under way in February 2010, there have not been any results announced. Nevertheless, the Special Rapporteur was encouraged to hear that the review process continues, including during the second regular session of Parliament. Given the Government's stated commitment to respect for the rule of law, and in line with his previous recommendations on the issue, he hopes such efforts will be accelerated and clear time-bound target dates for the conclusion of the review will be established. Additionally, priority legislation for urgent review should also be identified, including those provisions identified by the Special Rapporteur. Similar sentiments had been expressed by the Committee on Freedom of Association of the International Labour Organization (ILO), in May 2011, when it urged the Government to repeal the Unlawful Association Act and adopt all necessary measures and mechanisms to ensure workers' and employers' rights, in line with ILO Convention No. 87 on Freedom of Association and the Protection of the Right to Organize.

52. The freedoms of opinion and expression, assembly and association are essential for the functioning of a democratic society. They are fundamental rights enshrined in the Universal Declaration of Human Rights and in international human rights treaties, including those to which Myanmar is party: the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and ILO Convention No. 87 on Freedom of Association and the Protection of the Right to Organize. The 2008 Constitution also provides for freedom of expression, opinion and assembly. The Preamble (para. 8) provides for justice, liberty and equality. Article 6 (d) declares that the basic principles of the Union are the flourishing of a genuine, disciplined, multi-party democratic system. Article 406 (a) and (b) state that a political party shall have the right to organize freely and to participate and compete in elections. Article 354 states that every citizen shall be at liberty to express and publish freely their convictions and opinions, to assemble peacefully without arms and to form associations and organizations.

53. The right to freedom of expression is linked to the role of the media. The 10-point reform agenda outlined by the President to Parliament included amending some journalism laws in line with the provisions of the Constitution. During the Special Rapporteur's mission to Myanmar, some interlocutors noted that media censorship had eased. In August 2011, slogans criticizing foreign media were removed from Government newspapers. In September 2011, an article by Daw Aung San Suu Kyi was published in a local journal, her first publication in 23 years. Nevertheless, the Special Rapporteur has received reports of continuing restrictions

placed on the media. For example, news outlets inside Myanmar have been required to publish only State-run newspaper accounts about fighting between the Government and the Kachin Independence Army in Kachin State. As of 10 June 2011, publications focusing on sports, health, the arts, children's literature and technology no longer need to gain approval prior to publication, but copies must be submitted to the Press Scrutiny and Registration Division afterwards. Publications focusing on news, crime, education, economics and religion must still be presented to censors prior to publication.

54. The Ministry of Information issued a regulation requiring publications to deposit 5 million kyat (around US\$ 5,882) with the censorship board, with the stipulation that if they violated rules three times, the money would be seized upon a fourth violation. According to reports, a new oversight board under the Ministry of Information has been established to investigate violations. On 7 June 2011, the board issued notifications that include No. 46, prohibiting publication and distribution of material that is contrary to the Three National Causes (non-disintegration of the Union, non-disintegration of national solidarity and perpetuation of national sovereignty); the Constitution; or the Official Secrets Act; that is damaging to relations among ethnic national races or religions; that upsets peace and tranquillity or incites disturbances; and that exhorts members of the armed services to commit traitorous acts or undermines the performance of public service duties. The Special Rapporteur highlights that these vague but encompassing restrictions are similar in nature to the laws that have been used to convict prisoners of conscience for many years.

55. The Special Rapporteur was informed by the Minister for Labour, Aung Kyi, that a draft trade union law had been submitted to the Bill Committee in Parliament for consideration. ILO has provided assistance in drafting the law, including through a mission to Myanmar by an ILO consultation team in July 2011. The Special Rapporteur welcomes this development and hopes that the draft law, as adopted, will conform to international standards.

56. President Thein Sein has publicly acknowledged that many individuals and organizations, both inside and outside the country, do not accept the new Government and the Constitution. He has, however, asserted the importance of showing goodwill, and urged these actors to take part in elections in accordance with the democratic process and exercise their constitutional rights by legitimate means if they desired a change to the Constitution. Recently, the Minister for Foreign Affairs, Wunna Maung Lwin, also stated that those willing to participate in the deliberations of the future of the nation should form a political party, be elected and take part in the Hluttaws as representatives of the people, in accordance with the Constitution.

57. Questions remain over the status of the National League for Democracy, which the Government has declared an illegal party over its failure to re-register to participate in the 2010 elections. The National League for Democracy has since exhausted legal appeals against its official dissolution. On 29 June 2011, *The New Light of Myanmar* reported on the letter from the Ministry of Home Affairs to Daw Aung San Suu Kyi, stating that her party was breaking the law by maintaining party offices, holding meetings and issuing statements. The letter stated "If they really want to accept and practice democracy effectively, they are to stop such acts that can harm peace and stability and the rule of law, as well as the unity among the people including monks and service personnel". The Special Rapporteur notes that the National League for Democracy and Daw Aung San Suu Kyi represent key

stakeholders, who need to be included in the political process. National reconciliation requires real dialogue with all relevant stakeholders. Therefore, he welcomes talks between the Minister Aung Kyi and Daw Aung San Suu Kyi on 25 July and 12 August, and notes with appreciation the meeting held with President Thein Sein on 19 August, which resulted in public statements on the need to cooperate. He hopes that these talks will further substantive engagement between the Government and important political opposition stakeholders.

58. The Special Rapporteur notes with appreciation that Daw Aung San Suu Kyi was able to travel, without incident, outside Yangon for the first time, from 4 to 8 July 2011, when she made a private trip to Bagan, and then on 14 August 2011 when she travelled to Bago to meet with supporters, open two libraries and to give public addresses. Nevertheless, he reiterates that Daw Aung San Suu Kyi should be allowed to travel without restriction and to be allowed to exercise her right to freedom of expression and freedom of association and assembly, and that these freedoms should be the general rule rather than an exception.

#### **D. Economic, social and cultural rights**

59. The President's inaugural speeches made several commitments in the area of economic, social and cultural rights, and his 10-point reform agenda includes the safeguarding of farmers' rights, creating jobs and safeguarding labour rights, overhauling public health care and social security, raising education and health standards and promoting environmental conservation.

60. In addition to these commitments, the Special Rapporteur is encouraged to note recent initiatives, such as the enactment of new investment legislation; the holding of another national workshop on rural development and poverty alleviation, in May 2011, and the development of an action plan (covering the period 2011 to 2015) on this issue; the Third Development Partnership Forum, held in June 2011, jointly organized by the Government and the Economic and Social Commission for Asia and the Pacific; and a national-level workshop on economic reform and economic development, held in August 2011, to which Daw Aung San Suu Kyi was invited. He also takes note of the Government's stated intention to reduce the poverty rate in Myanmar from 26 per cent to 16 per cent by 2015.

61. In his report to the Human Rights Council in March 2011 (A/HRC/16/59), the Special Rapporteur began to explicitly address economic, social and cultural rights: those human rights relating to the workplace, social security, family life, participation in cultural life and an adequate standard of living that includes access to food, water, housing, education and health care. He noted that the failure to address systematic discrimination and inequities in the enjoyment of these rights will undermine efforts to build a better future for the people of Myanmar.

62. During his mission to Myanmar, many interlocutors underscored the extent to which the people have been deprived of economic, social and cultural rights, throughout the country, but particularly in the ethnic border areas. This is closely linked to the need to immediately address Myanmar's long-standing social, economic and development challenges. Concerns regarding the availability and accessibility of education and health care were specifically highlighted, as well as the need for the teaching of ethnic minority languages in schools in minority areas, reflecting issues that the Special Rapporteur has raised previously.

63. A recent survey conducted by the United Nations Development Programme, in cooperation with the Government's Ministry of Planning and Economic Development, the United Nations Children's Fund and the Swedish International Development Agency, found that Chin State remains the poorest State among 14 regions and States in Myanmar, with 73.3 per cent of the people below the poverty line, while Kayah State had a poverty rate of 11.4 per cent, Yangon region had a rate of 16.1 per cent, and Rakhine State, with a rate of 43.5 per cent, was the second poorest.

64. Other concerns highlighted land and housing rights, particularly with respect to the impact of infrastructure projects; land confiscation by the military for barracks and military camps, the production of food for soldiers, and subsequent designation of "high security areas" prohibiting people from access; natural resource exploitation; deliberate population transfers to change the demographic make-up of certain areas, including Northern Rakhine State; and development-induced displacement. Violations of land and housing rights result in poverty, displacement and ruined livelihoods, but also the destruction of cultures and traditional knowledge. Estimates of the number of people forcibly displaced in Myanmar since 1962 owing to natural disasters, armed conflict and increasingly, to infrastructure and development projects, place the figure over 1.5 million.

65. During the Special Rapporteur's visit to Mae Hong Son, in Thailand, in May 2011, Karenni civil society organizations highlighted the problem of infrastructure projects in Kayah State. The construction of the Moebye dam and the Lawpita hydropower plant appear to have been a factor in the military's actions in 1996, leading to massive displacement of populations to relocation sites and over the border into Thailand. At least 183 villages, covering at least half of the entire geographic area of the State and with an estimated total population between 25,000 and 30,000 people, were ordered on short or no notice to move to various relocation sites, in order to cut off civilian support for the Karenni National Progressive Party after a ceasefire agreement was breached in June 1995. While most of the power produced by these projects goes to central Myanmar, with few benefits for local villagers, these residents have been victim to forced labour, including providing sentry duty to guard the structures, and made vulnerable to landmines used to protect the properties. Neither environmental nor social impact assessments were done for the projects. Meaningful consultation with communities likewise did not take place, although village headmen in affected communities apparently were provided with income-generating opportunities.

66. In 2010, the Government agreed to the construction of three new dams on the Salween river in Kayah State, with the Chinese State-owned Datang Corporation, and surveys are reportedly being undertaken by engineers with army escorts. There is great concern for people living in the area, particularly for the indigenous Yintale Karenni, with only 1,000 members remaining, who are threatened with forced relocation, land confiscation and other human rights abuses. The Special Rapporteur recalls that a number of articles in the United Nations Declaration on the Rights of Indigenous Peoples explicitly provide for free, prior and informed consent. Article 32 (2) requires States to "consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources". The

Declaration is also explicit that no relocation of indigenous peoples should take place without consent.

67. Tensions that led to the current armed conflict in Kachin State appear to have been exacerbated by the Government's approval of the construction, by China, of seven major hydroelectric projects on Kachin lands. While the projects will involve significant population displacement, destruction of local livelihoods and flooding of large parts of Kachin territory, the concerns of the ethnic group appear, to date, to have been largely ignored. In March 2011, the Kachin Independence Organization sent a letter to central authorities in China, detailing its concerns and seeking support in resolving the issue. Likewise, in Kayin State where the Hatgyi Dam is planned, increased fighting has led to thousands of new refugees fleeing to Thailand.

68. There appear to be more new projects in development. More than 25 large hydropower dams are being built or planned on all major rivers, with investment mainly from neighbouring countries to whom most of the power will be exported, despite only 13 per cent of Myanmar's population currently having access to electricity. The planned dams are all located in ethnic regions. Other projects include a deep sea port, gas and oil pipelines and mines involving multinational companies from China, India, the Republic of Korea, Thailand and other countries, including from Europe and North America, despite sanctions which do not permit service contracts. Myanmar requires strong rule of law in order to guarantee the rights of the people in the context of these infrastructure projects. Communities need to be consulted in a meaningful way, which does not appear to have been done in most cases. Revenues from these projects should be recorded appropriately and be used to benefit the people of Myanmar for the realization of their economic, social and cultural rights. The private companies that are involved in these projects also have a responsibility to not be complicit in human rights abuses.

69. Whereas the Government was directly responsible for economic projects prior to 1988, private local commercial interests with strong links to the military have since emerged, complicating somewhat the respective roles of these companies and the Government in their legal complicity in human rights abuses. For example, on 18 December 2010, the Htoo construction company, owned by a powerful businessman in Myanmar with strong connections to the military, cleared the land of a group of farmers, which was under agricultural use, for the construction of a road to the site of a caustic soda and polyvinyl chloride (PVC) factory in Magway Division. On 4 February 2011, four farmers lodged a complaint about attempts by the Htoo Company to acquire their land at a greatly undervalued amount; their complaint was rejected in court on the grounds that the land was being acquired for a Government project, even though the company is private. Subsequently, a gang of about 20 men attacked a group of the farmers, injuring two of them, and a series of criminal charges were filed against the farmers. The case went to court very quickly and the farmers were convicted.<sup>4</sup> Given the wave of privatizations last year, some under questionable circumstances, along with the new Government's plans to accelerate economic development, the Special Rapporteur fears an increase in land confiscation and other forms of coercion by private sector actors in collusion with the military and Government.

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<sup>4</sup> Asian Human Rights Commission, Urgent Appeal Case: AHRC-UAC-073-2011, 7 April 2011, available from [www.humanrights.asia](http://www.humanrights.asia).

70. While Myanmar is not party to either of the core international human rights covenants, the right to adequate housing is recognized in article 25, paragraph 1, of the Universal Declaration of Human Rights as well as in the two treaties that Myanmar has ratified: in article 14 of the Convention on the Elimination of All Forms of Discrimination against Women and in article 27, paragraph 3, of the Convention on the Rights of the Child.

71. The Government's obligations to realize the right to adequate housing does not require provision of housing but facilitation of the conditions, through law and policy, for citizens to have access to adequate housing. The Government has the obligation to not forcibly evict people and to protect people from being forcibly evicted by third parties. The Commission on Human Rights, in its resolution 1993/77, stated "that the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing".

72. In this context, the Special Rapporteur reminds the Government of the victims' right to restitution, a principle of restorative justice, providing every refugee and displaced person the right to return to their former homes and lands and to have their homes and lands, with repairs for any damage or rebuilding of destroyed property, under the Principles on Housing and Property Restitution for Refugees and Displaced Persons, adopted in 2005 by the Sub-Commission on the Promotion and Protection of Human Rights, in its resolution 2005/21. He notes that restitution rights are not limited to people with land titles, but also renters and other legal occupiers of land. If return to the old home or land is not possible, displaced persons have a right to compensation for their loss and/or a new house and/or land. The Government needs to adopt relevant rules and policies, in this regard, which ensure an independent and impartial process.

## V. Truth, justice and accountability

73. As stated in previous reports, the Special Rapporteur is concerned that a pattern of gross and systematic violations of human rights has existed for many years and continues today, although a new political system is being established. He reaffirms that justice and accountability measures, as well as measures to ensure access to the truth, are essential for Myanmar to face its past and current human rights challenges, and to move forward towards national reconciliation.

74. The Special Rapporteur reiterates that it is primarily the responsibility of the Government of Myanmar to address this problem and to end impunity. Investigating and prosecuting those responsible for serious violations of international human rights law and international humanitarian law is not only an obligation but would deter future violations and provide avenues of redress for victims. If the Government fails or is unable to assume this responsibility, then the responsibility falls to the international community. Accordingly, the Special Rapporteur has previously recommended that the international community consider establishing an international commission of inquiry into gross and systematic human rights violations that could amount to crimes against humanity and/or war crimes. He makes clear that this is only one option for ensuring that justice is dispensed, accountability is established, and impunity is averted.

75. An international commission of inquiry, appointed by ILO in 1997, found in 1998 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 and health and basic needs of the people". The Government, which had been invited to take part in the proceedings, abstained from participating in the inquiry and did not permit the commission to visit the country. The commission received over 6,000 pages of documents and heard testimony by representatives of non-governmental organizations and over 250 eyewitnesses with recent experience of forced labour practices. The outcome of the commission's investigation into forced labour includes an acknowledgement of the problem and some efforts to address it, including through subsequent active cooperation by the Government with ILO through a supplemental understanding. Such a positive outcome could likewise be helpful to the Government in confronting wider human rights and humanitarian law violations.

76. During his mission to Myanmar, the Special Rapporteur repeatedly highlighted the importance of investigations into alleged human rights violations being carried out by an independent and impartial body, in order to establish the facts. In this connection, he was again informed that the Myanmar Human Rights Body, under the chairmanship of the Minister for Home Affairs, had established a team to investigate human rights violations whenever they were lodged by citizens and to take punitive actions against violators. He notes, however, that the Myanmar Human Rights Body does not operate under any legislation but under the terms of Notification 53/2007, which sets out in three paragraphs the body's composition and broad terms of reference: to examine and make proposals on work related to the United Nations and international human rights; to examine and make proposals on the establishment of a human rights commission in Myanmar; and to set up working groups as necessary. No reference is made to any investigative capacity or complaints receiving mechanism.

77. During his mission, the Special Rapporteur received information that the Government intended to establish a national human rights institution. On 6 September 2011, the Government issued Notification 34/2011 on the formation of the Myanmar National Human Rights Commission "with a view to promoting and safeguarding fundamental rights of citizens described in the Constitution". The Special Rapporteur has also received information that the Government intends to research the role and terms of reference of other human rights commissions established during democratic transitions.

78. The Myanmar National Human Rights Commission is composed of 15 members, the majority of whom are former Government officials. There are many questions about the role and functioning of such an institution and whether it would comply, in terms of independence and effectiveness, with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (Paris Principles), which were welcomed by the General Assembly in its resolution 48/134. In this respect, the Special Rapporteur notes that an independent, credible and effective institution that complies with the Paris Principles could be an important mechanism for receiving complaints and investigating violations, thereby playing a central role in human rights promotion and protection in the country.

79. The Special Rapporteur emphasizes that ultimately the institutions and instruments in Myanmar available for investigation of human rights violations should meet international standards. Moreover, the issue of access to remedies and reparations must be addressed. The right to effective remedy is recognized under

international human rights law and has been detailed in General Assembly resolution 60/147, by which the Assembly adopted the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

80. The Special Rapporteur perceives that there is a growing understanding and recognition in some areas of the Government and among other stakeholders inside the country about the major responsibilities of the authorities in respect to truth, justice and accountability measures for past and ongoing gross and systematic human rights abuses. He again encourages the Government to demonstrate its willingness and commitment to address these concerns and to take the necessary measures for investigations of human rights violations to be conducted in an independent, impartial and credible manner, without delay.

## **VI. International cooperation**

81. The Special Adviser to the Secretary-General on Myanmar, Mr. Vijay Nambiar, has been able to continue the Secretary-General's good offices dialogue through his visits on 27 and 28 November 2010 and from 11 to 13 May 2011. The Special Rapporteur remains in close contact with the Special Adviser.

82. The Government of Myanmar participated actively in the universal periodic review process with the consideration of its report in January 2011 and the adoption of the outcome in June 2011.

83. OHCHR plans to conduct a human rights training workshop for Government officials during 2011. This follows a similar training workshop for Government officials, held in 2010.

84. The Special Rapporteur welcomes the return of the International Committee of the Red Cross (ICRC) to Myanmar with the visit of three officials from the ICRC water and habitat engineering department to three prisons (Myaungmya prison, Moulmein prison and Pa-an prison), on 1 and 2 July 2011. He again urges the Government to allow full access of ICRC to prisons and to prisoners, according to its standard procedures applied worldwide.

85. ILO has provided assistance to the Government on a draft trade union law. The Special Rapporteur hopes that the legislation, as adopted, will be in line with Myanmar's international obligations under Convention No. 87, which Myanmar has ratified.

86. The President noted in his inaugural speech that the Government intends to work in cooperation with international organizations, including the United Nations and non-governmental organizations in the education and health sectors.

87. The Office of the United Nations High Commissioner for Refugees (UNHCR) has noted a relative improvement in its ability to secure permissions for and facilitate the implementation of its activities in Myanmar, particularly its aid projects in Rakhine State. Collaboration with the Government for future planning and resolving UNHCR concerns in the field has also improved comparatively. UNHCR both directly and indirectly collaborates with local Government bodies in support of formal and informal education; health; water, sanitation and hygiene; and infrastructure development projects.

## VII. Conclusions

88. This is a key moment in Myanmar's history and there are real opportunities for positive and meaningful developments to improve the human rights situation and deepen the transition to democracy. The new Government has taken a number of steps towards these ends.

89. Yet, many serious human rights issues encompassing the broad range of civil, political, economic, social and cultural rights remain and they need to be addressed. The new Government should intensify its efforts to implement its own commitments and to fulfil its international human rights obligations.

90. The Special Rapporteur holds the view that justice and accountability measures, as well as measures to ensure access to the truth, are fundamental for Myanmar to face its past and current human rights challenges, and to move forward towards national reconciliation and democratization. In this context, the Special Rapporteur reiterates that it is essential for investigations of human rights violations to be conducted in an independent, impartial and credible manner, without delay. The new Government should signal its willingness and commitment as soon as possible through concrete action at the domestic level in this regard. The international community should be ready to consider those steps necessary to help Myanmar to fulfil its international obligations, which could include a commission of inquiry or other forms of technical assistance.

91. The international community needs to remain engaged, closely follow developments, and support and assist the Government during this important time. The Special Rapporteur reaffirms his willingness to work constructively and cooperatively with Myanmar to improve the human rights situation of its people. He hopes to return to Myanmar before he presents his next report to the Human Rights Council, in March 2012.

## VIII. Recommendations

92. The Special Rapporteur reiterates his four core human rights elements related to the review of legislation, prisoners of conscience, the armed forces and the judiciary (see A/63/341, A/64/318 and A/HRC/10/19).

93. He urges that priority be given to the release of all prisoners of conscience, without delay and without conditions, as a central and necessary step towards national reconciliation, which would bring more benefit to Myanmar's efforts towards democracy.

94. He also recommends that the Government of Myanmar:

(a) Take immediate measures to improve the conditions of detention and the treatment of prisoners, in compliance with international standards; to address allegations of torture and ill-treatment during interrogation, and the use of prisoners as porters or "human shields" for the military; and to halt and remedy the transfer of prisoners to prisons in remote areas where they are unable to receive family visits or packages of essential medicine and supplemental food;

(b) Ensure respect for the freedoms of expression, assembly and association. Remove restrictions on the development and activities of political

parties, and draw lessons from the November 2010 elections in order to ensure that future ballots are held in a more inclusive, participatory and transparent and thus, credible manner;

(c) Accelerate efforts for the review and amendment of legislation and legal provisions that limit fundamental freedoms and contravene international standards. Clear time-bound target dates for the conclusion of the review should be established. Priority legislation for urgent review should also be identified, including those provisions previously identified by the Special Rapporteur. They include: the State Protection Act (1975); the Emergency Provision Act (1950); the Printers and Publishers Registration Act (1962); the Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention against Disturbance and Oppositions (No. 5) (1996); the Law Relating to the Forming of Organizations (1988); the Television and Video Law (1985); the Motion Picture Law (1996); the Computer Science and Development Law (1996); the Unlawful Association Act (1908); the Electronics Act; and sections 143, 145, 152, 505, 505 (b) and 295 (A) of the penal code;

(d) Undertake more concrete measures to ensure not only the protection, but also the realization of basic economic, social and cultural rights. Special attention should be given to the implementation of the Special Rapporteur's previous recommendations on the right to education (A/HRC/16/59);

(e) Ratify core human rights conventions. This was being considered, as indicated to the Special Rapporteur during his meetings with authorities in Myanmar;

(f) Ensure that investigations by an independent body into gross and systematic human rights violations are conducted in an impartial and credible manner, without delay, with a view to establishing the facts and providing effective remedies, including reparations, rehabilitation and compensation. The Special Rapporteur urges the Government to seek the necessary international technical assistance in this regard;

(g) Ensure that the new Myanmar Human Rights Commission is established in such a way as to comply with international standards, particularly the Paris Principles. The human rights institution should be established by a law adopted by the Parliament that should provide for an inclusive and transparent selection process of the members, that includes a selection committee comprising all sectors of the society. The law should provide for functional and budgetary independence and meet other requirements of the Paris Principles;

(h) Ensure that the Commission should be equipped with the necessary resources and capacity in order to ensure effectiveness. The Government should seek technical assistance from OHCHR in the development of this new institution;

(i) Engage with and seek assistance from OHCHR for follow-up and implementation of the accepted universal periodic reviews recommendations, as well as those of the treaty bodies and special procedures mandate holders.

95. The Special Rapporteur calls on the authorities and all armed groups to ensure the protection of civilians in conflict-affected areas and respect for

international human rights and humanitarian law. He also calls on the authorities and all armed groups to accelerate efforts towards finding a political solution to the conflicts.

96. The use of anti-personnel landmines should be prohibited in all cases. The Special Rapporteur recommends that the Government ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction.

97. More broadly, the Special Rapporteur reiterates that ending discrimination and ensuring the enjoyment of cultural rights for ethnic minorities is essential for national reconciliation and would contribute to Myanmar's long-term political and social stability. A comprehensive plan by the Government to officially engage these groups in serious dialogue is needed to resolve long-standing and deep-rooted concerns.

98. The effective functioning and independence of State institutions is central to any transition to democracy. The Special Rapporteur therefore recommends that:

(a) In order to enhance the capacity and functioning of Parliament and of its members, cooperation and assistance from the international community should be sought, for example from the International Parliamentary Union and other appropriate international organizations;

(b) Technical assistance from the international community should also be sought in the area of judicial reform, capacity-building and training of judges and lawyers;

(c) The Union Election Commission should exercise its powers in an independent and impartial manner, in order to ensure that by-elections scheduled to take place later in 2011 are deemed to be more credible. Election laws should be revised to ensure a more level playing field. Complaints should be addressed in a timely, open and transparent manner.

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