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

Situation of human rights in Myanmar

Report submitted by the Special Rapporteur, Paulo Sérgio Pinheiro

Summary

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

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

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

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

During the mission, the Special Rapporteur collected sufficient insights into the current thinking and attitude of the State Peace and Development Council (SPDC) and others about the road map and, in particular, the National Convention. He was given to understand that the starting point of the National Convention would be the 104 Principles that had been developed by the previous National Convention; all political parties would be able to participate equally in

the Convention as one of the eight eligible categories of participants; and there would be new elections held in accordance with a new constitution. In response to his specific question regarding NLD participation, the Special Rapporteur was informed that NLD would be expected to take part in the National Convention on an equal footing with other political parties and it was now up to NLD to come forward and join the process.

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

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

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

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

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

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

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

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

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Introduction

1. The mandate of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar was established by the Commission in its resolution 1992/58 and extended most recently in resolution 2003/12 (approved by the Economic and Social Council in its decision 2003/239).
2. In its resolution 2003/12, the Commission requested the Special Rapporteur to report to the General Assembly at its fifty-eighth session and to the Commission at its sixtieth session (para. 6 (a)). The Special Rapporteur accordingly submitted an interim report to the General Assembly (A/58/219). The present report is based upon the findings of his fifth fact-finding mission to Myanmar undertaken in November 2003 and information received by him up to 17 December 2003 and is to be read in conjunction with his interim report.
3. In discharging his mandate the Special Rapporteur has always taken into account the situation of all sets of human rights. In the present report, he highlights civil and political rights in the context of the process of political transition and democratization, the monitoring of which is included in the terms of reference of his mandate, as he feels that it is necessary to evaluate the decisive events and new developments in the promotion and protection of those rights that occurred during the reporting period.

I. VISIT TO MYANMAR AND RELATED ACTIVITIES

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

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

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

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

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

9. On his way to and from Myanmar, the Special Rapporteur stopped in Thailand (29-31 October and 9-10 November) for meetings with the Director-General of the Department of International Organizations and other officials at the Ministry for Foreign Affairs of Thailand, United Nations officials, representatives of the diplomatic and academic communities, the media and non-governmental organizations (NGOs). The Special Rapporteur and his team² also heard testimonies from individuals who had direct knowledge of the circumstances of human rights violations that occurred before, during and after the 30 May 2003 events in Depayin.

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

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

II. HUMAN RIGHTS-RELATED DEVELOPMENTS

A. The events of 30 May

12. In his interim report, the Special Rapporteur documented the events that occurred on 30 May 2003 in Depayin as presented by the Myanmar authorities and other reliable sources and also shared his preliminary reading of the incident, based on the information available at the time of writing (see A/58/219, paras. 10-17, 23-25). During his last mission, he was able to supplement his knowledge about the incident through interviews with eight victims and eyewitnesses as well as discussions with the authorities and Daw Aung San Suu Kyi. He also had access to tapes and photographic evidence provided by the authorities and other reliable sources. At his request, the Special Rapporteur was provided with an unpublished report on the results of the official investigation. From what he heard and saw during this mission and based

on eyewitness testimonies, he is convinced that there is *prima facie* evidence that the Depayin incident could not have happened without the connivance of State agents. The evidence that the Special Rapporteur has been able to collect indicates that, as pro-Daw Aung San Suu Kyi rallies were growing larger, in particular in the period between 25 and 30 May 2003, there was an escalation of threats, provocation, harassment, intimidation, bullying and orchestrated acts of violence with the involvement of those opposed to NLD and/or those who had some connection to Government-affiliated bodies. The Special Rapporteur deeply regrets that the authorities did not handle the evolving situation peacefully and in accordance with human rights principles, thereby averting unnecessary loss of human life and suffering.

13. Pending the issuance of the Government's report, the Special Rapporteur feels that it is necessary to share his preliminary account of the incident, established on the basis of the information collected thus far through his own fact-finding. On the day of the incident (30 May 2003) at around 9 a.m., Daw Aung San Suu Kyi and her party left Monywa for Butalin town. On the way they stopped at Zawtika monastery to pay their respects to the monks. Upon arrival in Butalin in the early afternoon, Daw Aung San Suu Kyi gave a speech and organized ceremonies for the opening of the local township NLD office and the setting up of the party's youth wing. At around 6 p.m., the convoy left for Depayin town. On the way, they made a short stop in Saingpyin village where Daw Aung San Suu Kyi, to lend her moral support, greeted the villagers and visited the family of the NLD MP-elect, U Win Myint Aung, who appeared to have been arrested a few days earlier for his role in preparing her visit. At about 7 p.m., the motorcade, comprising at least around 11 cars and 150 motorcycles, resumed the journey to Depayin.

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

15. The attackers were civilians and wore white armbands, including the ones dressed as monks. People wearing such armbands had been seen prior to the incident in a smaller village and photos of the site of the attack taken a few days later show white armbands strewn around the field. There seemed to have been one or more leaders giving orders to the attackers. The violence was directed both against those in the convoy and the 200-500 villagers who had gathered to greet Daw Aung San Suu Kyi and her party. Some of those in the convoy stayed in their cars and some got out of their cars and tried to hide in the fields; both groups were attacked. The attackers used sharpened bamboo and wooden stakes and iron rods. The attackers also hit people with stones, reportedly harassed women, ripping off their blouses and stripping off their jewellery, and also took people's personal belongings from the cars. The attackers reportedly shouted, "Do not call us *Kyanthput* any more", *Kyanthput* being a derogatory term

used to refer to members of the Union Solidarity and Development Association (USDA), a pro-Government mass organization. According to testimonies, there were between 50 and 70 people lying on the road, either injured or dead. By 9 p.m., the violence had ended.

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

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

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

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

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

21. Effective redress of the human rights violations that occurred during the incident would provide a moral compass to guide the country forward on the path to national reconciliation and democratization. It is not a question of seeking revenge, or taking a partisan political stance. Missing this opportunity for reconciliation could lead to more negative developments. The

Special Rapporteur therefore proposed to SPDC that he conduct an independent assessment of the Depayin incident under his mandate, or assist in carrying out a full and independent inquiry.

B. Political prisoners

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

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

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

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

26. Concerning the circumstances surrounding the present situation of Daw Aung San Suu Kyi, the Special Rapporteur was informed by the authorities that she is no longer being detained under any provision of "security" legislation. However, her telephone line remains cut and security arrangements concerning her remain in place. In effect, her circumstances are

those of someone who has been placed under house arrest. She made it very clear to the Special Rapporteur that she would not accept freedom for herself until all those arrested since 30 May 2003 had been released. To his knowledge, the authorities have not yet made any offer to release her, but at the same time they claim that they are in regular contact with her and that the contacts are positive.

C. The National Convention

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

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

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

30. During his last visit, the Special Rapporteur collected sufficient insights on the current thinking and attitude of SPDC and others about the road map and, in particular, the National Convention. He had lengthy discussions with the Chair and other members of NCCC. He was informed that the above-mentioned three bodies had held their first joint meeting on 5 November 2003. He was given to understand that the starting point of the National Convention would be the 104 Principles that had been developed by the previous National Convention; all political parties would be able to participate equally in the Convention as one of the eight eligible categories of participants; and there would be new elections held in accordance with a new constitution. In response to his specific question regarding NLD participation, the

Special Rapporteur was informed that NLD would be expected to take part in the National Convention on an equal footing with other political parties and it was now up to NLD to come forward and join the process. The Special Rapporteur's reading of the indications he received from various interlocutors is that the results of the 1990 elections are unlikely to be considered. In addition, the process of the National Convention has yet to embrace those elements that are conducive to a genuinely free, transparent and inclusive process involving all political parties, ethnic nationalities and elements of civil society.

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

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

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

34. Political rights and freedoms must be respected in order to create an enabling environment conducive to a successful democratic transition. The implementation of human rights reforms set out by the Special Rapporteur in his reports and letters to the authorities of

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

35. Human rights principles should be incorporated in the new constitution of Myanmar. While it is up to the people of Myanmar to decide their own structure of government, there are certain human rights and rule of law principles that should be an integral part of any constitution in the twenty-first century. These principles should include explicit human rights guarantees for both civil and political rights and economic, social and cultural rights; non-discrimination; the independence of judiciary and other mechanisms of accountability; and remedies for citizens for abuse of power by officials. There are many good examples of constitutions in the region, including those of Thailand and the Philippines, which could be studied.

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

D. Conditions of detention

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

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

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

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

41. The Special Rapporteur continues to be very concerned about detainees either in pre-trial detention or during trial who are kept in incommunicado detention. Before and during trial, they are not allowed to receive visits and sometimes even parcels, from their families. In most cases, families are not even informed of their whereabouts. The time between the arrest and the start of the trial is too long, and in many cases detainees are informed of the charges against them only when their trial starts. In addition, the right to a fair trial continues to be denied to political detainees. More often than not, they do not have access to lawyers or, if they do, are not allowed sufficient time to consult with their lawyers to prepare their defence adequately. In most cases, they meet their lawyers, if any, on trial days.

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

E. Religious violence

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

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

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

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

F. Independent assessment of the situation in Shan State

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

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

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

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

G. Child soldiers

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

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

H. Compulsory military training for civilians

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

III. OTHER ISSUES

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

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

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

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

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

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

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

B. Effects of sanctions

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

61. The Special Rapporteur took note of a report and information submitted by the United States Department of State in October 2003 to the International Relations Committee of the United States Congress regarding the effects of these sanctions. Reportedly, those measures, in particular the financial services ban, immediately disrupted the economy of Myanmar. The import ban hit the garment sector the hardest and the Government has been unable or unwilling to assist affected businesses or their employees. The ban on imports from Myanmar had already led by then to 30,000-40,000 layoffs in the garment industry and it was estimated that ultimately 100,000 people could lose their jobs. It was noted that this would lead to significant unemployment and a possible rise in economic migrants' seeking illegal work inside Myanmar or across the border in Thailand and China. Most of them would be young women who have no other way of earning a living and some would be forced, or duped, into the sex trade and prostitution.

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

IV. CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

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

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

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

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

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

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

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

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

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

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

Notes

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

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

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

Annex

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

1. May Win Myint
2. Maung Maung Lay
3. Win Ko Ko
4. Lwin Ko Latt, also known as Win Ko
5. U Aye Myint
6. Aye Kyu, also known as Monywa Aung Shin
7. U Tun Myint
8. U Htwe Myint
9. Nanda Sir Aung, also known as Sit Ko Aung
10. U Ne Win
11. Mae Hnin Kyi, also known as Daw Ni
12. U Naing Min Kyi
13. U Kyaw Sun
14. U Saw Naing Naing
15. Dr. Than Nyein
16. U Win Tin
17. U Thu Wai
18. U Toe Po
19. U Hla Min
