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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 of the Special Rapporteur, Paulo Sérgio Pinheiro

Summary

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

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

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

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

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

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

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

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

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

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

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

The Special Rapporteur underlines the fact that the State apparatus and its agents will not just disappear after the political transition has been completed. As was the case in many democratic transitions in the twentieth century, even subsequent to direct military rule, many State agents and bureaucrats with experience in running the country, including judges, public prosecutors and army officials, will remain in office in order to prevent instability. In other

South-East Asian countries, transitions gradually led to improvements in participatory democracy, elections, labour standards and human rights. The Special Rapporteur believes that it would be absurd for the international community to wait for the end of the political transition to cooperate on initiatives aimed at improving the lives of vulnerable persons in Myanmar and to hold the population hostage until the completion of the democratization process.

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

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

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Introduction

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

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

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

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

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

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

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

II. THE NATIONAL CONVENTION PROCESS

A. Recent developments

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

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

9. While there was a change of Prime Minister on 19 October 2004, the Government, under the new Prime Minister, Lieutenant-General Soe Win, has given public assurances that all commitments made under the previous Government will be honoured and that, in particular, it will remain fully committed to the successful implementation of the seven-step road map for national reconciliation and democratic transition, including the National Convention, which was announced by the former Prime Minister, General Khin Nyunt, in August 2003. It was reiterated that the road map was formulated by the State Peace and Development Council (SPDC) rather than a single individual, and that SPDC would therefore continue to implement the road map, its own political agenda, without changes, step by step, “with a view to seeing to the emergence of a peaceful, developed and discipline-flourishing democratic nation”.

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

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

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

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

B. The participation of ethnic nationalities in the National Convention

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

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

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

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

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

C. The participation of political parties in the National Convention

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

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

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

III. UPDATE ON THE SITUATION OF HUMAN RIGHTS

A. The exercise of fundamental rights and freedoms

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

23. A number of recent cases of people being arrested, tried and sentenced to prison for peaceful political activity and the exercise of basic civil and political rights and freedoms have been brought to the attention of the Special Rapporteur. U Ohn Than, a 58-year-old former political prisoner, was arrested on 21 September 2004 for staging a protest outside

United Nations premises in Yangon, bearing a poster calling for a free and fair parliament and for a United Nations commission to investigate the events of 30 May 2003. Thet Wai (a) Pauk Sa, NLD Chairman from Sanchaung Township, was arrested on 22 September 2004 for providing assistance to U Ohn Than. Both were sentenced to two years of imprisonment at the Eastern High Court in Yangon, under article 505 (b) of the Penal Code: “intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility”.

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

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

B. Political prisoners

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

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

28. Among those released were NLD MPs-elect U Kyaw San, U Ohn Maung and U Toe Po, aged 72, 77 and 65 respectively. Also released were a number of students, including Min Ko Naing, also known as Paw U Tun, who was arrested for his leading role in the organization of non-violent student demonstrations in the 1988 protests against military rule, when he headed

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

29. The Special Rapporteur also welcomes the release on 26 November 2004 of a further 10 political prisoners who were among the additional 5,311 prisoners whose release had been announced by the authorities on the previous day. The grounds for their release were the same as for the earlier group of 3,937 prisoners. On 29 November 2004, the State newspaper *New Light of Myanmar* reported that all 9,248 convicts had been released from various prisons around the country. Pending the clarification by the authorities of the details of those released, the Special Rapporteur hopes that those large-scale releases include large numbers of political prisoners. In that regard, the Special Rapporteur requests from the Government a full list of all released prisoners, with the exact grounds for their conviction and release.

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

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

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

C. Administration of justice

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

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

35. The Special Rapporteur is of the view that the recent large-scale prisoner releases prompted by the “irregularities” committed by NIB agents could be an initial step in the direction of addressing human rights issues in the area of the administration of justice, as described in previous reports. It is immaterial whether those releases include large numbers of common prisoners: the release of any unfairly detained or unjustly convicted persons must be welcomed. After so many months without the release of substantial numbers of prisoners, this move by the Myanmar Government would contribute to the process of political transition if it were to include large numbers of political prisoners, would certainly help to create a more favourable environment for the reconvening of the National Convention, and would open the way to reform in the administration of justice.

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

D. Human rights in ethnic minority areas

37. The Special Rapporteur remains very disturbed by continuing allegations of human rights violations in ethnic minority areas, particularly those affected by counter-insurgency operations, and by the presence in ceasefire areas not involved in counter-insurgency activity of large contingents of the armed forces. Civilians in those areas have reportedly witnessed widespread violations of economic, social and cultural rights, including the deprivation of means of livelihood through land and crop confiscation, the destruction of houses, excessive taxation and extortion. Continuing reports of the use of landmines, forced labour and sexual violence indicate that fundamental human rights are at risk in those areas. Most regrettably, not having been

granted access to the country by the Government in the past 12 months, the Special Rapporteur has been unable to conduct a first-hand assessment of those allegations, but he hopes to be able to look into them when he is invited to return to the country.

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

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

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

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

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

E. Child soldiers

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

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

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

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

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

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

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

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

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

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

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

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

V. CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

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

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

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

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

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

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

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

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

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

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

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

64. The Special Rapporteur is keen to pursue his cooperation with Myanmar and hopes that the new Government will give favourable consideration to his resumption of country visits.
