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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, Mr. Rajsoomer Lallah, submitted in  
accordance with Commission on Human Rights resolution 1999/17

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### Executive summary

Political repression and the lack of real engagement in a political dialogue with opposition groups continue to be the main sources of measures adversely affecting democratic governance in Myanmar. The policy of large-scale displacement of certain ethnic groups, the continued practice of forced labour for military camp work and portering, and related human rights violations remain the main cause of refugee movements.

The Permanent Representative of Myanmar to the United Nations indicated at the General Assembly last November that the authorities in Myanmar were giving serious consideration to a visit by the Special Rapporteur. To date no concrete steps have materialized.

Myanmar's ethnic and religious minorities, such as the Karen, Karenni, Shan and Rohingyas, continue to suffer severe abuses, including arbitrary arrest, killings, forced labour in the army and trafficking of women.

The administration of justice continues to operate under the effective control of a military regime where the exercise of the basic freedoms of expression, association, assembly and movement are criminalized under the law itself. Vaguely worded laws, such as the 1950 Emergency Provisions Act and the 1975 State Protection Law, continue to be used to arrest and sentence persons for their peaceful political activities. It is estimated that in 1998 there were approximately 800 political prisoners in Myanmar.

According to reliable studies of the economic and social situation in Myanmar, the country is riddled with abject poverty. Child mortality rates are relatively high for a country with Myanmar's level of gross domestic product per capita. Poverty rates are approximately the same in urban and rural areas, but most of the poor (71 per cent) live in rural areas. Flawed policies and inefficient mechanisms for rice procurement are largely responsible for the high level of malnutrition and infant and maternal mortality. Government budgetary priorities that in effect limit expenditure on social services have exacerbated the current situation.

The adoption by the Government of Myanmar of military solutions to political problems, while seeking military and financial inputs from outside the country to impose its order on the people, continues to generate a pattern of gross and systematic human rights violations.

Unless the regime moves away from military solutions and engages instead in an all-inclusive political dialogue with the political opposition, including representatives of the ethnic groups, and addresses the concerns of the international community, the pattern of human rights violations which has characterized the last decade in Myanmar will continue and no significant progress can be expected towards realizing the country's economic potential and achieving the levels of human welfare and prosperity enjoyed by the rest of South-East Asia.

### Introduction

1. The mandate of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar has been described in each of the Special Rapporteur's previous reports to the General Assembly (annexes to documents A/47/651, A/48/578, A/49/594 and Add.1, A/50/568, A/51/466, A/52/484, A/53/364 and A/54/440) and to the Commission on Human Rights (E/CN.4/1993/37, E/CN.4/1994/57, E/CN.4/1995/65 and Corr.1, E/CN.4/1996/65, E/CN.4/1997/64, E/CN.4/1998 and E/CN.4/1999/35). The mandate was extended for a further year by resolution 1999/17 of the Commission on Human Rights, which requested the Special Rapporteur to submit an interim report to the General Assembly at its fifty-fourth session and to report to the Commission at its fifty-sixth session, keeping a gender perspective in mind when seeking and analysing information (para. 8).

#### I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

2. On 4 October 1999, the Special Rapporteur presented his interim report on the situation of human rights in Myanmar to the fifty-fourth session of the General Assembly (A/54/440) and made an introductory statement. While in New York, he had discussions with representatives of various Governments and non-governmental organizations as well as individuals who provided him with information on the situation of human rights in Myanmar.

3. It should be recalled that, since his appointment in June 1996, the Special Rapporteur has yet to be allowed by the Government of Myanmar to examine the situation in situ and to meet with government officials and other persons relevant to the effective exercise of his mandate.

4. It should be noted that, in response to the submission of his last interim report to the General Assembly, the Permanent Representative of the Union of Myanmar to the United Nations reiterated his Government's rejection of the appointment of the Special Rapporteur, on the ground that it constituted an interference in the internal affairs of Myanmar. He expressed, as on previous occasions, his disagreement with the contents of the Special Rapporteur's report. He stated however, that his Government did not rule out a visit by the Special Rapporteur. Similar indications had, year after year, been given in the General Assembly and the Commission by the Permanent Representative of Myanmar. To date no positive steps have been taken to allow such a visit. The Special Rapporteur reiterates his regret that in the nearly four years since his appointment, the Government of Myanmar has not responded to the repeated calls of the General Assembly and the Commission on Human Rights for cooperation with the Special Rapporteur and to authorize his visit. In spite of the lack of cooperation from the authorities in Myanmar, and as in previous years, the Special Rapporteur has received considerable assistance and information from governmental, intergovernmental and non-governmental sources. He has also received relevant information from individuals about the human rights situation in Myanmar.

5. The Special Rapporteur has proposed to visit two neighbouring countries in order to conduct interviews of refugees and other displaced persons from Myanmar in those countries. The Special Rapporteur expects that the mission could take place in the course of this year.

6. The present report is based upon information received by the Special Rapporteur up to 15 December 1999 and is to be read in conjunction with his interim report to the General Assembly.

## II. THE EXERCISE OF CIVIL AND POLITICAL RIGHTS

### A. Measures adversely affecting democratic governance

7. In his report to the fifty-fourth session of the General Assembly (A/54/440), the Special Rapporteur indicated that opposition political parties continued to be subject to intense and constant monitoring by the regime and to severe restrictions on their activities; their members have been prohibited from leaving their localities and subjected to intimidation, personal harassment and harassment of their families, and arrest and imprisonment, particularly in the case of members of the National League for Democracy (NLD), the object being to procure the resignation of those members.

8. The Special Rapporteur continues to receive reports indicating that the campaign of harassment and intimidation continues to be conducted against high-ranking members of NLD in general and the rank and file membership in particular for the purpose of procuring their resignations. It would appear that Aung San Suu Kyi and other NLD leaders are able to meet but always subject to restrictions and close monitoring. Public meetings are not allowed. As a result of forced resignations, particularly among members of executive committees, a number of NLD branch offices have closed down or were forced to close. By March 1999 there had been over 50 branch closures. Moreover, a number of sources reported in September 1999 that many members of the NLD, including MPs-elect, and other activists (in the hundreds) were still in prison or were under arrest or some form of detention while others were subject to restrictions on their freedom of assembly and movement and to systematic monitoring.

9. Restrictions imposed by the regime on ethnic opposition parties are reported to continue unabated. For instance, two senior members, Naing Tun Thein (82) of the Mon National Democratic Front and Kyin Shin Htan of the Zomi National Congress, two of the ethnic opposition parties in Myanmar, were arrested shortly after they met with the Special Envoy of the United Nations Secretary-General, Mr. Alvaro de Soto, during his visit to Myanmar from 14 to 18 October 1999. No official reason has been given for their detention. Another ethnic leader, Doo-wah U Zaw Aung, of Myanmar's Kachin nationality and the MP-elect for the township of Waingmaw, disappeared at the beginning of August. It is reported that his fate or whereabouts remain undetermined.

10. Reports indicate that three ethnic leaders were arrested in September 1998 for supporting the Committee Representing the People's Parliament formed by NLD to speak on behalf of Myanmar's elected parliamentarians. Two of them were subsequently released in order to receive medical treatment, but the third, Saw Mra Aung (82) from the Arakan League for Democracy, has remained under arrest for more than a year.

11. According to news bulletins received by the Special Rapporteur, the authorities in Kachin State ordered the branch of the Shan National League for Democracy (SNLD) in Waingmaw township to close down in November. No official reasons were given. It is further reported

that in August two MPs-elect from Labutta township, U Kyi Win, a Supreme Court lawyer, and Aye Kyu, along with two other township officers of the NLD, were sentenced to two years in prison in Myaung Mya for their efforts to secure the release of four other township branch members. The four were sentenced to five years' imprisonment.

12. Regular "resignations" of NLD members continue to be announced in The New Light of Myanmar, Myanmar TV and other media channels, all controlled by the regime, in furtherance of its systematic policy of intimidation and repression directed against NLD and its supporters. According to sources inside Myanmar, about 48,000 NLD members have been reported as resigning since the campaign began a year ago. A large majority of these resignations are reported to have been registered in Irrawaddy, Mandalay and Pegu Divisions.

13. The Special Rapporteur has also been apprised of daily features published in the Government-controlled press belittling and vilifying the leadership of NLD, in particular Aung San Suu Kyi, inciting the public to treat them as enemies and to destroy them, presenting them as stooges of foreign Powers, jeopardizing stability and progress, and as being destructive agents.

14. The Special Rapporteur wishes to recall the pledge made by the authorities of Myanmar since 1990 after the general elections, in particular in Declaration No. 1/90 (see A/51/466, chap. III.C), and similar subsequent assurances often repeated in international forums. With a view to redeeming that pledge, to achieving national reconciliation and to enabling Myanmar to fulfil its obligations under the Charter of the United Nations and the Universal Declaration of Human Rights, the authorities should respond to the calls of the General Assembly and the Commission, put an end to the hostile policy they have carried on against their own people and engage in a substantive dialogue with the political leaders in the opposition, including Aung San Suu Kyi, and representatives of the ethnic groups.

#### B. Extrajudicial, summary or arbitrary executions

15. The Special Rapporteur on extrajudicial, summary or arbitrary executions has, during the last reporting period (November 1998-October 1999), transmitted three communications to the Government of Myanmar regarding 11 allegations of violations of the right to life of individuals, most of whom were reportedly porters killed by troops of the State Peace and Development Council (SPDC).

16. More specifically, one of the communications concerned a group of women who were allegedly raped and shot by an SPDC commander near the villages of Wan Wawn and Wan Ek, Nawng Kaw Tract, Nam-Zarng Township, in January 1999. Further, it is also reported that when a civilian porter who witnessed the scene tried to intervene, the commander shot him as well. Another communication concerned a number of porters who were allegedly executed by SPDC troops on 4 December 1998 in Kae-See Township. In the third communication, information was transmitted to the Government regarding allegations of two executions on 5 December 1998 of porters who were kicked and beaten, and finally shot, by SPDC troops because they became too weak from exhaustion and lack of food over a period of days to carry equipment.

### C. Freedom of association

17. On 15 November 1999, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent a communication to the Government of Myanmar on behalf of nine persons, two of whom are NLD MPs-elect, namely, Saung Win Latt, U Hla Pe, U Zeya, U Moe Thu, U Win Tin, U Myo Mynt Nyen, U Sein Hlaing and U Aung Tin and U Boe Thin, requesting information about the legal basis of the charges and offences of which they were convicted.

### D. The administration of justice

18. According to a recent study conducted by the Centre for the Independence of Judges and Lawyers (CIJL) of the International Commission of Jurists (ICJ) and published in its annual report, Attacks on Justice, the rule of law in Myanmar has malfunctioned since the military Government began its rule in 1988, as the Special Rapporteur and his predecessor have found in their reports over the past several years.

19. The study recalls that in September 1988, Law No. 2/88, the Judiciary Law, was enacted by the regime. Under that law, a Supreme Court was established, composed of a Chief Justice and “not more than five Judges”. Lower courts, the state or division and township courts, are established by the Supreme Court. Military tribunals, established in 1989 for the purpose of trying martial-law offenders under special summary procedures, were abolished in September 1992.

20. The military regime appoints the Judges of the Supreme Court. The Supreme Court selects judges for the lower courts, but requires the approval of the regime. The Supreme Court is further in charge of supervising the lower courts. The Judiciary Law does not contain any provisions on the security of tenure of judges and their protection from arbitrary removal, thus leaving such issues entirely in the hands of the military regime and, what is worse, without any guarantees provided by law by which the military regime is bound.

21. In this regard, according to the CIJL study, five Judges of the Supreme Court, namely U Kyaw Win, U Aung Myin, U Than Pe, U Tin Ohn and U Tin Htut Naing, were “permitted” by the regime to retire by Order No. 5/98. No reasons were given. It is widely believed that, because cases submitted by NLD were pending and the regime was uncertain as to how those Judges would decide the outcome, they were forced to retire.

22. The administration of justice is greatly marked by constraints which are inconsistent with judicial independence and characteristic of a military dictatorship. According to section 2 (a) of Law No. 2/88, justice is required to be administered “independently, according to law”. In reality, however, the judiciary is far from independent. This situation results from the suspension of the Constitution and the numerous decrees made by the regime the object of which is to arrogate to itself complete control over the whole political life of the nation and to restrict all civil freedoms that are likely to interfere with that objective.

23. In addition to the military Government’s unrestricted powers in the appointment of judges, the courts are powerless to protect the rights of victims of oppression. This is so because

a great number of decrees have been promulgated by the regime for the purpose of repressing political activity and freedom of thought, expression, association and movement, among others. Moreover, emergency laws are still resorted to. These, in Myanmar, are similar to those devised in colonial times, long before the adoption of the Universal Declaration and the human rights treaties which have since followed. The courts have no jurisdiction to challenge or to discard this repressive legal arsenal. For this reason, the courts have become a mere instrument to provide formal and apparent, but clearly not substantive, legitimacy to the regime's systematic repression of the civil and political rights which constitute the very basis of the rule of law, democracy and democratic governance.

24. Basic guarantees of due process and judicial control over detention do not in practice exist, even in cases involving violations of the provisions of the law that criminalize political activity and the exercise of civil rights for that purpose. For example, without the permission of the intelligence organs, judges cannot even let the family and counsel of the accused know what sentence has been passed. In many cases, the accused is kept in ignorance of the section of law under which he is charged. There have been reported instances where Military Intelligence has passed sentences orally at the time of arrest, before any trial had taken place. More often than not trials are held in camera.

25. According to the CIJL study referred to above, since the assumption of power by the regime in 1988, the freedom of individual lawyers to exercise their profession and defend political opponents of the regime has in practice been severely suppressed. The Lawyers' Associations, the voice of the profession, have been silenced. The Bar Council has not been independent since 1989, and is instead supervised by the Attorney-General and is staffed by government officials.

26. Many of the decrees promulgated by the State Law and Order Council (SLORC), as it then was, remain in force today, including Order No. 2/88 which prohibits public gatherings of more than five people and No. 8/88 which, in its effects, prohibits debate and criticism.

27. In cases other than those involving political activity, some basic due process rights, including the right to a public trial and to be represented by a defence attorney, are generally respected. Defence attorneys are permitted to call and cross-examine witnesses, but their primary role would, in practice, be to bargain with the judge to obtain the least severe sentence possible for their clients.

28. During the past few years many lawyers have had their licences withdrawn for involvement, alleged or real, in politics. Lawyers who may have been arrested, imprisoned or released prior to 1997 reportedly remain unable to practise their profession. For example, according to CIJL, Myint Aung (lawyer, licence No. 3277) was arrested and charged under section 2 (1) (a) of the Arms Act. His trial was heard on 16 and 17 May 1990 at Yangon Division Joint Magistrates Court No. 12 and he was sentenced to two years' imprisonment with hard labour. He was prevented from practising law as of 4 November 1993, and his licence to practise was withdrawn. A similar fate befell U Toe Aung (lawyer, licence No. 1049). He was charged under the notorious article 5 (j) of the Emergency Act 1950 and sentenced to five years' imprisonment on 7 February 1991. His licence too was withdrawn.



29. CIJL reports that some 50 lawyers are unable to practise their profession owing to similar treatment by the regime. It also reported that lawyers are often reluctant to take on cases involving human rights abuses by Military Intelligence (MI) Officers or soldiers for fear of arrest, retaliation or harassment by the authorities and the removal of their right to practise.

### III. THE EXERCISE OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

#### A. Background

30. The exercise of economic, social and cultural rights has been greatly marked by the ethos of militarism inherent in the very nature of a military regime. The regime has constituted for itself a highly centralized system of decision-making and enforced execution with no representative or public participation in the decision making process, whether with regard to policy or implementation. The only organization which participates in implementation is the Union Solidarity and Development Association (USDA) which is, however, under the complete direction and control of the military and for the purposes for which the military alone decides to use it.

31. In particular, and above all else, budgetary allocations are largely determined by military considerations and objectives. Thus, high and growing military spending contrasts with diminishing allocations to basic social services such as health, education and essential services, all necessary not only to translate growth, however modest, into human development and welfare but also to sustain growth.

#### B. Poverty

32. According to a recent economic and social assessment of Myanmar by the World Bank which is soon to be published, the country is “trapped in abject poverty despite its rich resources base. Although there has been notable moderate growth in the economy, the trickle-down effect of this growth did not reach the poor. The country’s poverty and development indicators have lagged behind those of its neighbours”. Flawed government policies are considered to be responsible for these outcomes.

33. The study adds, with regard to prospects for the future:

“The recent slowdown in economic activity, the sharp worsening of foreign reserves and severe contraction of public expenditure on basic services, are inflicting further hardship on the poor. If the present policies are maintained, the people of Myanmar are unlikely to benefit substantially from a resumption of growth in the region ... Continuing lackluster economic performance that fails to improve living standards for the majority of the population could have devastating consequences for poverty, human development and social cohesion in Myanmar.”

34. The World Bank study concludes that if Myanmar is to enjoy broad-based economic growth and create significant gains in human welfare on a par with those enjoyed in other countries in South-East Asia, it must consider a comprehensive review of the Government’s role in the economy with a view to abandoning inefficient policies and reforming budgetary priorities

that squeeze expenditure on social services and infrastructure. If the country is to meet its full economic potential, it will be necessary both to establish domestic incentives and capable institutions, and to attract high-quality foreign investment. However, in order to receive the support of the international community, Myanmar must demonstrate a commitment to a broad-based policy that would not only address the economic and social issues elaborated in the Bank's report, but also the other concerns of the international community, in particular United Nations resolutions concerning political and civil rights.

35. Yet a different study of July 1998, provided to the Special Rapporteur, has concluded that data concerning the ability to lead a long healthy life, to be educated, and to have command over resources needed for a decent living indicate that Myanmar's 46 million people are generally poor. Further, the same study points to the low levels of achievement and slow progress in several critical areas of human development in Myanmar.

### C. Food security

36. According to the World Bank study, "the level and depth of hardship among families in Myanmar is vividly reflected in high rates of malnutrition among pre-school-aged children. Even based on official statistics, far too many of Myanmar's children suffer from wasting and stunting. Moderate wasting affects almost 3 out of 10 children under 3 years of age, and 1 in 10 is severely malnourished. This has been described elsewhere as a 'silent emergency' in Myanmar. It has also been noted that deprivation on this scale indicates not only immediate need, but also adverse long-term repercussions for the health and intellectual development of the affected children".

37. In a recent report submitted to the Special Rapporteur, entitled "The People's Tribunal on Food Scarcity and Militarisation in Burma, October 1999"<sup>1</sup>, the authors received testimonies from a large number of witnesses upon which the following conclusions were reached:

- "1. There exists hunger and food scarcity in both the civil war and non-civil war areas of Myanmar, in particular the Karen, Karenni and Shan states, and the Delta region;
- "2. The situation of hunger is spreading both geographically (to more regions of Myanmar) and demographically (affecting people from more varied walks of life);
- "3. The causes of this situation are as follows:
  - "3.1 the destruction of staple crops which provide the local food supply.
  - "3.2 uncompensated conscription of people to work on State projects which do not leave enough time for them to work their fields.

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<sup>1</sup> The report has been compiled by the Asian Human Rights Commission (AHRC) on the basis of the work of a tribunal established to assess evidence of human rights violations, particularly concerning the right to food, committed against the people of Myanmar by their Government.

- “3.3. uncompensated conscription of people to do portering to areas far from their home villages, resulting in not being able to have time to grow food.
- “3.4. forced relocation of people to areas where rice is difficult to grow, or to unfamiliar terrain making it difficult to find enough food.
- “3.5 a quota system of the amount of rice to be supplied to the government substantially below market price, which must be supplied whether or not the harvest was adequate. This often leaves the people in debt and without any rice of their own to eat.”

#### D. AIDS/HIV epidemic

38. The economic deterioration and the widespread human rights abuses that accompanied the rule of SLORC since 1988 and later, in 1997, SPDC, has had a dramatic effect on the health status of the people of Myanmar, a situation that is compounded by limited access to health care, particularly in the ethnic-minority regions. According to the World Bank study mentioned above, the last 10 years have been characterized by a sharp decline (80 per cent) in the usage of public hospitals and dispensaries. This is mainly due in principal to the low level of public spending on health (about 0.2 per cent). The widespread campaigns of forced relocation and wholesale transfers of communities such as the Karen and other minority groups, arbitrary arrests, slave labour coupled with the use of civilians as human minesweepers have further deteriorated the health situation in the country. Furthermore, about 1 million children are malnourished. The health of the people of Myanmar is further jeopardized by another threat: the increasing use of heroin and the alarming spread of HIV/AIDS. According to the World Bank report on Myanmar, “there are over 1 million HIV/AIDS cases”.

39. It is further reported that the availability of heroin in Myanmar has encouraged its local cultivation, especially for the consumption of intravenous drug users. This is considered to have contributed to a marked increase in HIV infection throughout the region. While government statistical estimates are conservative, the United Nations Drug Control Programme and non-governmental organizations that work in the health sector estimate the number of addicts to be between 400,000 and 500,000. The Joint United Nations Programme on HIV/AIDS (UNAIDS) published estimates for the end of 1997 indicating the number of adults and children living with the HIV/AIDS virus to be around 440,000.

40. UNAIDS reports that the Government of Myanmar began HIV screening in 1985 of high-risk populations and blood donors and in 1989, the National AIDS Technical Committee was formed and later restructured, within the National Health Committee, to the multisectoral National AIDS Committee, with a vertical structure of divisional, district and township AIDS committees. Further, the National Health Committee has established guidelines for the Government’s AIDS policy since then. Although the Government was reluctant to acknowledge the existence of an HIV/AIDS problem when it was first discovered in 1985, recent efforts show a change in attitude. However, resources made available to combat HIV/AIDS would appear to have been limited. The impact of these resources, meagre in comparison with the magnitude of the problem, is judged to have been limited by the Government’s reluctance to permit

international non-governmental organizations to work in collaboration with community-based organizations. Permits to visit patients are difficult to obtain and access to high-risk groups and vulnerable groups is restricted.

41. Other significant factors impeding the measures taken to date to address the situation are said to be the lack of “social marketing” crucial in prevention efforts and the lack of behavioural research and assessment of prevention interventions. Equally important, little intervention has targeted women. There would also appear to be a lack of political will to tackle the HIV/AIDS problem as well as of resources at a level required for a successful HIV/AIDS care and prevention programme. Indeed, earlier this year UNAIDS warned of a growing epidemic in Myanmar and indicated that the regime was largely ignoring it. The Special Rapporteur shares this concern and urges the Government to recognize the problem and allocate sufficient resources to address the epidemic, which might quite easily affect neighbouring countries as well.

#### E. State of education

42. Universities are still closed. The authorities still fear that the demand of the students to have a say in structuring their own education might lead, as in 1988, to demands for the restoration of democracy. A whole generation, and the country itself, is being deprived of the knowledge, intellectual development and expertise which a country badly requires for its own development and human welfare.

43. Available data indicate a trend of declining expenditure on education by the Government, accounting for 1.1 per cent of GDP in 1995-1996, from 2.6 per cent in 1991-1992. The World Bank study referred to above corroborates these estimates, adding that it is impossible to provide good quality education services with the substantial erosion in education spending that has occurred over the past decade, and that “current Government spending in education as a share of national income is among the lowest in the world”.

#### F. Forced Labour

44. In his report to the General Assembly (A/53/364), the Special Rapporteur provided details on the work of the Commission of Inquiry established by ILO to examine complaints lodged by the international Confederation of Free Trade Unions concerning the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), as well as the observations made in the Director-General’s report (see A/54/440, paras. 21-30).

45. The Commission of Inquiry submitted its report in July 1998. Its findings were updated in subsequent reports of which the most recent was published in November 1999 for the 276th session of the ILO Governing Body. This report (document GB.276/6) presented comprehensive information on such measures as had been taken by the Government of Myanmar following the recommendations of the Commission of Inquiry and action taken in that regard by ILO. The report, *inter alia*, notes that in spite of the Commission’s recommendations, the exaction of forced or compulsory labour by the authorities continued and the attention of the Government was drawn to the “relevant and consistent evidence of the persistence of forced labour” in Myanmar.

46. The evidence presented to the ILO Governing Body also shows that a considerable number of orders addressed to village heads were issued by military officers demanding the supply, without fail, of a number of “servants”, “rotation servants” or “volunteer workers”. Further, the report indicates that it is often specified that if the village head fails to comply, it would be entirely his or her responsibility and would be severely punished. While the focus of the report of the Commission of Inquiry was on forced labour, it highlighted the human rights violations suffered by the various ethnic groups in Myanmar in general. The human rights violations recorded include extrajudicial killings, rape, torture, ill-treatment and forced relocation.

47. With respect to the right to form and join trade unions, although Myanmar ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) in 1955, the competent organ of ILO reports that workers and employers in Myanmar do not enjoy the right to join organizations of their own choosing. Furthermore, such organizations do not have the right to join federations and confederations or to affiliate with international organizations without impediments.

48. The issue of freedom of association and protection of the right to organize has again been discussed before the ILO Committee on the Application of Standards and the Committee of Experts. Both committees have deplored the absence of any progress towards the application of this fundamental Convention despite their repeated calls upon the Government for over a decade.

49. In the absence of genuine cooperation on the part of the Government and the total absence of progress in the application of this convention, the Committee on the Application of Standards has noted in a special paragraph of its report the continued failure of the Government of Myanmar to implement the Convention. Both the Committee on the Application of Standards and the Committee of Experts have strongly urged the Government of Myanmar to adopt, as a matter of urgency, the measures and mechanisms necessary to ensure, both in legislation and actual practice, the right of workers to establish, without previous authorization, and to join, subject only to the rules of the organizations concerned, first-level unions, federations and confederations of their own choosing for the furtherance and defence of their interests and to ensure the right of such organizations to affiliate with international organizations. The Government of Myanmar was invited by the Committee on the Applications of Standards to consider appropriate forms of ILO assistance to ensure that real progress was achieved by 2000 in the observance of its obligations under this fundamental convention.

## V. THE GENDER PERSPECTIVE

### A. Violence against women

50. In a previous report (E/CN.4/1999/35) the Special Rapporteur identified some of the problems that affect especially women and children in Myanmar and expressed his concern over the situation. Because rape and abuses are a regular feature in the mode of operation of the army in its campaign of incursions into the insurgency zones or else in the relocation sites, women and children continue to seek refuge within and outside the country. As those abuses continue to devastate the lives of many, they migrate. Many women are reported to fall through the safety net of refugee camps along the borders and into the hands of traffickers or become victims of

other forms of exploitation. Recent reports received by the Special Rapporteur indicate that such abuses and their consequences afflict women from several ethnic groups in general and the Rohingyas in particular.

51. As an ethnic group, it is said that the Rohingyas continue to suffer from the consequences of discrimination and gross abuses. They practice Islam. Many generations ago they migrated from East Bengal. They are denied citizenship, as explained in the Special Rapporteur's previous reports. While Rohingya women, men and children are all affected, the women are at particular risk of exploitation by traffickers luring them into becoming sex workers or to "sweatshops" working as underpaid labour .

52. The Special Rapporteur's attention has been drawn to the interview of a 19-year-old educated Rohingya woman who complained that "the major problem is rape. Rape is very common. We are not respected. That is why women are too afraid to leave their homes and even work outside. Often the military kidnap girls and take them to their camps. They are only released after being gang raped ... and assaulted."

53. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), six major circumstances constituted the "push factor" for the outflow some years ago of the Rohingyas from Myanmar: (1) the lack of citizenship and, by extension, nationality rights; (2) imposed restrictions on movement by the Myanmar authorities; (3) forced labour and portering for the army; (4) compulsory food donations, extortion and arbitrary taxation; (5) land confiscation or relocation; and (6) deliberate food (rice) shortages in combination with high prices. These factors, coupled with systematic human rights violations and imposed underdevelopment, led to the mass exodus of Rohingyas.

54. The General Assembly, in resolution 49/166, defined the practice of trafficking as the "illicit and clandestine movement of persons across national and international borders, largely from developing countries and some countries with economies in transition, with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations from the profit of recruiters, traffickers and crime syndicates, as well as other illegal activities related to trafficking, such as forced domestic labour, false marriages, clandestine employment and false adoption".

55. The Special Rapporteur on violence against women, its causes and consequences, transmitted to the Government of Myanmar last June information on alleged instances of violence against women and, in particular, alleged violations of the Convention on the Elimination of All Forms of Discrimination against Women, the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, and Protocol II Additional to the Geneva Convention.

56. Examples of the cases that have been brought to the attention of the Government of Myanmar by the Special Rapporteur on violence against women, include the following: Naw May Oo Paw, who was forced to pay soldiers with rice and other food to avoid working as a porter; the wives of Bo Pha Palaw Pho and Bo Kyaw Hair, two Karen National Union leaders,

forced to carry extra-heavy loads for the army to the point of becoming unconscious; Nam Nu, who was allegedly kidnapped by MI officers and later beaten during interrogation; and Mugha Lwee Paw, who was allegedly arrested twice by soldiers and tortured.

#### B. Forced labour

57. There are many reports of forced labour of women. Women are said to be regularly taken from their homes and forced to undertake manual labour for the army. This labour involves cooking, cleaning, digging ditches, building bridges and roads, and carrying heavy loads. Moreover, they are allegedly beaten if they are unable to work or become tired; they are left behind in the jungle if they become unconscious from beatings or fatigue and are malnourished.

#### C. Arbitrary detention

58. Many reports indicate that police and intelligence officers use rape and sexual harassment in order to extract information from women in detention. Women are allegedly beaten, starved, and kept in solitary confinement while in detention.

### V. CONCLUSIONS AND RECOMMENDATIONS

#### A. Conclusions

59. The Special Rapporteur, as in his previous reports to the General Assembly and the Commission on Human Rights, regrets that in spite of the Government's recent indications that "serious consideration" would be given to a visit by him, he has not so far been given permission to enter the country. He therefore has to rely on his personal interviews with refugees or other displaced persons as well as valuable information given to him by various organizations and institutions, both governmental and non-governmental, as well as by individual Governments.

60. A most welcome feature has been the resumption of cooperation by the Government in relation to the valuable work of the International Committee of the Red Cross (ICRC) which is now able to operate in accordance with its own procedures, as the Special Rapporteur has already been able to highlight in his last interim report to the General Assembly.

61. No concrete progress, most unfortunately, can be reported on the general situation of human rights in Myanmar. On the contrary, repression of political and civil rights continues in Myanmar, including summary or arbitrary executions, abuse of women and children by soldiers and the imposition of oppressive measures directed in particular at ethnic and religious minorities, including the continuing use of forced labour and relocation.

62. Persecution of the democratic opposition, in particular members of the NLD, continues as in previous years, including long prison sentences and the use of intimidation and harassment.

63. Well-documented reports and testimonies continue to be received by the Special Rapporteur which indicate that human rights violations continue to occur, as in the last decade.

These include extrajudicial, summary or arbitrary executions, torture, portering and forced labour, particularly in the context of the “development” programmes and of counter-insurgency operations in ethnic areas.

64. With regard to the exaction of forced or compulsory labour, the Special Rapporteur reiterates, as in his previous reports, that information he has received from refugees and displaced persons indicates that the practice of forced labour continues, although there is an official order directing that the offending provisions of the the Village Act and the Town Act should not be enforced. No law has been passed to make forced labour an offence and no prosecution against those exacting forced labour is possible. Impunity remains a serious problem.

#### B. Recommendations

65. As no concrete progress can be discerned from the totality of the information provided to the Special Rapporteur, he considers it necessary to reiterate the recommendations he made in paragraphs 80 to 83 of his last report to the Commission on Human Rights (E/CN.4/1999/35) and paragraphs 50 to 55 of his last interim report to the General Assembly (A/54/440).

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