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Progress report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana*

Summary

The present report, submitted pursuant to Human Rights Council resolution 10/27, covers human rights developments in Myanmar since the Special Rapporteur's second report to the Human Rights Council (A/HRC/10/19) and the submission of his report to the General Assembly (A/64/318) in October 2009.

The Special Rapporteur has travelled to Myanmar three times. He conducted his third country visit from 15 to 19 February 2010 at the invitation of the Government, which had postponed planned visits several times.

The present report elaborates on the issues related to the protection of human rights. The Security Council, the Secretary-General, the Human Rights Council, Government representatives from many nations, Nobel laureates and other respected leaders have all called for the release of Aung San Suu Kyi and the more than 2,100 prisoners of conscience. However, the Government of Myanmar has not yet met this important step in its preparations for transition to democracy in the lead-up to the 2010 election. Likewise, the international community has urged the Government of Myanmar to announce an election date and an electoral framework that adheres to international standards for a free, fair, participatory and transparent election process. The basic rights to food, shelter, health and education, which are not only human rights in and of themselves, but are also essential for the exercise of other human rights, are denied to far too many of the people of Myanmar. At the same time, conflicts along the border areas continue to abet serious human rights abuses against civilian populations, including the ongoing recruitment of child soldiers. The Special Rapporteur is deeply concerned about the systematic and endemic discrimination faced by the Muslim community in Northern Rakhine State. This discrimination, which is framed as an immigration problem, leads to basic and fundamental human rights being denied to this population. Measures taken against this population

* The present report was submitted after the deadline in order to include the most recent information gathered during the Special Rapporteur's mission to Myanmar from 15 to 19 February 2010.

include the restriction of movement, limitations on permission to marry, and forced labour.

As the Special Rapporteur stated in previous reports, there is a pattern of gross and systematic violation of human rights which has been in place for many years and still continues. Given the extent and persistence of the problem, and the lack of accountability, there is an indication that those human rights violations are the result of a State policy, originating from decisions by authorities in the executive, military and judiciary at all levels. The Government of Myanmar needs to take prompt and effective measures to investigate these facts.

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I. Introduction

1. The mandate of the Special Rapporteur on the situation of human rights in Myanmar was established pursuant to resolution 1992/58 of the Commission on Human Rights, and most recently extended by Human Rights Council resolution 7/32. The current Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana (Argentina), officially assumed the function on 1 May 2008.

2. The present report is submitted pursuant to Human Rights Council resolution 10/27 and covers human rights developments in Myanmar since the Special Rapporteur's second report to the Human Rights Council (A/HRC/10/19) and the submission of his report to the General Assembly (A/64/318) in October 2009.

3. Engagement with Myanmar by the international community has improved with some notable shifts from long-standing policies of isolating the Government of Myanmar. With the launch of the new human rights mechanism of the Association of Southeast Asian Nations (ASEAN), namely, the ASEAN Intergovernmental Commission on Human Rights, the Government of Myanmar is presented with another forum to address human rights concerns. The Special Rapporteur hopes that engagement, at all levels, will bring the improvement of human rights in Myanmar.

4. The Government of Myanmar has reiterated that national elections, planned for 2010 as part of the seven-step road map to democracy to which the Myanmar authorities have committed, will go ahead. As of 5 March 2010, neither the election date nor the election law had been announced, and restrictions to freedoms of expression, assembly and association had not been lifted. The Special Rapporteur regrets that during his mission in February 2010 no further information was provided on the election date or the electoral framework. This election is an important opportunity for the Government to show its commitment to international human rights standards and democratic values, however, the ongoing delay offers serious doubts about the possibility to provide adequate time for examination of the electoral framework and preparation by all parties to fairly contest the elections.

5. The Security Council, the Secretary-General, the Human Rights Council, representatives of many States, Nobel laureates and other respected leaders have all called for the release of Aung San Suu Kyi and the more than 2,100 prisoners of conscience, particularly in the light of the expected upcoming elections. However, the Government of Myanmar has not yet met this important step in its preparations for transition to democracy.

6. The Special Rapporteur would like to thank the Office of the United Nations High Commissioner for Human Rights (OHCHR), in particular at Headquarters, in Bangkok and in New York, for assisting him in discharging his mandate. These thanks are also extended to the United Nations Country Team in Myanmar.

II. Methodology and activities of the special rapporteur

7. Since taking up the mandate in May 2008, the Special Rapporteur has adopted an open and clear approach to working towards the promotion and protection of human rights in Myanmar, including working in a cooperative manner with the Government to assist in the realization of those rights. He explained the approach in his first report to the Human Rights Council in June 2008 (A/HRC/8/12) and reiterated it in his statements to the Human Rights Council (A/HRC/10/19) and the General Assembly (A/64/318). The Special Rapporteur intends to continue with this approach.

8. The Special Rapporteur conducted his third country visit from 15 to 19 February 2010 at the invitation of the Government, which had postponed planned visits several times. His previous two missions were carried out from 3 to 7 August 2008 and from 14 to 19 February 2009.

9. As in the past, the Special Rapporteur was provided with his mission programme on a daily basis. The length of the mission agreed by the Government was only five days, during which time the Special Rapporteur visited Rakhine State, including the Sittwe and Buthidaung prisons, and met with state authorities, members of the Nasaka (Myanmar's border and immigration forces) and Muslim community leaders. In Nay Pyi Taw, he met with the Ministers of Home Affairs and Labour, the Chief Justice and Attorney General, the Chief of Police and the governmental human rights body. In Yangon he visited Insein Prison and met with political party and ethnic nationality leaders, and the judges and lawyers involved in the most recent trial of Daw Aung San Suu Kyi.

10. With a view to gathering all relevant information on the country and maintaining an impartial and balanced approach, in addition to meeting with the authorities of Myanmar during missions, the Special Rapporteur keeps in contact with all those working on Myanmar – individuals, non-governmental organizations (NGOs) and diplomatic missions. He consults with countries in the region, especially ASEAN members given the important role they play in relation to Myanmar.

11. The Special Rapporteur met with the Secretary-General in October 2009, and is in regular contact with the office of his Special Adviser on Myanmar. In New York, the Special Rapporteur also met with the Special Adviser for the Responsibility to Protect, and representatives of the Office of the Special Representative of the Secretary-General for Children and Armed Conflict and the Office of the Special Adviser on the Prevention of Genocide.

12. Between 1 August 2009 and 13 January 2010, the Special Rapporteur sent five communications to the Government of Myanmar regarding particular cases of alleged human rights violations. He sent those letters of allegation and urgent appeals jointly with other special procedures mandate holders, and he has received replies to two of those communications.

III. Human rights issues

13. The human rights issues confronting Myanmar are many, complex and interdependent. At the centre of the daunting challenges to the full realization of human rights in the country is the pattern of widespread and systematic violations which has existed for many years and still persists. The prevailing culture of impunity, in fact, is a necessary consequence of the lack of accountability for grave human rights violations when they do occur. The lack of independence of the judiciary and weak rule of law are also preconditions for this pattern. The large number of prisoners of conscience in Myanmar demonstrates the abrogation of the fundamental rights to freedom of expression, assembly and association. The plight of ethnic minorities and civilians along the country's border areas who are subject to discrimination and grave human rights abuses has continued for too long, due to the prevailing culture of impunity.

14. Recommendations made by the international community, including the four core human rights elements proposed by the Special Rapporteur, remain largely outstanding. Substantive action by the Government on the four core human rights elements would be necessary for the democratic transition to which Myanmar has committed. The four core human rights elements are: the release of all prisoners of conscience; review and reform of specific national legislation, in compliance with international human rights standards;

reform of the judiciary to assure independence and impartiality; and specific measures by the military and police including respecting international human rights and humanitarian law and establishing a permanent and meaningful training programme on human rights.

A. Situation of prisoners of conscience and conditions of detention

15. The Special Rapporteur has repeatedly expressed grave concerns about the house arrest of Daw Aung San Suu Kyi and the high number of prisoners of conscience and has called for the release of all prisoners of conscience without delay and without conditions. He recalls that one of the four core human rights elements that he proposed to the authorities is the progressive release of prisoners of conscience before the announced 2010 elections. Nevertheless, during his recent mission, the Special Rapporteur did not receive any indication that the Government is willing to release all prisoners of conscience. The Government of Myanmar does not accept that there are any prisoners of conscience in Myanmar. While there was a release of 131 prisoners of conscience in September 2009 and 29 prisoners in February 2009, these figures lack proportionality to the more than 2,100 prisoners of conscience who remain detained. In fact, the number of prisoners of conscience has nearly doubled in the past two years. These prisoners come from all walks of life, and include monks, students, teachers, lawyers, journalists and political activists. Some have spent many years in prison and continue to suffer under long sentences.

16. In order to move forward concretely and urgently on the release of prisoners of conscience, the Special Rapporteur reiterates the proposal he put forward to the authorities to begin with certain categories of prisoners such as the elderly, those with health limitations, long-serving prisoners and women who have children. The Special Rapporteur wishes to underline the utmost urgency of the release of those prisoners whose lives are at risk if proper medical attention is not received, including those who have endured torture and ill-treatment during years in detention in harsh conditions. There are reportedly 130 prisoners of conscience in poor health, 19 of them requiring urgent medical treatment.

17. Over 260 sentenced prisoners have been transferred to prisons far from their hometowns, in isolated areas around the country, making it difficult for their families to ensure regular visits. At least 47 of them — including Htay Kywe, Min Ko Naing, Su Su Nway and Zarganar — have been transferred to prisons over 1,000 km away from their families. The impossibility to see each other on a regular basis can have a psychological impact on both the prisoners and their families. A number of prisoners have been transferred to other prisons without their families being notified, such that the families lose track of the prisoner's whereabouts. There are serious concerns for the health and well-being of prisoners of conscience who are unable to receive family visits as they do not receive important supplementary food or medicines.

18. The Special Rapporteur has noted previously the importance of financial support that the International Committee of the Red Cross provides families so they can visit their detained relatives. He again invites the authorities to re-engage with the International Committee in order for it to conduct prison visits, in accordance with its established mandate, which have been suspended since December 2005.

19. On his latest mission, the Special Rapporteur was allowed to visit three prisons — Sittwe, Buthidaung and Insein — where he met with 14 prisoners of conscience and one former child soldier. While serious concerns on prison conditions remain, such as inadequate water and food rations and extortion by prison staff, the Special Rapporteur understands that the conditions in both Buthidaung and Insein had improved over the past few months. The Special Rapporteur would like to encourage the authorities to continue these efforts throughout the prison system. He invites the authorities to address effectively

the requests of prisoners who staged hunger strikes in Insein and in Buthidaung in February 2010 for better food and health care as well as for reading and writing material.

20. There are 44 prisons in Myanmar and at least 50 labour camps. Some do not have a prison hospital, and at least 12 of the prisons do not even have a prison doctor.

21. In this regard the Special Rapporteur would like to draw attention to the Standard Minimum Rules for the Treatment of Prisoners, which provide for, among other things: the services of a qualified medical officer within prisons or detention facilities; the transfer of prisoners and detainees who require specialist treatment to specialized institutions or to civil hospitals; and the provision of sufficiently nutritious food for prisoners.

22. These provisions are still not being met in Myanmar as some of the prison facilities do not have a prison doctor, and prisoners in many cases have to purchase their own medicines beyond basic pain relief pills or pay for outside treatments. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment also provides that “medical care and treatment shall be provided whenever necessary” (art. 24).

23. On 16 October 2009 the Special Rapporteur on the situation of human rights in Myanmar along with the Special Rapporteurs on torture and other cruel, inhuman or degrading treatment or punishment, on the promotion and protection of the right to freedom of opinion and expression, on the situation of human rights defenders and on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Chairperson of the Working Group on Arbitrary Detention, wrote to the Government regarding the case of Hla Myo Naung, who has been at serious risk of total blindness unless he receives specialist medical treatment. He had already been the subject of a joint urgent appeal addressed on 5 November 2008. Hla Myo Naung had participated in demonstrations against the fuel price hike in August 2007 and was the main spokesperson for the 88 Generation Students. He was arrested on 10 October 2007, sentenced to a prison term of 65 years and 6 months in November 2008, and transferred to the remote Myitkyina prison shortly afterwards. An unsuccessful eye surgery was conducted while he was in detention and led to the loss of vision in one eye. He later began to experience the same symptoms in his functional eye that had led to blindness in the other eye. He is known to be suffering from keratitis and corneal opacity. No reply has been provided by the Government of Myanmar.

24. The Special Rapporteur continues to receive reports on the alarmingly high number of deaths in prison. While official statistics have not been made available, it appears that both prisoners of conscience and regular prisoners are subject to conditions that lead to death.

25. Reports suggest that 143 prisoners of conscience have died in prison since 1988. Reports suggest that some prisoners died in prison from internal injuries that they sustained in interrogation camps and police stations where they were subject to brutal torture-like beating and kicking. Often, the bodies of the prisoners of conscience are cremated before the family can view them.

26. It is reported that in Sittwe Prison authorities register deaths of prisoners in prison as having taken place on the way to Sittwe General Hospital during the transfer process. In November 2009, four prisoners died in Sittwe Prison: Myo Kyaw, Daw Aung Tha Paing, U Sate Taung and Abu Ahlong.

27. Deprivation of food and water as punishment are reported to continue in Myanmar's prisons. The State has the responsibility to ensure the protection and proper treatment of those put in detention, including providing adequate food and medical care in accordance

with universally accepted standards and the principles contained in international human rights instruments.

28. According to media reports six prisoners died in Insein Prison in Yangon during the week of 28 October – 4 November 2009. According to reliable sources they are: U Win Aung, former Foreign Minister U Win Aung, Ma Thida Soe from Pazuntaung, Mayanthee from Mingaladon, Ko Phyo, Myint Wei and Pho Si.

29. The Special Rapporteur wishes to remind the Government of Myanmar that the State has the responsibility to ensure adequate budget allocation to prisons to ensure proper health facilities and conditions.

30. On 23 December 2009 Tin Tin Htwe Ma Pae, aged 38, died in Insein Prison from a burst aneurysm. She was sentenced along with 14 other political activists because of their involvement in the 2007 demonstrations on 24 November 2007, under sections 332 (hindering a public servant from carrying out their duty) and 294 (covering obscene acts and songs in public), to three years and three months with hard labour. She is the third prisoner of conscience to die in prison in 2009.

31. International standards require that an inquiry into the cause of death be held by a judicial or other authority and that the findings of such inquiry be made available upon request. The authorities must ensure that each death in detention is fully investigated, that causes for deaths identified, that families are informed in timely fashion, that lessons are learned and that accountability is clearly established. The Special Rapporteur urges the Government to investigate all deaths of those in detention.

32. On 29 September 2009, the Special Rapporteur on the human rights situation in Myanmar, along with the Special Rapporteur on the question of torture and the Chairperson of the Working Group on Arbitrary Detention, wrote to the Government regarding the case of Kyaw Zaw Lwin (a.k.a. Nyi Nyi Aung). On 3 September, Kyaw Zaw Lwin was arrested and taken to Insein Prison in Yangon. During his interrogation, he was subject to ill-treatment. On 16 December, the same group sent a follow-up letter to the Government. He was originally accused of entering the country with the intention to prompt unrest in the nation. The Government of Myanmar replied on 8 February 2010 that Kyaw Zaw Lwin was found guilty of forging a national identity card, failing to declare currency at customs, and failing to renounce his Myanmar citizenship, and he was sentenced to five years in prison.

33. Of serious concern to the Special Rapporteur are reports that prisoners of conscience are subject to torture during the interrogation period and in detention. According to testimonies from prisoners of conscience who were released, there are systematic patterns of abuse and torture of detainees. Various forms of physical, psychological and sexual abuse by officials have been detailed in reports. Deliberately poor prison conditions combined with purposeful medical negligence cause extreme suffering of prisoners.

34. The Special Rapporteur would like to stress the importance of the need for human rights training for the military and prison staff to ensure their awareness of and compliance with international standards and rules for the treatment of prisoners. This is part of one of the four core human rights elements. During his meeting with the Chief of Police, the Special Rapporteur was told that the Government has started a training programme on human rights for new recruits at the township level. The Special Rapporteur did not receive substantive details about the training programmes and would welcome more information from the authorities.

B. Due process of law

35. Another core human rights element recommended to the Government by the Special Rapporteur is the establishment of an independent and impartial judiciary. Without such a judiciary, Myanmar does not have functioning rule of law. The current system of administration of justice is seriously flawed.

36. The Special Rapporteur notes that the Constitution of Myanmar (2008), in chapter 1, paragraph 19, establishes important judicial principles: (a) to administer justice independently according to the law; (b) to dispense justice in open court unless otherwise prohibited by the law; (c) to guarantee in all cases the right of defence and the right of appeal under the law. However, in reality, many trials are conducted behind closed doors within prison compounds, without legal representation, without the presence or knowledge of their family members, without proof of evidence or with defective evidence, and pursuant to arbitrary decisions of the judges.

37. The Special Rapporteur draws the attention of the Myanmar authorities to the existence of a body of internationally accepted standards and principles in the area of human rights in the administration of justice, including the treatment of prisoners, role of lawyers, role of prosecutors, independence of the judiciary and conduct of law enforcement officials, which must guide the authorities to ensure fair trials and due process of law. The Special Rapporteur underlines the necessity of legal reform through review of legislation and procedures to ensure conformity with human rights standards and respect for the basic principles of the presumption of innocence, due process of the law and independence of the judiciary.

38. Defence lawyers face great difficulties ranging from not being informed of the dates and venues of the trials, to not being allowed to meet the detainees in private in advance of the trials. The right to defence through proper legal representation has to be ensured in law as well as in practice. Lawyers must be allowed to defend clients without harassment and without the threat of charges for the contempt of court. However, the Special Rapporteur has continued to receive disturbing information on the conviction of defence lawyers for contempt of court. The Contempt of Court Act (1926) contains such brief and broad formulations that it is open for any arbitrary interpretations. Some 11 lawyers are currently imprisoned. In this regard, the Special Rapporteur would like to flag to the Government the Basic Principles on the Role of Lawyers.

39. The Special Rapporteur repeats his call for the termination of the detention of Daw Aung San Suu Kyi under house arrest, which is in contravention to international and domestic law. He regrets the decision of the Supreme Court to reject her appeal against her house arrest on 26 February 2010. He regrets also that the Government did not grant his special request to meet with Daw Aung San Suu Kyi on his third mission.

40. While the Special Rapporteur again commends the Government for the effective moratorium on the use of death penalty, he regrets that lower courts continue to hand down death sentences. During his last mission, the Special Rapporteur raised this issue with the Attorney General and Chief Justice as a step backwards for Myanmar.

41. The Special Rapporteur is also deeply concerned about reports that Aung Ko Htay, a child soldier, now aged 16, has been sentenced to death for involvement in the killing of a soldier during a fight. He was recruited into the army when he was 14 years old. The Convention on the Rights of the Child, to which Myanmar is a State party, prohibits the execution of people for offences committed under the age of 18. According to the country's Child Law (1993), chapter XVIII, article 71, a child should not be punished by death or imprisonment exceeding 10 years.

42. During the Special Rapporteur's second mission to Myanmar, the Chief Justice accepted his recommendation to engage with the Special Rapporteur on the independence of judges and lawyers. However, when the latter sent a visit request in March 2009, the Government replied in April that it had other commitments. The Special Rapporteur on the situation of human rights in Myanmar again raised this recommendation on his third mission. The Chief Justice again said that the Government of Myanmar would welcome the Special Rapporteur on the independence of judges and lawyers. Such a mission would be an indication of seriousness in addressing the problem of judicial independence and impartiality.

C. Freedom of expression, assembly and association in the light of the 2010 elections

43. The freedom of opinion and expression, as well as, freedom of assembly and association are fundamental rights enshrined in the UDHR and are guaranteed by international human rights treaties including those to which Myanmar is a State party, namely, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention concerning Freedom of Association and Protection of the Right to Organize, 1948 (No. 87) of the International Labour Organization (ILO). These freedoms are essential for the functioning of a democratic society, critical for the organization of meaningful and credible elections, and necessary for reflecting the diversity of a multi-ethnic society. They are exercised through the existence of an independent media, vibrant civil society and independent trade unions.

44. As 2010 is the year announced for holding national elections, freedom of opinion and expression, as well as assembly and association, are more necessary than ever. The elections cannot be free, fair, transparent and inclusive, in accordance with international standards, without those freedoms. At present essential conditions allowing for the exercise of these rights do not exist in Myanmar. Dissenting voices are not allowed, and all publications are subject to censorship by the Press Scrutiny and Registration Board of the Ministry of Information. Other censorship boards exercise control in the field of arts and culture. Journalists exercise a high level of self-censorship in order to survive or otherwise risk seeing their licences revoked as has happened to many journals and magazines.

45. There are currently at least 12 journalists and many more bloggers in prison. In effect, many of the other prisoners of conscience are incarcerated for offences that are linked to a denial of this freedom, or sometimes charged for completely unrelated offences.

46. In its resolution 64/238, the General Assembly strongly calls upon the Government of Myanmar to lift restrictions on the freedom of assembly, association, movement and freedom of expression, including for free and independent media, including through the openly available and accessible use of Internet and mobile telephone services, and ending the use of censorship. In his previous report, the Special Rapporteur indicated several domestic laws that restrict the principles of freedom of association and assembly: most importantly, the Unlawful Association Act (1908), the State Protection Act (1975), as well as sections 143, 145, 152, 505, 505 (b) and 295 (A) of the Penal Code.

47. These laws continue to be used to restrict freedom of expression and association. With regard to freedom of opinion and expression, the Television and Video Law (1985), the Motion Picture Law (1996), the Computer Science Development Law (1996), Electronic Transactions Law (2004) and the Printers and Publishers Registration Act (1962) are being used to censor the media.

48. It is important to note that these laws are in contravention of international law, inter alia articles 19 and 20 of the Universal Declaration of Human Rights, articles 13 and 15 of

the Convention on the Rights of the Child, as well as ILO Convention 87, to which Myanmar is a State party, and which explicitly calls upon Governments to ensure the full enjoyment of freedom of expression and association. As a State party to these conventions and a Member State of the United Nations, the Government of Myanmar should ensure compliance of domestic laws with its international obligations.

49. A review of national laws to ensure they are in compliance with international standards is one of the Special Rapporteur's four core human rights elements. According to the Attorney General, the Government has been reviewing national legislation and has found that half are not in line with the new Constitution, and 50 laws will be deleted. Some laws remain to be reviewed, but that should be completed before the end of the year. No details were provided on the specific laws mentioned above, which the Special Rapporteur enquired about during his third mission.

50. The Special Rapporteur has received information that several journalists have been convicted under the Electronic Transactions Law and the Television and Video Law. He remains concerned about restrictions on the media, including censorship of newspapers, the Internet and other sources of information, and the threatening of journalists with heavy prison sentences under the above-mentioned laws. Win Zaw Naing, 24, has been held since December 2009 by police in the Yangon district of Kyauktada, where he has not been allowed to see a lawyer. He was arrested under article 33 (a) of the Electronic Transactions Law, which provides for sentences of up to 15 years in prison. He was arrested for posting photos of the September 2007 protests, including of Buddhist monks, on his blog. According to reports, freelance reporter Hla Hla Win, age 25, was arrested in September 2009 after visiting a Buddhist monastery in the northern town of Pakokku. She was sentenced to 20 years in prison on 31 December 2009 for an alleged violation of the Electronics Transactions Law. A man accompanying her was sentenced to 26 years in jail.

51. In Sittwe prison, the Special Rapporteur met Aung Tun Myint, age 33, a video journalist, who was arrested in 2008 for filming outside a polling station during the referendum on the new Constitution. Although the polling station was in Yangon, which is not near any border, he was sentenced to three years in prison under charges related to the immigration act. His three video cameras and mobile phone were confiscated, and he lost his work including interviews from the Cyclone Nargis aftermath.

52. The Special Rapporteur has continued to receive information about ongoing restrictions on the right to form trade unions. Several individuals have been detained, convicted and sentenced to long terms in prison for their association with trade unions, including the banned Federation of Trade Unions of Burma.

53. In Buthidaung Prison, the Special Rapporteur met Kyaw Min, age 23, who received a 28-year sentence for his activities related to organizing workers. He noted that everything he and his colleagues did was within the bounds of the law.

54. The Special Rapporteur was informed by the Minister of Labour of discussions between the Government and ILO about assistance in drafting a trade union act. The Special Rapporteur welcomes this initiative and hopes that the law will conform to international standards.

55. The continuous building of democracy, which is the aim of the seven-step road map as declared by the Government, requires the active participation of civil society including independent NGOs. Organized groups such as associations of monks, students and human rights defenders have been harshly suppressed. Currently some 500 monks and students remain imprisoned. The well known 88 Generation Students group has been punished most severely for advocating peaceful democratic changes. Many of its prominent members have been arrested and sentenced to lengthy prison terms. During his last mission, the Special Rapporteur met two of its leaders, Htay Kywe in Buthidaung and Than Tin in Sittwe,

serving 65-year sentences far from their homes. Prisoners of conscience like these who believe in peaceful national reconciliation and democratic changes must be released to play a legitimate and important role in the upcoming elections.

56. On 3 August 2009, the Special Rapporteur, along with the Special Rapporteur on the situation of human rights defenders and the Chairperson for the Working Group on Arbitrary Detention, wrote an urgent appeal regarding the arrest and detention of 27 members of the National League for Democracy. Three other members of the League were arrested around the same time, but later released. The Government responded on 29 November that these members were attempting to create unrest and were questioned by the police and released on the same day. In section 151 of the Code of Criminal Procedure, it is provided that a police officer has the right to arrest any person who intends to commit a crime without an order and warrant issued by a criminal judge if it appears to the police officer that there is no other way to prevent the crime.

D. The Constitution and transition to democracy

57. The Special Rapporteur has previously noted the problem of impunity in Myanmar, and he has called for prompt measures to establish accountability and responsibility with regard to widespread and systematic human rights abuses. The Constitution contains one article in chapter XIV on transitory provisions which could be seen to enshrine impunity through permanent amnesties for crimes committed by military leaders and civilian personnel and requires clarification. Article 445 states that “no proceeding shall be instituted against the said Councils [State Law and Order Restoration Council and the State Peace and Development Council] or any member thereof or any member of the Government, in respect of any act done in the execution of their respective duties”.

58. Article 352 states that “the Union shall, upon specified qualifications being fulfilled, in appointing or assigning duties to civil service personnel, not discriminate for or against any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, and sex. However, nothing in this Section shall prevent appointment of men to the positions that are suitable for men only”. The Committee on the Elimination of Discrimination against Women in reviewing the periodic report submitted by Myanmar in November 2008 expressed concern that this and other provisions in the new Constitution may be incompatible with the Convention.

59. The provisions in the Constitution are currently confined to citizens, and the very restricted requirement of having both parents as nationals of the country for citizenship will render some people stateless. It is estimated that there are over 723,000 people without citizenship in Myanmar.

60. The Special Rapporteur notes that it is important to recognize that under international human rights law, some fundamental rights are non-derogable and that the derogation of certain rights in case of declared emergencies is clearly defined. In addition, he wishes to reiterate the principles he has outlined with regard to restrictions on the enjoyment of human rights. They shall (a) be defined by law, (b) be imposed for one or more specific legitimate purposes, and (c) be necessary for one or more of these purposes in a democratic society, including proportionality. Any limitation which does not follow these requirements and jeopardizes the essence of the right with vague, broad and/or sweeping formulas, would contravene the principles of legality and international human rights law.

E. Protection of civilians

61. The Special Rapporteur remains deeply concerned about ongoing conflict in border areas, particularly in eastern Myanmar. Since 1996, up to 1 million people in Myanmar, half of them in the eastern part of the country, have been displaced. Entire communities have been forced to relocate and their houses and food supplies burned to prevent their return. Those who refuse forced relocations and choose to hide risk military attacks. While the number of conflict-affected areas has been reduced with ceasefire agreements, armed clashes affecting civilians caught in the middle continue to be reported.

62. It is estimated that there are over 184,000 refugees originating from Myanmar. An estimated 2 million migrants from Myanmar are currently found in Thailand. Thousands of ethnic Chin have crossed the border to the State of Mizoram in India, where some 75,000–100,000 undocumented Chin from Myanmar live. Muslim residents from Northern Rakhine State of Myanmar continue to seek asylum in neighbouring countries and beyond. Approximately 28,000 are residing in two refugee camps in Bangladesh and have been there since 1991 in addition to about 100,000–200,000¹ residing in Bangladesh with no legal status. There are also some 40,000 individuals of concern from Myanmar in Malaysia.

63. The presence and conduct of the military are central to the plight of these civilians. Military operations have placed a particularly heavy burden on rural populations, affecting their ability to sustain livelihoods. There have been numerous and frequent reports of civilians being forced to serve as porters and guides for the military, to build and maintain roads, to construct military camps and to labour for infrastructure projects. Cases of rape and sexual violence, many of them against young girls and adolescents, have been reported by human rights organizations over the past years as committed by military personnel. As with all allegations of serious human rights violations, proper investigations must be conducted and justice provided to the victims.

64. While civilians living in conflict affected areas live in fear of being suspected as sympathizers of armed rebel groups, they are also vulnerable to abuses by some rebel groups.

65. The Special Rapporteur is alarmed by the dire human rights situation in Shan State. Since 27 July 2009, it is reported that the military have burned down over 500 houses and scores of granaries, and forcibly relocated almost 40 villages, mostly in the Laikha township. According to reports, over 100 villagers, both men and women, have been arrested and tortured. At least three villagers have been killed. This would be the largest forced relocation since 1996–1998, when over 300,000 villagers in southern and central Shan State were displaced.

66. Battles between Government forces and ethnic groups in Shan State in August 2009 and along the Thai border region in June 2009 have raised serious concerns about security both inside Myanmar and its spillover effects in neighbouring countries. As many as 37,000 people may have fled into Nansan County in China to flee fighting between Myanmar Government troops and Kokang fighters. Despite Government control of the Kokang territory following these battles, the situation in north-eastern Myanmar remains tense according to reports received by the Special Rapporteur.

67. The Special Rapporteur is seriously concerned about the continuing armed conflict in Kayin State, which severely affects the civilian population. It has been reported that in Hsaw Law Kho village, three villagers were killed and over a dozen more tortured by

¹ According to estimates of the Government of Bangladesh.

Infantry Battalion No. 48, in the Than Tha Bin Township in the Pegu Division on 5 November 2009.

68. The Special Rapporteur reminds the Government of its obligations to fully implement Legislative Order No. 1/1999 on the Eradication of Forced Labour. The Special Rapporteur has received specific reports about human rights abuses in relation to extractive industry projects.

69. The Special Rapporteur urges the Government and all armed groups to ensure the protection of civilians, in particular children and women, during armed conflict. In this regard, recruitment of child soldiers, displacement of villagers, the use of anti-personnel landmines and the forced labour of civilians should stop without any delay.

70. He calls upon the Government to abide by international humanitarian law, especially the four Geneva Conventions to which Myanmar is a party. In particular, article 3 of the Geneva Conventions provides for the protection of civilians from inhumane treatment and violence to life and person.

71. Since 2000, the Security Council has passed four resolutions finding that the growing use of violence against women in situations of armed conflict threatens international peace and security. Resolutions 1325, 1820, 1888 and 1889 require that specific measures be taken to ensure women's right to equality and justice both during and after conflict.

72. The Committee on the Elimination of Discrimination against Women has expressed deep concern at the high prevalence of sexual and other forms of violence, including rape, perpetrated against rural women from the Shan, Mon, Karen, Palaung and Chin ethnic groups by members of armed forces. The Committee also expressed concern at the apparent impunity of the perpetrators of such violence, although a few cases have been prosecuted, and at reports of threats against and intimidation and punishment of the victims.

73. The use of anti-personnel mines along Myanmar's border areas, particularly in the east, endangers villagers. Both the military and non-State armed groups use anti-personnel mines. It is reported that from May until June 2009 and again since September the Democratic Karen Buddhist Army has increased the number of landmines it has placed in civilian areas throughout the Bu Tho and Dweh Loh townships. According to the information, villagers are not being notified of the location of the new landmines, which are on busy paths used by villagers, in farm field huts, around paddy fields and along the banks of canals.

74. Of grave concern are reports that civilians are forced by the military to clear brush in suspected mined areas or to serve as porters for the military in areas where there is a mine hazard. According to sources, civilians have been ordered to remove mines without training or protective equipment or to repair fences of mined areas, which have caused serious casualties. The Special Rapporteur calls for a moratorium on the use of landmines and for Myanmar to accede to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (1997), which some 156 states have already ratified, acceded to, accepted or approved. He encourages the authorities to seek effective international cooperation and support in order to begin demining efforts and to provide support to victims of landmines.

75. The Special Rapporteur commends the efforts of the Committee on the Prevention of Military Recruitment of Underage Children, which include: the education of officers, military personnel and communities on the law regarding recruitment of underage children and the purpose and activities of the Committee; training on adhering to the law; discharging soldiers who were found to be underage; and investigating complaints received from ILO on forced military recruitment. Nevertheless, reports from numerous reliable

sources of ongoing recruitment and the estimates of upwards of thousands of underage soldiers call for increased measures against recruiting officers and generals.

76. Despite measures by the Government of Myanmar to prevent and halt the recruitment and use of child soldiers, these practices still persist in the military and by non-State actors. Children from vulnerable poor families are particularly at risk of being lured into the military with promises of jobs and food. There have been reports of threats of arrests to children who refuse to join the military.

77. In 2009, ILO received 78 complaints concerning underage recruitment, of which 34 led to releases that year; an additional 10 complaints received in 2008 led to discharges in 2009. According to information received by the Special Rapporteur, the Government has released 278 child soldiers.

78. The Working Group on Children and Armed Conflict released its conclusions on Myanmar on 28 October 2009 (S/AC.51/2009/4) which included strong condemnation of all recruitment and use of children in violation of national and international law as well as deep concern about continued lack of humanitarian access particularly in contested and ceasefire areas.²

79. Non-State armed groups have recruited and used children, including through forced recruitment. Although the situation has been well documented by several NGOs, due to the restrictions in access to the border areas the United Nations has been unable to monitor and verify the presence of children in these groups. A United Nations country task force has been established as a monitoring and reporting mechanism, but the effective functioning of such a mechanism requires strengthened capacity, unhindered access, freedom of movement and witness protection guarantees. The ILO complaint mechanism on forced labour encompasses recruitment of child soldiers and should be given the conditions and means to operate effectively, including strengthened capacity of the office.

80. Recruitment of child soldiers is a crime for which perpetrators must be held accountable in accordance with the law. Only legal prosecution of those involved will contribute to ending this practice. The Working Group on Children and Armed Conflict urged the Myanmar Government to prosecute as a matter of priority persons responsible for crimes committed against children.³ Punitive measures taken to punish those involved in the recruitment of child soldiers have been disproportionately light and largely ineffective.

81. The Special Rapporteur also encourages the Government to apply the principle that child recruits cannot be found guilty of desertion and to adjust its policies to ensure that children are not charged with desertion in the first place, and are not subject to any criminal charges, imprisonment or any other form of harassment. There appears to be a practice of arresting former child soldiers for desertion some years after the fact.

82. The Special Rapporteur raised the case of Myo Win with the Minister of Labour. Myo Win was arrested in September 2009 for desertion and sentenced to seven years in a military court without a lawyer. He had been forcibly recruited into the military in 1996 while still in school but escaped back home after spending four and a half months in training and a week in his regiment.

² Para. 6 (b) and (c).

³ S/AC.51/2009/4, para. 7 (c) (iii).

F. Discrimination

83. Non-discrimination is a well-established fundamental human rights principle, explicitly referred to in the Universal Declaration of Human Rights (art. 2), as well as in the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. Article 4, paragraph 1 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992 Declaration on Minorities) spells out the responsibility of the State to ensure that persons belonging to minorities exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.

84. The Special Rapporteur calls upon the Government to ensure that ethnic minorities are granted fundamental rights. The ethnic minorities in Myanmar should have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination, in accordance with the 1992 Declaration on Minorities. Policies that prevent teaching in ethnic languages in ethnic populated areas need to be changed. Ensuring the enjoyment of culture rights for ethnic minorities would contribute to the richness of Myanmar as a diverse and multi-ethnic country and would contribute to its political and social stability.

85. In the light of the 2008 Constitution, especially articles 34 (freedom of religion), 347 (equal rights of all persons before the law), and 348 (prohibition of discrimination based on race, birth, religion, official position, status, culture, sex and wealth), the Special Rapporteur urges the Government to undertake the amendment of domestic laws to ensure the full enjoyment of human rights without discrimination for all people in Myanmar.

86. During his last mission, the Special Rapporteur visited Northern Rakhine State. He is deeply concerned about the systematic and endemic discrimination faced by the Muslim community, known as the Rohingya, in this State. This discrimination, which is framed as an immigration problem, leads to basic and fundamental human rights being denied to this population. Measures taken against this population include restriction of movement, limitations on permission to marry, and forced labour.

87. The Special Rapporteur urges the Government to end the unacceptable discrimination, human rights abuses and resulting severe economic deprivation they face. This ethnic minority continues to be denied citizenship, under the 1982 Citizenship Act, which contravenes generally accepted international norms to ensure that there is no State-sanctioned discrimination on the basis of religion and ethnicity. The right of children to nationality and registration at birth are guaranteed by the Convention on the Rights of the Child.

88. Since 1994 the Myanmar authorities have refused to issue birth certificates to many Muslim children. As a consequence of their statelessness, these children face discrimination with regard to education, health care and employment.

89. Unlike other people of Myanmar, this Muslim community must apply for papers from Nasaka, the border and immigration forces in Northern Rakhine State, which checks for citizenship and age of majority, in order to get married. This process is reported to cost 40,000 kyat (about \$40), which many Muslims cannot pay, and can take up to several years to complete. As a consequence, many Muslims are arrested and sentenced up to five years in prison for offenses relating to these requirements. The majority of the prison population of Buthidaung were Muslim, most of them for charges related to immigration or marriage offenses. However, the Supreme Court in 2009 overturned two convictions for illegal marriage. The Special Rapporteur urges the Government to consider these rulings and to

release all those prisoners currently serving sentences for illegal marriage, a topic he raised with the Chief Justice during his last mission.

90. The Special Rapporteur notes that the Government should comply with the conclusions of the Committee on the Rights of the Child, which recommended that the Citizenship Act be repealed⁴ and that in the light of articles 2 (non-discrimination) and 3 (best interests of the child) of the Convention, “abolish the categorization of citizens, as well as the mention on the national identity card of the religion and the ethnic origin of citizens, including children. In the view of the Committee, all possibility of stigmatization and denial of the rights recognized by the Convention should be avoided.”⁵

91. Also of concern are the extreme restrictions on movement placed on this Muslim population due to their lack of citizenship, which limits their employment opportunities. The situation of poverty appears to be exacerbated by the frequent imposition of arbitrary taxes and forced labour, which has been on the rise since November 2008, as a consequence of military expansion in the area, as well as by the construction of a barbed wire fence along the border in March 2009 to prevent Muslims from travelling back and forth.

92. The impact of these policies of discrimination is felt through family and social breakdowns in the community. The situation has resulted in the exodus of many from the community. In 2009 hundreds attempted the dangerous journeys by boat, risking their lives at sea. Some were pushed back to the sea. Others remain in detention facilities in the countries where they landed. The risk of another mass exodus of people remains unless the economic and social conditions for the community are adequately addressed with respect for their fundamental human rights.

93. In Rakhine State, it is said that only 13 per cent of households are able to meet their food needs for the entire year, and 26 per cent of the population suffers from malnutrition. Between 70 and 90 per cent of a household’s income is allocated to food purchase. Only 30 per cent of the population is said to receive public health care. A third of the population has no access to clean water. Prevalent causes of mortality are malaria, diarrhoea, respiratory and skin infections, intestinal parasites and cholera. The maternal mortality rate is much higher than in the rest of Myanmar (380 women per 100,000 births). There are three doctors per 430,000 people in Maungdaw, and two per 280,000 in Buthidaung.

94. The Special Rapporteur commends the Government on its agreement to extend and strengthen the presence of the Office of the United Nations High Commissioner for Refugees in Northern Rakhine State, and its identification of key social and economic areas for cooperation, which will be facilitated by the support announced by some donors. The Special Rapporteur hopes that all members of the United Nations Country Team could contribute to this cooperation in the identified areas.

G. Living conditions, sustenance, humanitarian assistance

95. The enjoyment of economic, social and cultural rights is seriously impeded by the social, economic and development conditions in the country, affecting the most vulnerable populations, including those in remote states and those recovering from Cyclone Nargis. This vulnerability is the result of the Government’s policies, and is further exacerbated by the impact of the global economic crisis, food insecurity and climate change.

⁴ CRC/C/15/Add.69, para. 28.

⁵ Ibid., para. 34.

96. The Special Rapporteur recalls that it is the duty of the Government of Myanmar to expend available resources to address the realization of basic economic, social and cultural rights. The denial of economic, social and cultural rights has had devastating effects in Myanmar, affecting an immense proportion of the population. Serious investment in the public service sector is urgently needed in order to make available affordable and accessible health care, education, and social security coverage.

97. Infant mortality remains high, with an estimated 1 in 10 births resulting in the death of the infant. More than 25 per cent of the population lacks access to safe drinking water. Approximately half of the malaria deaths in South-East Asia occur in Myanmar. More than 30 per cent of Myanmar's children are chronically malnourished. The national prevalence of underweight and stunting among children under 5 years is 32 per cent.

98. The Government of Myanmar spends 0.5 per cent of the gross domestic product (GDP) on health, and 0.9 per cent of GDP on education, while the military and State-owned enterprises together account for 80 per cent of total State spending.

99. Regional disparities in poverty remain alarming. While the figure for people below the official food poverty line is 10 per cent countrywide, it is 40 per cent in Chin, 21 per cent in northern Shan State, and 20 per cent in eastern Shan State, according to estimates.

100. In Chin State, the evolving food crisis remains of great concern. According to information received, up to 100,000 people in more than 200 villages are in need of food aid, most urgently in the southern townships of Matupi and Paletwa.

101. Scarcity of food is also reported in Northern Rakhine State, Kayin State, North and East Shan State, and the cyclone-affected areas. According to reliable sources, nearly 5 million people are in need of food aid.

102. Myanmar's earnings from natural gas are recorded at the official exchange rate for the kyat, which overvalues the currency by 150 to 200 times its market value. According to reliable sources, it is estimated that in 2009 the Government of Myanmar earned almost \$3 billion in revenues from sales of oil and natural gas. Since 2000, \$4.8 billion of \$4.83 billion of the Government's revenues on the Yadana Project appears not to have been included in the national budget.

103. Nobel laureate Joseph Stiglitz, during his participation in a forum in Yangon in December 2009 sponsored by the Government and the Economic and Social Commission for Asia and the Pacific, noted that revenues from oil and gas provided an opportunity for the Government to "open up a new era if used well". In fact, the Government of Myanmar is obligated by international treaties to which it is a State party to expend these available resources to the furtherance of the economic, social and cultural rights of the people of Myanmar. The Government's compliance with the obligation to take appropriate measures is assessed in the light of available resources. Article 4 of the Convention on the Rights of the Child states: "With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation."

104. With regard to the health sector, the Special Rapporteur notes that the right to health remains an obligation of the Government of Myanmar. Vulnerable groups, including widows and orphans, need special attention and protection as laid down in the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women.

105. An estimated 240,000 people are thought to be living with HIV/AIDS in Myanmar. Among them, 76,000 are in urgent need of antiretroviral treatment, yet less than 20 per cent of them currently have access to it. In 2008, about 25,000 people died of AIDS-related illnesses.

106. The Special Rapporteur welcomes the return of The Global Fund to Fight AIDS, Tuberculosis and Malaria to Myanmar in November 2009. The Global Fund has agreed to provide Myanmar with \$110 million to fight HIV/AIDS, malaria and tuberculosis, after pulling out of the country in 2005.

107. Although it is over a year and a half since Cyclone Nargis ripped through the Irrawaddy Delta, killing 140,000 and leaving 2.4 million destitute, the situation remains fragile. The Special Rapporteur welcomes the achievements of the Tripartite Core Group, established in May 2008 by the Government of Myanmar, ASEAN and the United Nations, in its relief efforts. The Post-Nargis and Regional Partnership Conference, held on 25 November 2009 in Bangkok, reported that shelter was the most important need identified for now. There was still an overall gap of 178,000 households that required urgent shelter assistance and that had been waiting for support from the humanitarian community for over a year.

108. Myanmar receives one of the lowest levels of overseas development assistance. Donors cite the human rights situation as a key obstacle, along with issues of access and other restrictions on the delivery of aid. However, the social development indicators of the country call for concerted action and support. Urgent measures are required to ensure the most basic human rights of the most vulnerable people, especially those ethnic communities residing in remote border areas. According to the *Human Development Report 2009*, Myanmar is still one of the least developed countries, ranking 138th of 182 nations on the human development index, despite its rich natural resources.

109. Commitments by the authorities in addressing barriers to development assistance would be the fundamental step in encouraging stronger international support, such as lifting administrative restrictions that threaten to limit the work of NGOs and aid workers, and the release of those who have been imprisoned for involvement in post-Nargis relief efforts.

110. Access to international agencies and organizations would help facilitate not only humanitarian work but would also help verify information coming out of border areas and other restricted zones which, in complaints, the Government has characterized as inaccurate and resulting from malicious reports deliberately made by opposing forces.

111. The Special Rapporteur is aware of reports of human rights abuses associated with large-scale development projects in Myanmar, in relation to oil and gas industries, mining and the building of large-scale dams. The alarming depletion of resources in Myanmar is of concern, as is the relationship between the extractive industries and a vast array of human rights violations. In Myanmar the mining of gold, gemstones, copper and other plentiful mineral resources has been linked to land confiscation, forced labour, and violations of the right to a healthy environment and the right to water.

112. It has been reported that extraction activities have directly resulted in an increase in human rights and environmental abuses committed by the military against the people living along the PTT Exploration and Production Public Company Limited's Yadana and Yetagun gas pipeline projects in the Tenasserim region of Myanmar. Reports highlight the close relationship between the extraction companies and the armed forces. The companies rely on the Myanmar military to provide security for their projects. Similar negative impact is caused in the context of the Kanbauk to Myaing Kalay gas pipeline project, operated by the Myanmar Oil and Gas Enterprise, and the Shwe gas pipeline project, the majority stakeholder of which is Daewoo International. According to reports, there is rampant use of forced labour in the areas.

113. The Special Representative on the issue of human rights and transnational corporations and other business enterprises has defined the policy framework in regard to this issue (see A/HRC/8/5). The framework rests on three complementary pillars: the State duty to protect against human rights abuses by third parties, including business, through

appropriate policies, regulation, and adjudication; the corporate responsibility to respect human rights, which in essence means to act with due diligence to avoid infringing on the rights of others; and greater access by victims to effective remedy, judicial and non-judicial. The Special Rapporteur hopes that this policy framework is incorporated and applied in Myanmar by all parties concerned.

H. Developing cooperation in the context of human rights

114. The Special Rapporteur welcomes the cooperation between the United Nations Country Team and the Governmental human rights body. In this context, the Special Rapporteur encourages the Member States of the United Nations and the donor community to provide adequate resources and the necessary environment to the United Nations and financial institutions to assist the Government of Myanmar in achieving the Millennium Development Goals. Children, women and all people of Myanmar should be given the same opportunity as those in any other Member State to achieve their economic, social and cultural rights. At the same time, the Special Rapporteur calls upon the Government of Myanmar to cooperate with international organizations by facilitating necessary visas and allowing access for effective delivery of aid.

115. Myanmar is party only to the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. However, as a Member State of the United Nations, it is still bound by the Universal Declaration of Human Rights proclaimed on 10 December 1948 and subsequent Declarations adopted by the General Assembly.

116. The Committee on the Elimination of Discrimination against Women considered in November 2008 the second and third reports of Myanmar covering the period 2000–2006. The Government should take heed of the Committee's requests that the State party provide, within one year, written information on the steps undertaken to implement the recommendations contained in paragraph 29 regarding the pursuance of sustained policies aimed at the promotion of women's full and equal participation in decision-making in all areas of public, political and professional life, and paragraph 43, regarding violence and discrimination against women in Northern Rakhine State, of its concluding observations (CEDAW/C/MMR/CO/3). The Committee also requested the State party to consider seeking technical cooperation and assistance, including advisory services, if necessary and, when appropriate, for implementation of the above recommendations.

117. The Special Rapporteur welcomes the extension of the Supplementary Understanding between the Government of the Union of Myanmar and the International Labour Office for one year from 26 February 2010. ILO operates, in agreement with the Government of Myanmar, a forced labour complaints mechanism which covers complaints of underage recruitment into the military and the inappropriate use of prison labour. Nevertheless, the Special Rapporteur remains disturbed by the situation of four farmers associated with forced labour complaints to ILO who, following the release of 10 farmers on 17 February 2010, are currently in prison on charges which clearly breach the spirit and letter of the protections provided in the Supplementary Understanding. He is also concerned about the situation of a facilitator and a lawyer who had assisted the farmers, who remain in prison on allegedly unrelated charges.

IV. Conclusions and Recommendations

118. The Special Rapporteur would like to thank the Government of Myanmar for its increased cooperation in facilitating his brief but very intensive third mission.

119. The recommendations that the Special Rapporteur has made to the Government since his first report to the General Assembly in September 2008 (A/63/341), including the four core human rights elements, still apply in the context of the announced intention to hold elections this year.

120. As the Special Rapporteur stated in previous reports, there is a pattern of gross and systematic violation of human rights which has been in place for many years and still continues. The human rights that are part of this pattern are broad-ranging and include the rights to life, to liberty, to personal integrity, to freedom of expression, assembly and religion, to judicial remedy and due process of law, to nationality, to protection of civilians and internally displaced communities and to prohibition against discrimination, among others.

121. Given the gross and systematic nature of human rights violations in Myanmar over a period of many years, and the lack of accountability, there is an indication that those human rights violations are the result of a State policy that involves authorities in the executive, military and judiciary at all levels. According to consistent reports, the possibility exists that some of these human rights violations may entail categories of crimes against humanity or war crimes under the terms of the Rome Statute of the International Criminal Court.

122. The mere existence of this possibility obliges the Government of Myanmar to take prompt and effective measures to investigate these facts. There have clearly been cases where it has been necessary to establish responsibility, but this has not been done. Given this lack of accountability, United Nations institutions may consider the possibility to establish a commission of inquiry with a specific fact-finding mandate to address the question of international crimes. At this particular stage in the history of Myanmar, the State faces this critical assignment which must be addressed by this Government and by a newly elected Government as well.

123. With plans for the first national elections in 20 years, Myanmar faces an opportunity for positive change. Respect for human rights is a fundamental condition for that change to be positive. Nevertheless, during his last mission, the Special Rapporteur received no indication that all prisoners of conscience would be released, that freedom of opinion and association would be guaranteed in the context of these elections, and that ethnic communities would be able to fully participate. The Special Rapporteur hopes that the Government seriously considers and ultimately implements the necessary steps for ensuring credible elections and substantive changes to the human rights situation in Myanmar.