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**HUMAN RIGHTS SITUATIONS THAT REQUIRE  
THE COUNCIL'S ATTENTION**

**Report of the Special Rapporteur on the situation of human rights  
in Myanmar, Tomás Ojea Quintana, on the implementation of  
Council resolutions S-5/1 and 6/33\***

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\* The present report was submitted after the deadline in order to include the most recent information.

## Summary

In its resolution 1992/58, the Commission on Human Rights established the mandate on the situation of human rights in Myanmar, which was then extended by the Human Rights Council in its decision 1/102 and resolution 5/1.

In March 2008, by its resolution 7/32, the Council extended the mandate for one year. On 26 March 2008, Tomás Ojea Quintana (Argentina) was appointed as the new Special Rapporteur, and he officially assumed the function on 1 May 2008.

The present report is a follow-up report on the status of implementation of Council resolutions S-5/1 and 6/33, as requested by the Council in its resolution 7/31. In the report, the Special Rapporteur focuses on the human rights issues pertinent to the current constitutional process in the country, the developments with regard to the crackdown on the demonstrations in September 2007, and the human rights impact of tropical cyclone Nargis. The report builds upon the preliminary findings and further developments included in the previous report submitted to the Council (A/HRC/7/24). Since the present report is his first to be submitted to the Council, the Special Rapporteur also presents an overview of his methodology and programme of work in discharging his mandate.

The Special Rapporteur would like to pay tribute to the victims of cyclone Nargis, present his condolences to the families at this tragic time and convey to the people of Myanmar a message of encouragement in the recovery phase of that natural disaster.

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## I. INTRODUCTION

1. The mandate on the situation of human rights in Myanmar was established in 1992 by the Commission on Human Rights in its resolution 1992/58 and extended by the Human Rights Council in its decision 1/102 and resolution 5/1.
2. In March 2008, the Council reviewed the mandate, and in its resolution 7/32, extended it for another year. On 1 May 2008, Tomás Ojea Quintana (Argentina) officially assumed the function of the Special Rapporteur on the situation of human rights in Myanmar, succeeding Paulo Sérgio Pinheiro.
3. The present report is submitted in accordance with Council resolution 7/31. It covers human rights developments in Myanmar since the previous report submitted to the Council (A/HRC/7/24) in March 2008 on the latest developments of the implementation of Council resolutions S-5/31 and 6/33. In view of the short time between the official assumption of his mandate and the timeline reporting constraints of the Council for the present session, the Special Rapporteur considers it important to inform the Council on the information brought to his attention relevant to the areas covered in the above-mentioned resolutions. However, he would like to point out that the present report should be observed as a preliminary analysis requiring further research and discussions with the Government of Myanmar.
4. In the above-mentioned resolutions, the Government of Myanmar is requested (a) to ensure full respect for human rights and fundamental freedoms and to investigate and bring to justice perpetrators of violations of the human rights of peaceful protesters during the demonstrations of September 2007; (b) to release, without delay, those arrested and detained as a result of the demonstrations, and to release all political detainees in Myanmar, including the General Secretary of the National League for Democracy (NLD), Daw Aung San Suu Kyi, and to ensure that the conditions of detention meet international standards and include the possibility of visiting any detainee; (c) to lift all restraints on peaceful political activity of all persons by, inter alia, guaranteeing freedom of peaceful assembly and association and freedom of opinion and expression, including for free and independent media, and to ensure unhindered access to media information for the people of Myanmar; (d) to engage urgently in a reinvigorated national dialogue with all parties with a view to achieving genuine national reconciliation, democratization and the establishment of the rule of law; and (e) to cooperate fully with humanitarian organizations, including by ensuring full, safe and unhindered access of humanitarian assistance to all persons in need in the country.
5. The Council also requested the Special Rapporteur to monitor the implementation of its resolutions and to conduct visits to the country. It encouraged the Government of Myanmar and the Office of the United Nations High Commissioner for Human Rights (OHCHR) to continue to engage in a dialogue with a view to ensuring full respect for all human rights and fundamental freedoms.
6. The Council resolutions, while focusing on the tragic events of September 2007, are also relevant to key current situations in the country with regard to the constitutional process and the devastating effects of cyclone Nargis. In accordance with resolution 7/31, in the present report the Special Rapporteur focuses on the human rights issues pertinent to the current constitutional process in the country and the developments with regard to the crackdown on the demonstrations

of September 2007. He also reviews the impact on the human rights situation of the people of Myanmar of tropical cyclone Nargis and on access to humanitarian assistance. Furthermore, the report includes the Special Rapporteur's overview of the methodology and programme of work that he would like to follow in discharging his mandate.

7. The Special Rapporteur addressed two letters to the Government of Myanmar. In the first letter, dated 6 May 2008, he expressed his distress and profound sympathy to the people of Myanmar following the devastating cyclone; in the second letter, dated 7 May, he focused on establishing formal contacts by introducing himself and requesting to visit the country. The Government of Myanmar responded to his first letter, expressing its deep appreciation on behalf of the people of Myanmar for his kind message regarding the tragic event, noting that the Special Rapporteur's support and encouragement reflected the cooperation between the Government of Myanmar and the Council. At the time of finalization of the present report, the Special Rapporteur had not yet received any reply to his request for a visit. He very much hopes that, in accordance with the sense of collaboration expressed in the above-mentioned communication, his request will be accepted by the Government.

8. The Special Rapporteur would like to benefit from the expertise developed by his predecessors and explore with the authorities, national partners and the people of Myanmar positive ways to address the main human rights challenges in the country. He would also like to thank OHCHR and its Regional Office for South-East Asia for the support received in the implementation of his mandate.

## **II. HUMAN RIGHTS AND THE CONSTITUTIONAL PROCESS**

9. In its resolution 7/31, the Council requested the Special Rapporteur to report to it at its eighth session on the implementation of resolutions S-5/1 and 6/33. In those resolutions, the Council addressed a number of requests to the Government of Myanmar in substantive thematic areas. With regard to the current constitutional process, the Council requested the Government to lift all restraints on the peaceful political activities of all persons by, inter alia, guaranteeing freedom of peaceful assembly and association and freedom of opinion and expression, including for free and independent media, and to ensure unhindered access to media information for the people of Myanmar and to engage urgently in a reinvigorated national dialogue with all parties with a view to achieving genuine national reconciliation, democratization and the establishment of the rule of law. The Special Rapporteur therefore considers it relevant to provide the Council with the information set out below.

### **A. Developments in the constitutional process, including the referendum**

10. On 19 February 2008, the finalization of the draft Constitution, the fourth step in the Government's 7-step road map to democracy, was announced. On 9 April, it was announced that the referendum on the adoption of the new Constitution was scheduled for 10 May 2008, with multiparty democratic elections scheduled by the Government for 2010. The people of Myanmar have not been called to vote since 1990.

11. Copies of the 457-article draft Constitution were officially made public on 9 April and were reportedly on sale in bookshops at the price of 1,000 kyat (\$1) a copy, a price that was reportedly unaffordable for a significant proportion of the population. The short time frame

between the official announcement of the referendum and 10 May, the date of its holding, raised deep concerns locally and internationally with regard to the readiness, preparedness, organization and carrying out of the referendum process. It was widely noted that the schedule fell far short of ensuring a far-reaching publicity campaign, inclusive of information dissemination, public-awareness programmes and free debate to enable members of the electorate to make an informed decision when casting their votes.

12. The atmosphere for a credible, widely acceptable referendum has been, regrettably, sombre. The calls from world leaders, including the Secretary-General, to the Myanmar authorities to make the constitution-making process inclusive, participatory and transparent and to engage without delay in a time-bound dialogue with others, including the General Secretary of NLD, Daw Aung San Suu Kyi, were not properly heeded by the Government. The Government relied on a narrow sovereignty interpretation and used this as grounds not to accept the recommendation of the Special Adviser to the Secretary-General on Myanmar, Ibrahim Gambari, to invite international observers for the referendum. By inviting international observers, the referendum process would have been transparent, and the observers could have assisted in ensuring a free and fair process. The path for the referendum was further challenged by cyclone Nargis, which struck Myanmar on 2 and 3 May.

13. Despite the cyclone, the Government decided to proceed with the referendum, as had been announced by the commission responsible for organizing the referendum, in its statement 8/2008, according to which the referendum would be held, as scheduled, on 10 May, in all states and divisions, except in 40 towns in Yangon Division and 7 towns in Irrawady Division, devastated by the cyclone, where the referendum would be held shortly after, on 24 May. Subsequently, on 8 May, the Secretary-General noted that it might be more prudent to focus instead on mobilizing all available resources and capacity for emergency response efforts.

14. The referendum was held on 10 May 2008. Aung Toe, head of the Commission for the referendum, announced that the draft Constitution had been overwhelmingly approved by 92.4 per cent of the 22 million eligible voters, pointing out that there had been a turnout of more than 99 per cent. In the remaining 47 towns, the referendum was held on 24 May.

15. The NLD publicly dismissed the national referendum on the draft Constitution stating that it had not been inclusive and that it was unclear. It also pointed out that the Government had failed to discuss the drafting of the new Constitution with the representatives elected in the 1990 parliamentary elections, and that decree No. 5/96 reportedly prohibited criticism of the national convention and allowed critics to be sentenced to up to 20 years of prison. On 17 May, the NLD rejected the Government's claim that more than 92 per cent of voters had approved the draft Constitution in the first round of the referendum.

16. On several occasions, the Government announced that the referendum and the 2010 elections were two crucial steps on the road to democracy. Such announcements are particularly relevant in the context of the Universal Declaration of Human Rights. In article 20, it is stated that "everyone has the right to freedom of peaceful assembly and association" and "no-one may be compelled to belong to an association". In article 21, it is stated that "everyone has the right to take part in the Government of his country, directly or through freely chosen representatives", "everyone has the right of equal access to public service in his country", and that "the will of the

people shall be the basis of the authority of Government; this will shall be expressed in periodic and genuine elections, which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures”.

17. If properly carried out, this path would lead to the formation of an elected Government and create an excellent opportunity to establish the basis for economic, social and political reforms, address the country’s pressing humanitarian and human rights needs, find effective precautionary measures for the rapidly deteriorating health and education situation and find avenues for true dialogue with opposition leaders.

18. The lack of participation in the drafting process, its transparency, the challenges regarding public knowledge about its contents, the implications of the draft Constitution for the people of Myanmar before making an informed decision, and the conditions under which the referendum was held all raise significant concerns from a human rights perspective.

19. The draft Constitution is said to have provisions that could compromise the enjoyment of the human rights recognized in the Universal Declaration of Human Rights. This aspect will be developed in future reports of the Special Rapporteur. To that end, the Special Rapporteur hopes to receive in the near future, an official English-language translation of the draft.

#### **B. Right to freedom of opinion and expression, peaceful assembly and association, and the role of human rights defenders**

20. The right to freedom of opinion and expression is guaranteed under international law by a number of human rights instruments, notably under article 19 of the Universal Declaration of Human Rights. This universal right is particularly relevant to the democratization process.

21. After the announcement of the finalization of the draft Constitution, the Government intensified its campaign in support of the referendum and to ensure the acceptance of the Constitution by the people of Myanmar. A widespread media campaign encouraging citizens to vote in favour of the draft Constitution, as well as public rallies and activities, were reportedly held throughout the country. Public political debate, activism and organization are fundamental values encouraged by the Universal Declaration of Human Rights in its articles 2, 18, 19, 20 and 21. These provisions should provide space for all voices to be heard, including those that might be different, with varying perspectives enriching the pluralism of a vibrant democracy.

22. The provision included in the Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar No. 1/2008 and the existing provisions in the State Law and Order Restoration Council Law No. 5/96 threatened any opposition to the referendum. According to the Referendum Law, people who publicly stand against the referendum face fines and prison sentences. The Law has curtailed the peoples’ right to express their views, the essence of modern democracy. Despite these provisions, reports were received that posters had been hung on walls and anti-referendum rallies held.

23. The Special Rapporteur received a number of allegations regarding the arrest, detention and bringing of charges against individuals who had expressed views against the referendum and the draft Constitution. Reports were received of acts of protest and anti-referendum rallies in several parts of the country, in particular in Yangon and Mandalay. On 4 March, in Yangon, a

number of demonstrators wearing T-shirts bearing anti-referendum slogans gathered near NLD headquarters; reportedly, seven activists participating in the rally were arrested. Several instances of harassment of NLD members (Myint Soe and Aung Ko Ko) were also reported after the NLD launched a “Vote No” campaign. A number of activists were also reportedly arrested in Sittwe following a peaceful demonstration against the referendum on 19 April.

24. According to the reports brought to the attention of the Special Rapporteur, the respect for voter anonymity at polling stations and during the collection of advance votes had not been respected. There were also accounts of pro-Constitution posters being displayed at polling stations and polling station administrators putting pressure on voters to vote in favour of the Constitution.

25. A solid and independent civil society is a good measure of democracy in a country. Human rights organizations should be part of a vibrant civil society. States members of the United Nations recognized the importance of human rights defenders when, in 1999, the General Assembly adopted by consensus the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (resolution 53/144). Human rights defenders are fundamental partners in democratization, and the Declaration provides a framework for their action, defining their rights and responsibilities and giving guidance on how their role should be supported and protected. The presence of human rights defenders and the possibility of conducting their work without hindrance and with full liberty are indicators of democratization.

### **C. Political prisoners and the path to democracy**

26. Over the years, the Commission on Human Rights and the Human Rights Council have denounced the situation of political prisoners in Myanmar. This situation is particularly relevant at a time when the country is supposed to be paving the way towards a democratic society.

27. Regrettably, the reported number of political prisoners and detention conditions continue to be appalling. The Special Rapporteur was informed that, as at 20 May 2008, 1,900 persons were in prison, allegedly on political grounds.

28. The situation of the General Secretary of the NLD, Aung Saan Suu Kyi, and in particular her house arrest, are issues of particular concern in this regard. According to Opinion No. 2/2007 of the Working Group on Arbitrary Detention, the Government argued that Aung Saan Suu Kyi had been arrested because, in 2003, during her political activism in numerous towns, she had committed acts against peace and order of local communities, had made speeches against the Government and had campaigned with the intention of weakening the integrity of Myanmar and the solidarity of ethnic communities. On these grounds, the Government applied article 10 (b) of State Protection Law 1975, which established that a person who is a “threat to the sovereignty and security of the State and the peace of the people may be detained for up to five years, but no more than one year at a time”. On 25 May 2007, the Government extended Aung Saan Suu Kyi’s arrest for another year, reaching the limit of five years provided for by the Law. According to reliable information, in May 2008, the Government of Myanmar exceeded the limit by again extending Aung Saan Suu Kyi’s arrest with no new evidence or allegations against her.



29. The situation of Aung Saan Suu Kyi is an issue of critical concern for the Special Rapporteur, since it compromises the fundamental human rights recognized by the Universal Declaration of Human Rights. Articles 9, 10 and 11, which grant a number of rights to arrested persons, and articles 19, 20 and 21, which protect the principle of political rights, are all seriously affected in the case of Aung Saan Suu Kyi. In addition, given her responsibility as NLD General Secretary, her arrest affects the political rights of many other members of the NLD and of the people of Myanmar.

### **III. DEVELOPMENTS WITH REGARD TO THE EVENTS OF AUGUST AND SEPTEMBER 2007**

30. In its resolutions S-5/31 and 6/33, the Council called on the Government of Myanmar to investigate and bring to justice perpetrators of human rights violations with regard to the peaceful demonstrators of September 2007, and to release, without delay, those arrested and detained as a result of the demonstrations and to ensure that the conditions of detention met international standards and included the possibility of visiting any detainee.

31. The Special Rapporteur would like to provide more recent information brought to his attention in relation to the situation covered in the previous report (A/HRC/7/24).

#### **A. Arrests, detentions, trials and releases in connection with the demonstrations of September 2007**

32. In the previous report (A/HRC/7/24), the Special Rapporteur noted that 718 individuals had been arrested between August 2007 and February 2008 and that they were reportedly still detained at the time of finalization of the report. That figure included the 93 individuals confirmed by the Government to be in detention during the Special Rapporteur's mission to Myanmar in November 2007. The Special Rapporteur has relied on information from various sources and it is incumbent on the Government to provide confirmation in order for the Special Rapporteur to present an accurate account. The Special Rapporteur has received information relating to individuals reportedly arrested and/or in detention in connection with the crackdown on the demonstrations of September 2007. These arrests contravene articles 9, 10, 11, 19, 20 and 21 of the Universal Declaration of Human Rights.

33. Regarding the situation of some members of the 88 Generation Students group, the Special Rapporteur has received information confirming that Khin Moe Ay, Aung Gyi (also known as Moe Aung Soe), Myat Hsan, Zaw Min, Htun Htun Win and Win Maw are all still detained in Insein prison. Kyaw Soe, Myo Yan Naung Thein and Win Maw are also still detained in Insein prison and have reportedly been charged under section 5 (g) of the penal code. Mon Min Soe (also known as Min Min Soe), included in the report as self-identified political activist, has also reportedly been identified as a member of the 88 Generation Student group and is reportedly still in Insein prison.

34. Regarding the situation of self-identified political activists, the Special Rapporteur is pleased to report that, according to information received, Myint Naing, Dr. Aung Moe Nyo and Htet Htet Aung have been released; however, Ye Thein (alias Ko Bo Naung) is reportedly still detained in Sittwe prison, Arakan State. U Khin Hla was reportedly transferred from Thandwe prison, Arakan State, on 8 February 2008, to Buthidaung prison, Arakan State, and charged

under sections 294, 506 and 427 of the Penal Code and has been sentenced to four years of imprisonment. Htay Myint, is reportedly still detained in Thayet prison, while Nay Myo Kyaw is still held in Insein prison. Kyaw Zin Win, who remains in Insein prison, has been allegedly charged under sections 6, 32 (b) and 13/1 of the Penal Code.

35. U Thet Wia, Sanchaung township NLD Chairman, who had allegedly been arrested in September 2007 for being in possession of information on forced labour and children in armed conflict and subsequently released on bail in January 2008, is still reported as released on bail.

36. Regarding the situation of Thet Zin, editor-in-chief of *Myanmar Nation (Myo Myanmar)* and Sein Win, both reportedly arrested for being in possession of the report of the previous Special Rapporteur, Thet Zin is still in detention in Insein prison and has been charged under section 17/20 of the Printing Act. With regard to the detained artists mentioned in the report of the Special Rapporteur, according to reliable sources they are still detained in Insein prison.

37. Human rights defender Aung Zaw Oo is still reportedly detained in Insein prison and is said to have been charged under section 5 (g) of the Penal Code. U Tin Hla, a member of the Federation of Trade Unions - Burma, on 11 January 2008, was reportedly charged under section 19 (a) of the Penal Code and sentenced to seven years imprisonment and is in Insein prison. On 7 November 2007, Thet Oo was reportedly charged under section 505 (b) of the Penal Code and sentenced to two years imprisonment in Taungoo prison, where he is now. Zaw Tun was reportedly charged on 7 November 2007 under section 505 (b) of the Penal Code; he is in Prome prison. On 18 October 2007, Shwe Pain was reportedly charged under section 505 (b) of the Penal Code and sentenced to two years of imprisonment; he is in Katha prison, Sagaing Division. Ya Zar and Zaw Kyi are both still detained in Kale prison. Shwe Thwe is still detained in Kale prison and has been sentenced to two and a half years of imprisonment. Aung Naing Soe is still detained in Thandwe prison; the order for his solitary confinement was lifted on 13 December 2007.

38. In the previous report (A/HRC/7/24), information was provided concerning the arrest of two students. According to recent information received, Ye Myat Hein, a 17-year-old student, who had reportedly been charged but has never been brought before the courts, was finally brought to Bahan town court on 2 January 2008 and reportedly charged under sections 505 (b), 143, 144, 145, 295 and 295 (a) of the Penal Code. He remains detained in Insein prison and has been allowed to communicate with his lawyer. Regarding the other student, Sithu Maung (alias Ya Pyeit), according to information received, he is also detained in Insein prison and has been charged under sections 505 (b), 143, 144, 145, 295 and 295 (a) of the Penal Code. He was taken to Bahan town court together with Ye Myat Hein and has been allowed to contact his lawyer also.

39. In relation to the reported detained monks, U Kaw Vida is still reportedly detained in Insein annex prison and has been charged under sections 134, 135 and 505 (b) of the Penal Code. U Gambira reportedly continues to be detained under the same charges. Another eight monks - U Pyinnyar Thila, U Nara Pati, U Vilathetka, U Sanda Vanna, U Eindriya, U Khaymar Vantha, U Zathi La and U Zar Nayya - have also reportedly been brought before the court together with U Kaw Vida. The Special Rapporteur was informed that a nun, Daw Thi La Nandi (also known

as Aye Aye), is still detained in Insein prison. She has reportedly been charged under section 295 of the Penal Code after she allegedly appeared before Okkapala town court on 27 February 2008 with seven other nuns.

40. In his next report to the Council, the Special Rapporteur would like to provide an analysis on the compatibility of the provision in the current Penal Code and its procedural frameworks with human rights standards. In this context, the Special Rapporteur will propose to the Government of Myanmar, in the course of a future visit, the possibility of setting up a national experts' conference that could enlighten him on the country's procedures and serve as an open and ongoing forum for dialogue on these matters.

### **B. Conditions of detention: right to health and treatment**

41. Information was received with regard to the health situation of Paw U Tun (alias Min Ko Naing), a member of the 88 Generation Students group active in the demonstrations against the sharp rise in fuel prices in August 2007; Paw U Tun has reportedly been suffering from a severe eye infection while in detention. He requested to visit an ophthalmologist, but the prison authorities allegedly refused this request, claiming that an eye doctor would not be available before May 2008. According to reports, Paw U Tun's eye condition and acute pain prevented him from eating and sleeping.

42. Information has also been received with regard to the situation of one of the NLD members mentioned in the report. Aye Cho is reportedly suffering from hypertension and a heart problem and requires assistance.

### **C. Access to prisoners by international organizations**

43. The reports received indicate that the detention conditions of detainees at Insein prison in Yangon remain appalling. Family members and relatives continue to report that they face many obstacles, including lengthy procedures, before they can visit detainees in prison. While some of the prisoners have had access to legal counsel during the reported trials, reports on the situation of most of the detainees can still only be obtained through contacts with prisoners' families.

44. According to the most recent information, there have been no visible developments in the access by the International Committee of the Red Cross (ICRC) to the detainees in accordance with its mandate. In this context, the Special Rapporteur would like to emphasize his call to the authorities to re-engage with ICRC and provide free access to detention centres.

### **D. Investigations on the 31 reported killings and depuration of responsibilities for excessive use of force**

45. The Special Rapporteur, as mandated by the Council, would like to continue to follow up on the steps taken by his predecessor in engaging in fruitful discussions with the relevant authorities with a view to clarifying the reported tragic deaths of at least 31 individuals during and/or as a result of the crackdown on the peaceful protests in September 2007. The excessive use of force contravenes article 29 (2) and (3) of the Universal Declaration of Human Rights.

46. At the time of finalization of the present report, the Special Rapporteur had not received any further information from the relevant authorities on the status of the investigations on the deaths of the mentioned individuals and the investigations with regard to responsibility in the light of article 3 of the Code of Conduct for Law Enforcement Officials and its commentary.

47. A number of individuals continued to be reported as missing since the crackdown on the protests. While noting the difficulties in assessing the whereabouts of these individuals in view of the present circumstances, the Special Rapporteur would like to express his concern and hopes that the Government will put a mechanism in place in order to discover the whereabouts of these individuals.

48. In this context, the Special Rapporteur would like to focus in his dialogue with the Government on the importance of access to official information and the outcome of investigations; this will allow him to follow the process of identification and clarification of cases reported to him.

#### **IV. THE IMPACT OF CYCLONE NARGIS**

49. Tropical cyclone Nargis struck Myanmar on 2 and 3 May 2008, causing devastation in Ayeyarwady Division and directly hitting the country's largest city, Yangon. A total of 40 towns in Yangon Division and 7 townships in Ayeyarwady Division are still on the Government's list of disaster areas. As at 16 May, the official death toll had risen to more than 77,000. According to Government media, nearly 56,000 people remain missing, with the official number of injured being approximately 19,400.

50. Assessment teams in the country have reported major damage in affected areas, particularly in the low-lying Ayeyarwady (Irrawaddy) delta region, where the impact of the cyclone was compounded by a storm surge. At the moment of finalization of the present report, the Office for the Coordination of Humanitarian Affairs reported that, of the 2.4 million cyclone-affected people, an estimated 1.4 million are located in severely affected areas of Ayeyarwady Division, including Bogale, Labutta, Ngaputaw, Dedaye, Pyapon, Kyaiklat, and Mawlamyinegyun. In addition, the Office estimates that 680,000 individuals reside in severely affected areas of Yangon Division.

51. In its resolutions, the Council has traditionally called on the Government to cooperate fully with humanitarian organizations, including by ensuring full, safe and unhindered access of humanitarian assistance to all persons in need in the country. Regrettably, and in view of the devastating effects of the cyclone, the recommendations made by the Council in October and December 2007 respectively continue to be of great relevance to the promotion and protection of the human rights of the people of Myanmar.

#### **Promotion and protection of human rights in humanitarian crises as a result of natural disasters**

52. In natural disasters, the timing of emergency assistance and the delivery of aid can determine life or death. This has been confirmed in a number of situations over recent years in almost all regions of the world. All too often, the human rights of disaster victims have not been sufficiently taken into account.

53. In the situations created by natural disasters, the rights of the victims, in particular of children, women and the elderly and other vulnerable groups, to receive assistance and protection and to have their basic needs addressed should be the priority of the concerned Government, with its ultimate responsibility to protect the rights of its people. The victims of complex emergencies and natural disasters are not only those who are directly affected by the natural disaster, but may also include many others whose lives have been indirectly disrupted by the impact of these events and who are in need of help. Regrettably, the most recent natural disasters are of such great magnitude that international assistance is crucial for effective and timely action. However, the consequences of these disasters can take long to remedy.

54. The question of equal access to humanitarian aid, gender-based violence, enforced relocation, increased fear of recruitment of children into armed conflict or fighting forces in the areas where this phenomenon exists, involuntary resettlement, as well as issues relating to lost documentation and property, are human rights issues that have been often identified in situations of natural disasters and need to be addressed as part of the humanitarian process: immediate relief, and short-term and long-term recovery.

55. Concerns regarding the situation of children separated from their parents, increases in forced labour, the conditions of temporary shelter facilities and their management, the right to food and drinking water, the protection of the right to health and ultimately the right to life and the blockage of access to the affected areas have been expressed since the immediate aftermath of cyclone Nargis.

56. In a humanitarian crisis as a result of natural disasters, the risk of human rights violations is therefore demonstrably high, in particular in relation to the violation of economic, social and cultural rights and discrimination with respect to aid. While there are violations that can occur as a direct result of policies and actions, many others are the result of oversight. For this reason, the Special Rapporteur is of the view that, in order to avoid such violations, it is important that both the national authorities responsible and all national actors respect the human rights of all victims and others, and establish the necessary monitoring mechanisms in the early stage of humanitarian aid delivery and in recovery planning.

57. According to information brought to the attention of the Special Rapporteur, on 2 May, at around midnight, when cyclone Nargis hit Myanmar, many zinc roofs of the prison Insein in Yangon were torn off. Owing to the destruction in one area of the prison, some 1,000 prisoners were reportedly forced to congregate inside the main prison hall, which was then locked. Prisoners reportedly panicked, creating chaos inside the hall. In order to control the situation, it is reported that soldiers and riot police were called in and opened fire on the prisoners in that area. A number of prisoners were allegedly killed during the operation. The authorities should conduct a thorough and transparent investigation to clarify the facts and identify the perpetrators of these arbitrary killings.

58. The human rights principles of non-discrimination and accountability are essential in this process. The primary bearer of responsibility for providing assistance and protection is the Government of the affected country, which has the obligation to do everything in its power to prevent and limit the negative impact of natural disasters, such as those resulting from cyclone

Nargis, which left so many dead and homeless. Assisting victims and recovering from such natural disasters may require the support of the international community to supplement the efforts of the authorities of the affected country.

59. The principles of equality and non-discrimination are contained in numerous human rights instruments to which Myanmar is a State party, such as the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. These principles are the key to ensuring a human rights-based response to natural disaster situations. Another key principle is the involvement of the affected communities in the decisions that will have an impact in their lives. The right to have access to free and impartial information and the right to freedom of expression, as guaranteed by human rights law, should also be respected and provided.

60. In this context, the Special Rapporteur calls on all actors to pay special attention to the situation of women, children, and in particular the situation of orphans or children separated from their parents, internally displaced persons, elderly persons, persons with disabilities, persons living with HIV/AIDS and minority ethnic groups. It is essential that a full protection-coordination mechanism be established in the country, in close coordination with the Government.

61. To promote and facilitate a rights-based approach to disaster relief, the Inter-Agency Standing Committee adopted its Operational Guidelines on Human Rights and Natural Disasters in June 2006. The Special Rapporteur very much hopes that the Government of Myanmar and the international, regional and national organizations involved in the provision of assistance to address the needs created by the cyclone pay special attention to these Guidelines. While the Operational Guidelines are mainly addressed to intergovernmental and non-governmental humanitarian actors, they are certainly a very useful tool to guide the Government's efforts to assist in getting the lives of its people back to normal.

## **V. METHODOLOGY, ACTIVITIES AND PROGRAMME OF WORK OF THE SPECIAL RAPPORTEUR: PRELIMINARY OVERVIEW**

62. The Special Rapporteur wishes to emphasize that, as his primary task, he would like to cooperate with and assist the Government of Myanmar in its efforts in the promotion and protection of human rights. The Special Rapporteur will highlight any shortcomings with a positive approach, in order to assist the authorities to remedy them.

63. Taking into consideration the major human rights issues set out above, the Special Rapporteur, within his mandate, will also identify particular topics that deserve special attention and present a programme of work in his next report to the Council.

64. The Special Rapporteur is of the view that, in order to report on the progress made by Myanmar in the implementation of Council resolutions and to adequately monitor developments in the overall human rights situation of the people of Myanmar, in-depth research, including discussions with the experts in the country, is essential. In addition to receiving information from human rights organizations and international academic experts, the Special Rapporteur would like to engage with the experts in the country itself in order to advance the promotion and protection of human rights in the country. An outline for each thematic study will be prepared

after a preliminary examination of the subject based on existing documentation. The study will then be developed using a variety of inputs and sources, including material and reports prepared by government agencies, civil society organizations, the United Nations country team and academic institutions.

65. The Special Rapporteur expects the Government to accept his requests to visit the country regularly. Since time and resources are limited, such visits will have to be prepared carefully to maximize results. The Special Rapporteur also considers it important to continue engaging countries in the region as well in the discussions regarding progress made on the implementation of resolutions. In view of the important role of the Association of Southeast Asian Nations, he will also carry out visits to neighbouring countries.

66. The Special Rapporteur welcomes full cooperation from the States members of the Human Rights Council in discharging his mandate. This includes the good offices of countries neighbouring Myanmar and other States in ensuring meaningful dialogue and cooperation between the mandate of the Special Rapporteur and the Government of Myanmar to achieve progress in the promotion and protection of human rights, especially at this crucial time, when the Government has set up its 7-step road map to democracy.

67. With the assistance of OHCHR and other institutions, the Special Rapporteur hopes to develop a computerized database of allegations of human rights violations that he receives. The database would help to continue strengthening the accuracy of the information received.

68. Effective coordination is a priority in the United Nations. In this context, the Special Rapporteur envisages close cooperation with, among others, the Special Adviser to the Secretary-General on Myanmar, the Special Representative of the Secretary-General for Children and Armed Conflict, the International Labour Organization coordination mechanism on forced labour and other special procedures and mechanisms for oversight, and in the implementation of the international human rights instruments to which Myanmar is a State party, such as the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

## **VI. CONCLUSIONS**

69. According to the information received since 26 March 2008, the situation of human rights in Myanmar reported by the previous Special Rapporteur has not changed for the better. It is a great concern of the present Special Rapporteur that almost no improvement has been made and that critical issues still have to be addressed.

70. Further development of the present report will need close cooperation with the Government of Myanmar, in order to improve the enjoyment of human rights of the people of Myanmar.

71. In that regard, the Special Rapporteur regrets that, owing to time constraints and the schedule of the Council, he must submit the present report without having a chance to explore thoroughly with the Government of Myanmar areas of cooperation and exchange of information.

## VII. RECOMMENDATIONS

72. **The Special Rapporteur recommends that the Government of Myanmar:**

**(a) Immediate release of the General Secretary of the NLD, Aung Saan Suu Kyi, as an initial step in the reconciliation process, to be followed by the release of all other political prisoners;**

**(b) Set-up an effective mechanism to establish the whereabouts of those who reportedly disappeared during and after the crackdown on the peaceful demonstrations in September 2007, and provide information on the progress of its work;**

**(c) Guarantee the physical integrity of all political prisoners, and in particular access to medical treatment of those in need;**

**(d) Prepare a public report on how the referendum was conducted and the lessons learned;**

**(e) Fully respect freedom of expression, peaceful assembly and association, in particular at this crucial time in the establishment of the solid foundations of a healthy democracy;**

**(f) Continue to uphold the agreements made with the Secretary-General to allow international humanitarian workers and supplies unhindered access to the country and particularly to the areas affected by cyclone Nargis, and cooperate with the international community in monitoring questions of access and in assessing the need for effectiveness of the aid being supplied;**

**(g) Extend full cooperation to the mandate of the Special Rapporteur, accepting his requests for visits.**

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