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

**Report on the situation of human rights in Myanmar, submitted by
Mr. Paulo Sérgio Pinheiro, Special Rapporteur, in accordance with
Commission resolution 2002/67**

Executive summary

The mandate of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar was established by the Commission in its resolution 1992/58 and extended most recently in resolution 2002/67. In its resolution the Commission requested the Special Rapporteur to report to the General Assembly at its fifty-seventh session and to the Commission at its fifty-ninth session. The Special Rapporteur accordingly submitted an interim report to the General Assembly (A/57/290 and Corr.1). The present report is based upon the findings of his third fact-finding mission to Myanmar undertaken in October 2002 and information received by him up to 10 December 2002 and is to be read in conjunction with his interim report.

The assessment of the Special Rapporteur is that:

(a) The political space is being gradually reopened for the National League for Democracy (NLD) to resume its activities. This should presumably, also be valid for other legal political parties, which have yet to resume their activities. Restrictions on the freedom of expression, information and the press are, however, still in place;

(b) There is now an apparent consensus within the State Peace and Development Council (SPDC) regarding the numbers and categories of political detainees and they have continued to be released. In general detention conditions have improved, although incrementally, in recent years. Physical ill-treatment of political prisoners, such as beatings, stopped where it had previously occurred and elderly prisoners have received regular medical attention; however, in several areas, political prisoners continue to be worse off than criminal offenders. Areas where further attention are required include the quality of food, the reported beating of common prisoners, and access to qualified medical attention and treatment, especially in emergencies;

(c) Political arrests since July 2002 have followed the pattern of “un-rule of law”, including arbitrary arrest, prolonged incommunicado detention and interrogation by military intelligence personnel, extraction of confessions of guilt or of information, very often under duress or torture, followed by summary trials, sentencing and imprisonment;

(d) Against the background of general respect for the practice of religion, there are local or regional variations. Respect for religious freedom appears to be better in places closer to central authorities than in remote or counter-insurgency areas;

(e) The voluntary and/or forced conscription of children into the armed forces and the various ways in which they are used by these forces is an issue in Myanmar;

(f) There appear to be serious problems with the way the army and armed groups treat civilians in ethnic counter-insurgency areas. These problems will not disappear by denying them and they should be recognized and addressed properly if they are to be resolved. Allegations will continue to be made as long as violations continue to occur. The way to address this issue would be to investigate allegations in a credible manner, to establish the facts, to take action against the perpetrators, to establish procedures to prevent their recurrence, to ensure

control over army units and to compensate the victims. The Special Rapporteur took note of a communiqué issued on 4 November by the SPDC giving an initial positive reaction to his proposals regarding the investigation of allegations of human rights violations in ethnic areas, including allegations of rape in Shan State. He has sought clarification about the terms of the invitation to the United Nations to visit the region and reiterated his readiness to conduct an independent assessment under his mandate;

(g) In response to the precarious humanitarian conditions in Myanmar, the United Nations country team is preparing a framework document which is expected to function as a blueprint for direct action.

Principled engagement should remain the policy option concerning Myanmar embracing, among other elements, dialogue, support for change, empowerment of community, promoting civil society, and the enlargement of the presence and the capacity of United Nations agencies. To speed up progress towards peace and national reconciliation, it is more necessary than ever to build a rational discourse on policy and strategy alternatives. It is past time for the apparent stalemate that has so far characterized the contacts between the SPDC and the NLD to be overcome. Greater progress in the promotion and protection of human rights will help create an adequate atmosphere to break the impasse.

Member States and international organizations must follow the lead of domestic actors concerning the political transition. He therefore continues to urge the international community to engage with Myanmar even before the SPDC introduces democratic reforms.

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Introduction

1. The mandate of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar was established by the Commission in its resolution 1992/58 and extended most recently in resolution 2002/67 (approved by the Economic and Social Council in its decision 2002/269).
2. In its resolution 2002/67, the Commission requested the Special Rapporteur to report to the General Assembly at its fifty-seventh session and to the Commission at its fifty-ninth session, keeping a gender perspective in mind when seeking and analysing information (para. 8 (a)). The Special Rapporteur accordingly submitted an interim report to the General Assembly (A/57/290 and Corr.1). The present report is based upon the findings of his third fact-finding mission to Myanmar undertaken in October 2002 and information received by him up to 10 December 2002 and is to be read in conjunction with his interim report.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Fact-finding mission

3. The Special Rapporteur conducted his third fact-finding mission to Myanmar from 17 to 28 October 2002. As during his previous missions, he received full cooperation from the Government, for which he expresses once again his sincere appreciation. He was able to carry out his programme in its entirety and enjoyed complete freedom of movement and access to private persons and others of interest.
4. While in Yangon, the Special Rapporteur met with the Secretary 1 of the State Peace and Development Council (SPDC); the Foreign Minister and his Deputy; the Home Minister; the Head of Department of the Office of Military Intelligence; the Chief of the Bureau of Special Investigation; the Directors-General of the Prisons and the Police Departments; the Chiefs of the Special Branch and the Criminal Investigation Departments; and members of the governmental Human Rights Committee. The Special Rapporteur visited Insein Central Prison, where he interviewed confidentially 16 prisoners, including recent political prisoners and those whom he had met during his previous visit in February 2002. He also had meetings with the General Secretary and members of the Central Executive Committee of the National League for Democracy (NLD), representatives of ethnic and other political parties, the United Nations country team, the diplomatic community, international civil society organizations, members of the international and local business community, as well as religious leaders and recently released political prisoners.
5. The Special Rapporteur travelled to Hpa-an (capital) and Kya-in-seikkyi township in Kayin (Karen) State from 23 to 25 October, where he met with local civilian and military authorities and visited the state court and district- and township-level police offices, including lock-ups. He also met with representatives of two ceasefire groups, and Buddhist and Christian religious leaders. On his way to Yangon, the Special Rapporteur stopped in Mawlawmyine,

capital of Mon State, where he met with the Commander of the South-Eastern Command responsible for Mon and Kayin States and visited the local NLD office. Finally, on 27 October, he also travelled to Bago Division to visit Thayarwaddy prison where he interviewed 11 prisoners.

6. The Special Rapporteur followed his mission to Myanmar with a four-day visit to Thailand (29 October-1 November), during which he had meetings with the Deputy Permanent Secretary of the Ministry for Foreign Affairs, United Nations officials, and representatives of the diplomatic community, the media and non-governmental organizations (NGOs). He also travelled to Chiang Mai to hear the preliminary results of research developed by his team in the context of his mission to gather directly, and in a systematic manner, first hand testimonies from victims of, and witnesses to, human rights violations, and other persons who may have direct knowledge of the circumstances or context of such violations in the Shan, Kayin (Karen), Kayah (Karenni) and Mon ethnic areas of Myanmar. The purpose of this research project was to provide a solid background based on first-hand empirical survey to enable the Special Rapporteur to build up his own knowledge and understanding of the situation in these areas.

7. On his way to and from Myanmar, the Special Rapporteur had consultations with the Special Envoy of the Secretary-General to Myanmar.

B. Other activities

8. After his mission, the Special Rapporteur travelled to New York to introduce his interim report and to present to the General Assembly, in his statement on 6 November 2002, his initial impressions and findings, which are elaborated further in the present report in light of information received during and after the mission.

9. While at United Nations Headquarters, the Special Rapporteur met with several representatives of the Myanmar authorities, other States, NGOs and private individuals who imparted their views and information on the situation of human rights in Myanmar.

10. The Special Rapporteur wrote four follow-up letters to Myanmar authorities (on 13, 19 and 28 November and 10 December) regarding his cooperation with them in the implementation of his mandate, including on the issues relating to the proposed investigation under his mandate of allegations of sexual violence against women in Shan State and on conditions of arrest, detention and release of detainees, including the recent instances of political arrests and imprisonment.

11. During the reporting period, the Special Rapporteur sent five urgent appeals (including two jointly with the Special Rapporteurs on torture and on freedom of opinion and expression) and two allegation letters jointly with the Special Rapporteurs on extrajudicial, summary or arbitrary executions, on the human rights of migrants, and on the right to food.

II. ENJOYMENT OF BASIC FREEDOMS AND HUMAN RIGHTS

A. Freedoms of association

12. A very important step by the SPDC was the release of Daw Aung San Suu Kyi, which, according to her, has been unconditional. Following her release on 6 May 2002, the General Secretary of the NLD and her party have enjoyed some freedom of movement, assembly and expression within their precincts and the framework of their party activities. She has been able to travel extensively in the country without restriction. She has started to reorganize the party, to meet her followers, to deliver public speeches, and to open new offices (so far, 66 NLD offices have been opened throughout the country). So far, none of her followers, be they party organizers, activists or sympathizers, has been subjected to intimidation or harassment, though surveillance continues unabated, but in a somewhat more courteous manner devoid of direct pressure. Military intelligence personnel systematically monitor the NLD and all other political activities. Such personnel continue to be conspicuously present in front of the NLD office, monitoring movements in and out, photographing visitors, and often visiting them to question them about their contacts and discussions. What these security agencies seem to want is to know what is going on in order to maintain complete control of the situation and avoid any activity that may “get out of hand”. They appear to be haunted by the spectre of social unrest.

13. While it is clear that the political space is being gradually reopened for the NLD to revive its activities, the extent to which it will be opened remains to be seen. The Special Rapporteur presumes that the regime that applies to the NLD is also valid for the eight other political parties which, in addition to the pro-Government National Unity Party, were not deregistered after the 1990 elections. The Special Rapporteur met representatives of several of these parties, none of which has resumed its legitimate activities, citing fear as the reason.

14. The Special Rapporteur also met representatives of parties that were deregistered and that refer to themselves as “national politicians” in order to be allowed to participate in what the SPDC calls “national politics”. This term seems to refer to political activities sanctioned by the SPDC, in contrast to “party politics” which contest its legitimacy. The Special Rapporteur also met with the United Nationalities Alliance, an informal umbrella organization founded in July 2002 by eight nationality parties that participated in the 1990 election.¹

B. Freedom of expression, information and the press

15. Restrictions on the freedom of expression and information are still in place. The NLD has yet to receive a licence for a printing equipment to publish and disseminate party or political information, for which it applied in May 2002. For the time being, Daw Aung San Suu Kyi only

¹ Among them only the Shan Nationalities League for Democracy (SNLD) is among the 10 remaining legal parties. Others are deregistered parties, including the Arakan League for Democracy (ALD), the Chin National League for Democracy (CNLD), the Kachin State National Congress for Democracy (KSNCD), the Karen National Congress for Democracy (KNCD), the Kayah State All Nationalities League for Democracy (KNLD), the Mon National Democratic Front (MNDF), the Shan Nationalities League for Democracy (SNLD) and the Zomi National Congress (ZNC).

holds a licence, renewable every six months, to operate the two computer printers to which she has access at the NLD central office. In Mawlawmyine (capital of Mon State), the Special Rapporteur visited the NLD branch whose chairman, along with his son, had been released earlier this year. Prior to their arrest, they had been operating a professional printing house that was closed under what appears to be a ridiculous pretext. The Special Rapporteur was informed that whereas the court had long ago ordered the reopening of his printing house, it was still sealed.

16. A free press has yet to become a social reality in Myanmar. Every publication in Myanmar is subjected to censorship through the Ministry of Home Affairs Printers and Publishers Registration Board. There was no reporting of the release of Aung San Suu Kyi except in The Myanmar Times, a private weekly newspaper with a circulation of around 250,000. The Special Rapporteur thinks that freedom of press in Myanmar might be a way of developing confidence on all sides. Access to information is also an essential component of a successful development strategy. To reduce poverty it is essential to liberate access to information and improve its quality. A free and independent press is able to provide a way for citizens to be heard and help build national reconciliation, but it is crucial to remember that the media are in essence a business: their survival depends on the overall economic activity. One of the key questions for the SPDC is to determine the steps that could be taken to establish free and independent media.

C. Political prisoners

17. The SPDC appears to have accepted the figure established by the International Committee of the Red Cross (ICRC) of 1,448 “security detainees” (as of 21 October 2002) whose detention involves a political or security element, even if they were convicted for criminal offences. Apparent consensus within the SPDC regarding numbers and categories of such detainees provides a clearer basis for mutual understanding. The Special Rapporteur called for their release before the end of the year, or at the latest by his next mission. He was informed that this would be unlikely but that releases would continue. The Special Rapporteur also reiterated his call that those who are imprisoned for their real or imputed peaceful opinions or activities (who appear to constitute the vast majority) should be released, immediately and unconditionally. Concerning those against whom there is credible evidence of involvement in violent acts, their release could be considered through an amnesty in the context of national reconciliation.

18. On 21 November 2002 the first group of 115 prisoners, including members of the NLD and other “security” detainees, was freed; this was welcomed by the Special Rapporteur in his press statement. In his view, it demonstrated the continuing good will of the SPDC to ease the political atmosphere and marked the largest single group release of prisoners since the beginning of the process of confidence building between the SPDC and the NLD in October 2000. Should all 115 prisoners be released, this would bring the total number of releases to some 950 in the past two years, comprising about 550 political detainees and 401 pregnant women or mothers with young children.

19. The release of all political prisoners is one of the criterion by which the seriousness of the process of political transition and national reconciliation will be measured. At the current rate of

an average of 27 releases per month, it will take about four years to release the remaining prisoners. The Special Rapporteur is aware of one interpretation according to which the slow pace of releases reflects the fact that political prisoners are hostages of political dialogue and their release is being used as a bargaining chip to delay the process of national reconciliation. This may well be. But in spite of the continuing contacts between the SPDC and the NLD, no structured substantive political dialogue has started yet. So what purpose does their detention serve? Such interpretations, if wrong, can only be disproved by convincing action - by further mass releases in the near future, contributing to the process of credible change in the political and human rights climate in the country which is essential for national reconciliation to take place.

20. These releases should also be unconditional. At present, political prisoners are released conditionally under section 401 (1) of the Criminal Procedure Code providing for the suspension of their sentence to the extent that they agree not to engage in activities construed as threatening "public order". Several prisoners whom the Special Rapporteur met have declined to be released under these conditions. He was also informed that prior to their release, several NLD members were advised by military intelligence personnel that they could resume their party activities if they wished but that they were obliged to report any contact by or knowledge of activities of "underground", that is illegal, opposition movements; should they fail to do so, they would have to serve their remaining term in addition to a new sentence. This practice is contrary to human rights standards and undermines the spirit of political détente that the SPDC is seeking to promote.

D. Conditions in prisons

21. As during previous missions, all the prisoners interviewed by the Special Rapporteur (see annex) confirmed that their general detention conditions had improved in recent years. This reflects the positive commitment of the authorities and the constructive cooperation with the ICRC since May 1999. The Special Rapporteur was pleased to learn from prisoners themselves that there had been no retaliation against persons interviewed during his previous missions, in accordance with the assurances received from the SPDC. He is only concerned that some of those interviewed persons were questioned by military intelligence personnel afterwards about the reason and content of his discussion with them. This practice may be perceived as an attempt to intimidate them and discourage some of them, or others, from further cooperation with him.

22. The Special Rapporteur also welcomes the fact that physical ill-treatment of political prisoners, such as beatings, had stopped where it previously occurred, and that elderly prisoners, such as U Win Tin and Dr. Salai Than Tun, have received regular medical attention and daily doctor's visits. The Special Rapporteur took note that the Prison Department is seriously considering giving political prisoners access to writing and reading materials other than religious books and to facilitate access to educational materials for those who wish to pursue their studies. Obviously, their release would resolve these problems.

23. Several areas where further attention would be required include the quality of food, the reported beating of common prisoners and the access to qualified medical attention and treatment, especially in cases of emergency. Since July 2002, four political prisoners have died in detention (Mai Aik Pan, U Aung May Thu, U Sai Pa and U Maung Ko). These deaths were

allegedly due to delays in getting clearance from authorities regarding access to urgent medical assistance. This brings to 74 the total number of deaths in detention of political prisoners since 1988. The Special Rapporteur understands that in the case of common prisoners, the situation is worse and that their death rate in prison and labour camps is abnormally high. This is an issue which he intends to follow up on during his next mission. He was also informed that, on several occasions, very sick common criminals had been temporarily taken out of prison just prior to his visit or a visit by the ICRC, so that their poor state of health would not be noticed. This reportedly took place in Myitkyina, Insein and Thayarwaddy prisons.

24. In several areas, political prisoners continue to be worse off than criminal offenders. For instance, they appear to be often deliberately sent to prisons far from their homes. This makes family visits very difficult or impossible and adversely affects their conditions of detention since prisoners largely depend on family support to sustain themselves in prison. Also, several of them continue to be held in solitary confinement which undoubtedly has adverse implications for their health. Further, they are not permitted privacy during family visits and cannot benefit from sentence remissions under existing law. Another source of serious concern is the continued practice of indefinite administrative detention of political prisoners beyond the term of their sentence under section 10 (a) of the 1975 State Protection Act. To the Special Rapporteur's knowledge, as of 20 November 2002, there were at least 26 persons in this situation. All these situations are in contravention of international human rights norms. They would be solved once and for all if all these persons were to be released. This would benefit all other prisoners and prison authorities who would then have to concentrate on criminal offenders only.

E. Recent political arrests

25. The limited number of political arrests between October 2000 and June 2002 had given the impression that the repression of peaceful political activities had somewhat softened. This seems to have been due to a large extent to the climate of political expectancy generated by the process initiated two years ago. It was also due to the efficiency of the system of surveillance, the related widespread fear this instilled in people and their caution in exercising their limited rights to undertake political activities. The 6 May 2002 statement by the SPDC was interpreted by many Myanmar citizens as a signal that a page effectively had been turned and that the space for political activities was being reopened. This has led to the formation among active students and other educated individuals, of literary, religious, welfare and other groups and associations aimed at participating in a peaceful manner in the process of transition. These groups also began to publish and disseminate leaflets, bulletins and journals. These activities resulted in a series of arrests that have taken place since July and involved about 50 students, teachers, lawyers and other peaceful activists.

26. The Special Rapporteur has already expressed his surprise and concern to the SPDC in relation to the renewed political arrests and detentions which followed the pattern which was described in his report to the General Assembly (A/57/290), including arbitrary arrest, prolonged incommunicado detention and interrogation by military intelligence personnel, extraction of confessions of guilt or information, very often under duress, followed by summary trials, sentencing and imprisonment. Several of those arrested since July were subjected to diverse

forms of ill-treatment at the time of arrest or during interrogation. These practices constitute torture because they contain three key definitional elements: severe suffering, committed with the intent to extract information or confession or to punish, by a State agent acting in official capacity.

27. All but five were released after several days in police custody during which military or police intelligence officers questioned them about their activities, contacts and suspected connections. They were discouraged from pursuing these activities under the threat of imprisonment and made to sign pledges that they would not engage in activities deemed to be detrimental to public order and stability. Among the five, who were charged under section 5 (j) of the Emergency Provisions Act, are students Thet Naung Soe and Khin Maung Win. They were arrested last August for having distributed leaflets calling for the release of fellow students detained earlier and expressing support for the process of political transition and national reconciliation. Thet Naung Soe also staged an individual and silent demonstration. They and others undertook these peaceful activities after they listened to the 6 May statement by the SPDC. The Special Rapporteur has repeatedly raised their and other cases with the SPDC since his urgent appeal of 2 September and he interviewed them in prison on 20 October. He was shocked to learn that they had been sentenced to 14 and 7 years of imprisonment, respectively.

28. These arrests violate the peaceful exercise of fundamental human rights, which is indispensable to a successful transition. Transition requires domestic and international support, which in turn requires confidence. These arrests undermine confidence in the process that has been embarked upon. They cast serious doubts about the SPDC's intention to "turn a new page".

E. Freedom of religion

29. The Special Rapporteur has the impression that against the background of a general respect for the practice of religion, there are local or regional variations. Respect for religious freedom appears to be better in places closer to central authorities than in remote or counter-insurgency areas. He has no clear answer why. Perhaps it is because of insufficient control by the central Government of local authorities or neglect with regard to the respect due certain faiths. Chronic problems involving Muslims, especially but not only in Rakhine State, continue to be reported. The Special Rapporteur is aware of the involvement of officials of the Office of the United Nations High Commissioner for Refugees (UNHCR) in this respect and plans to look at the issue more closely during his next mission.

30. During his mission the Special Rapporteur met with ministers and community leaders of several Christian churches as well as with Buddhist monks. He heard that to build a church or a community centre Christians need to get permission from the authorities. It appears that even if they are authorized to do so by central authorities, they must still go through all the administrative levels down to township where difficulties are frequent; in case of refusal they have to follow their complaint all the way up again through the same levels.

G. Child soldiers

31. After the debate on children and armed conflict on 20 November 2001, the United Nations Security Council unanimously adopted resolution 1379 (2001) which contains

clear provisions concerning the inclusion of child protection in the work of treaty bodies and United Nations mechanisms. The Special Rapporteur thinks that it is necessary that his mandate should begin to examine the question of the recruitment and use of children in Myanmar both by the army and by armed groups. Among non-State armed groups that have been reported to recruit child soldiers are the United Wa State Army, the Shan State Army-South, the Karen National Liberation Army, the Karenni Army, the Democratic Karen Buddhist Army, the Kachin Independence Army, and the Mon National Liberation Army.

32. In the Special Rapporteur's view the voluntary and/or forced conscription of children into the armed forces and the various ways in which they are used by these forces is an issue in Myanmar. He has continued to receive reports in this regard, among them the Child Soldiers 1379 report by the Coalition to Stop the Use of Child Soldiers (November 2002) and "My Gun Was As Tall As Me" by Human Rights Watch (October 2002), which were published after his mission. The attitude of the Special Rapporteur vis-à-vis these reports is the same as that concerning similar reports: both contain allegations of forced conscription of children as soldiers which he wants to investigate, among other alleged violations.

33. The Special Rapporteur was able to collect some information during the mission reflecting the existence of child soldiers in Myanmar, though he has not yet been able to establish the exact dimensions of the problem. He considers that many recommendations proposed in the above reports constitute useful leads for the serious examination of this issue by all parties to the conflict. Some of the suggestions can help a calm and objective examination of the ways to better implement the rights of children in that difficult area, for instance, to develop reliable systems to verify the age of individuals recruited and to put in place comprehensive birth registration. In this regard, the Special Rapporteur will be more than happy to collaborate with Myanmar authorities in seeking international cooperation with relevant agencies, such as UNICEF, and NGOs. A move by the SPDC in this direction would be a very positive development.

34. He believes it is important that the SPDC recognize the issue and start working towards addressing it, including through acceding to the relevant Optional Protocol to the Convention on the Rights of the Child and the Worst Forms of Child Labour Convention 1999 of the International Labour Organization, which defines the forced or compulsory recruitment of children as one of these. At the same time, the SPDC could engage in constructive discussion with the Committee on the Rights of the Child in the context of the examination of its second periodic report on the implementation of the Convention and consider any other measures as may be necessary.

III. INDEPENDENT INVESTIGATION OF ALLEGATIONS OF HUMAN RIGHTS VIOLATIONS IN ETHNIC AREAS

35. One of the major consequences of insurgency on the border between Myanmar and Thailand since the 1980s has been the generation of internally displaced persons (IDPs). Insurgency involves the entire population. This kind of warfare affects civilians as the distinction between combatants and non-combatants is very difficult to make. What is dramatic is the fact that the civilian population in the areas of ethnic insurgency in Myanmar, in spite of

their individual choices, are inevitably drawn in to the conflict. The army tends to see the refugees/IDPs as enemies and the refugee camps as rear-guard from which to attack the country. In consequence, every investigation of human rights violations in the war zones is considered as a war of wards against the SPDC.

36. The Special Rapporteur thinks that it is time to overcome this impasse whereby any consideration of well-founded allegations of human rights violations automatically is seen with suspicion as an accusation against the SPDC. He thinks that the peaceful exposure of violations will be a contribution to national reconciliation and peace that may open the path to accountability, a basic requirement for building the rule of law.

37. Serious human rights violations have undoubtedly occurred and continue to occur in the areas where armed groups operate. These violations have been primarily attributed to the army. There is also evidence that groups operating from neighbouring countries and with outside support show little regard for the life and security of civilians. Their continued armed activities in these areas provoked counter-insurgency measures by the army, which has had devastating consequences for the local population.

38. The question of independent investigation of allegations of human rights violations in the ethnic counter-insurgency areas was one of the specific issues addressed by the Special Rapporteur during the reporting period. Special attention was paid to the issue of investigating allegations that Shan women had been systematically raped by Myanmar military personnel in the report "Licence to Rape", published by the Shan Human Rights Foundation (SHRF) and the Shan Women's Action Network (SWAN) in May 2002. In this regard, during his last mission, he received detailed briefings on three investigations into the recent allegations of rape in Shan State conducted by the Myanmar authorities for a period of three months. He was also invited to travel to Shan State, which he opted to decline as a short visit would have been inappropriate for conducting a serious assessment of the alleged violations there. On his way back from Myanmar, the Special Rapporteur met with the authors and researchers of the above report and his research team interviewed a number of victims of and witnesses to incidents of rape in Thailand.

39. In preparing for his mission, the Special Rapporteur had followed the matter closely. He first noted that the SPDC rejected the allegations as fabrications without looking into them at press conferences held on 12 and 30 July; a press briefing on 23 August was an example of "double thinking" in the sense that the Deputy Foreign Minister concluded that "preliminary" findings had shown that the allegations had been fabricated by the authors of the report in connivance with the Shan United Revolutionary Army (SURA), at the same time pledging to "leave no stone unturned" in the investigation; and lastly, the two members of the National Working Group on Women's Affairs who visited OHCHR on 11 October stated that they had not seen the original Shan rape report.

40. The details of the three investigations given to the Special Rapporteur during his mission were as follows:

(a) The first investigation report (by a “special team of security personnel”) concluded (after meeting 94 officers and soldiers from 24 battalions, 27 members of the judiciary, police and hospital staff, 6 NGOs and 195 villagers) that “preliminary investigations and findings show that almost all of the allegations were highly exaggerated and their main purpose was to hurt the prestige of Myanmar and the Myanmar Armed Forces”;

(b) The second report (by the Chairman of the “Myanmar National Women Committee to Combat Trafficking” (the Deputy Minister for Home Affairs) under “the guidance of Gen. Khin Nyunt”) concluded that “there is no proof” to support the “allegation of the SURA narco-terrorists” after a five-day investigation mission in “43 localities”;

(c) The third report (by a team of the Myanmar National Working Committee on Women’s Affairs led by Dr. Daw Khin Win Shwe (Gen. Khin Nyunt’s wife)) concluded after a five-day visit during which it met 650 government officials in two districts and 250-300 village elders in two village tracts, that “it is clear that the accusations are unfounded”. There were “no rape cases committed by military personnel between 1996 and 1999 and in 2002”, but there were “three cases in 2000 and 2001” the perpetrators of which were sentenced to 5 to 10 years.

41. The Special Rapporteur also received briefings regarding two specific allegations, namely, the execution of five villagers in Kalein Padaw village, Thanbyuzayat township, Mon State and of 12 villagers in Htee Law Bler village, Kya-in-seikkyi township, Kayin State, conducted by the SPDC from July to October 2002.

42. While recognizing these important efforts, the Special Rapporteur explained to the SPDC that, having been undertaken by military and other SPDC personnel, the investigations lacked the independence required to be convincing and credible. The actual investigations were apparently conducted by personnel with no special skills or experience in investigating human rights allegations, and who were probably unaware of the minimum standards required for a credible inquiry. From the reports, one can assume that they were conducted in such manner that very few people would probably dare to testify out of fear of reprisals against them or their families (prearranged, large, collective and public meetings with local officials, village elders and villagers, organized by security/military personnel with military escorts; village elders were allegedly requested to gather villagers or risk being fined; villagers were asked to sign a document denying the allegations of rape). To the Special Rapporteur’s knowledge, very few efforts were made to interview individual villagers in a manner that would ensure the confidentiality of the interview and the protection of the witnesses afterwards. It is not clear - except in one case - whether effective interpretation was provided to ensure proper communication. Language problems, including translation of names of places and individuals (both victims and soldiers), may have been a complicating factor. The implied methodology and the factual evidence described do not support the conclusions of the investigations.

43. Having explained that, the Special Rapporteur proposed that the SPDC explore several options to establish a credible mechanism for investigating these and numerous other allegations of violations in ethnic minority areas and underlined the importance of making an early commitment to that effect. These options are the following, in order of preference:

(a) An independent assessment team under his mandate, the precise terms of reference of which would need to be thoroughly discussed and agreed upon. This team would look into the recent allegations of human rights violations against Shan women. It could also look into the recruitment and use of children as soldiers as well as other allegations of human rights in ethnic minority areas;

(b) An international commission of inquiry, which would require a new mandate from the United Nations;

(c) A balanced national inquiry mechanism which would involve the SPDC and other interested parties in Myanmar. The NLD has expressed its willingness to participate if such a body were to be established. The United Nations could provide technical assistance to help set up such a body if required.

44. As a matter of priority, besides the need for an independent assessment of the allegations of human rights violations in ethnic minority areas, the Special Rapporteur proposed that the SPDC consider allowing an adequate International Committee of the Red Cross presence in all conflict areas of the country. The ICRC could then assess the situation on an ongoing basis, report confidentially to the authorities and work out with them appropriate measures to ensure the security and protection of the civilian population, wherever needed. Access by the ICRC to detention facilities has helped to improve conditions in prisons and the treatment of prisoners. The ICRC presence in conflict areas would help address issues of the kind raised in the recent and other allegations of serious human rights violations and it could also start disseminating international humanitarian law to combatants. The ICRC has both the mandate and adequate capacity in Myanmar (40 international and 220 local staff) to do this.

45. The Special Rapporteur took note of a communiqué issued on 4 November by the SPDC giving an initial positive reaction to these proposals. He welcomed the SPDC's invitation to the ICRC "to visit with an adequate presence the Shan State Region". He hopes that the initial contacts made by the ICRC with local authorities and people in these areas following this invitation will pave the way for developing cooperation and implementing its humanitarian mandate there. He also wrote two letters to Myanmar authorities seeking clarification about the terms of invitation to the United Nations in the same communiqué.

46. As he stated in his presentation at the General Assembly last November, and based on his own research into the situation of human rights in ethnic areas, there appear to be serious problems with the way the army treats civilians in ethnic counter-insurgency areas. This problem will not disappear by denying its existence and should be recognized and addressed properly. Allegations will be made as violations continue to occur. The most reasonable way to address this issue would be to investigate these allegations in a credible manner, to establish the facts, to take action against the perpetrators, to establish procedures to prevent their recurrence, to ensure control over army units and to compensate the victims. The Special Rapporteur requests that the SPDC cooperate with him in conducting an independent assessment under his mandate. He reiterates his readiness to discuss the terms of reference concerning independence, timing, composition of the team, transparency of procedures, investigating methods, and protection of witnesses during the investigation. It is essential that there be a clear acceptance by

the SPDC of a *modus operandi* based on international standards and including sexual violence against Shan women in the terms of reference, and possibly including a review of the findings by the Special Rapporteur's team in Thailand and of allegations of other human rights violations in ethnic minority areas. This exercise could be launched during his next mission to Myanmar in the first months of 2003 and the United Nations, through OHCHR, would provide technical assistance to help set up the Special Rapporteur's investigation team.

IV. OTHER ISSUES

A. Challenges of transition and development

47. It is essential to understand the pyramid-shaped structure of the military hierarchy in Myanmar and of the society, in order to understand how the military leadership sees the situation; only then can the international community contribute to progress on issues such as the move towards long-awaited democracy and development of the nation. The SPDC members believe that they have achieved much since 1989: ceasefires with many insurgent groups, infrastructure development, opening up to a market economy and foreign investment, diplomatic initiatives (e.g. membership of the Association of South-East Asian Nations), positive developments in the area of human rights mentioned by the Special Rapporteur in his previous reports (see E/CN.4/2002/45). According to third-party views, it is true that there has been more development, peace and stability in more areas than before and there is more freedom (in relative terms).

48. The Special Rapporteur believes that the international community, especially those Member States that have historic ties with Myanmar, must abandon every illusion of quick solutions for extremely complex structural and cultural problems that for the last 50 years have blocked political and economic progress in Myanmar; nothing can be imposed. The Special Rapporteur thinks that the International Crisis Group in its Asia Briefing (27 September 2002) has phrased this requirement, with which he entirely agrees, very successfully:

“... the aim should be to unlock frozen patterns of behaviour and thinking inside the country by encouraging new actors, policies and ideas - and paths to democracy, military professionalism, a strong market economy and broader social development that can actually reach this destination. There is a need to abandon the kind of thinking that sees any progress achieved under the military government as an obstacle to democratization and therefore something to be neither supported nor encouraged or even acknowledged. The reality, whether Western policymakers feel comfortable with it or not, is that the military leadership is more likely to compromise in an atmosphere of progress than it is under siege. It is, after all, five decades of self-imposed isolation that has created the mindset against which the domestic opposition and international supporters are now struggling”.

B. Humanitarian aid

49. In response to the precarious humanitarian conditions in Myanmar, the United Nations country team is preparing a report entitled “A humanitarian review and framework for action in Myanmar” (working title) to find ways to better meet the needs of the people. The document

will enable the United Nations country team to speak with one voice on its analysis of the country situation and to put forth a framework for a response. The framework is expected to function as a blueprint for direct actions with maximum impact. The objectives of the strategic framework are: to raise awareness of the current situation; to influence policies; to mobilize resources; and to strengthen partnerships with stakeholders. It is expected that this document would provide the most up-to-date analysis of the basic needs of the population at this stage of political transition and urge the international community to consider being actively involved, which could lead to positive political developments. A final report is expected to be issued in the first quarter of 2003.

50. On the issue of HIV/AIDS, Myanmar has been cooperating with UNAIDS. In March 2002, a joint workshop was held to assess the HIV/AIDS situation in the country. The Government has informed the Special Rapporteur that according to UNAIDS there was a total of 177,279 people living with HIV/AIDS at the end of 2001 in Myanmar, most of whom were in the higher-risk groups and at the border areas.

V. CONCLUDING OBSERVATIONS

51. **The Special Rapporteur is convinced that to help enhance the dialogue between all political actors in Myanmar with a view to speeding up progress towards peace, it is necessary more than ever to build a rational discourse on policy and strategy alternatives that are effectively possible. It is perhaps necessary to bear in mind that to create international policies conducive to change in a world where human rights after 11 September 2001 tend to be given a back seat, it must be recognized that the willingness and the capacity of the international community are very limited indeed.**

52. **It is high time to replace the high expectations of the ideal game scenario and the writing of constitutional models with a down-to-earth discussion of less prescriptive requirements which will be able to stimulate a real process of change. It is crucial to follow, understand and strengthen the internal forces within Myanmar, as in the end only they will be able to bring about possibilities for change. To this end, instead of continuing to complain that little has changed in the past 14 years in terms of power and influence inside the SPDC, the army and society, it is time to take stock of, acknowledge and evaluate the ongoing effects of incremental change which have taken place. On all sides it is possible to see movement in terms of contacts and exchange of information between the SPDC and the NLD during the last two years. But it should still be insisted that a road map for substantive dialogue and setting out objectives for both sides is essential for progress towards democratic transition**

53. **The international community must have its eyes wide open to see the nuclei of change. It should continue its dialogue with all sides - the SPDC, the NLD, other parties and ceasefire groups. Its influence will be greatly determined by domestic factors and it must make every effort to establish an "enabling environment". Member States and international organizations must follow the lead of domestic actors concerning the political transition. At the time that the NLD General Secretary and her colleagues are beginning**

to operate, it is of fundamental importance to be pragmatic and to work within the compromises and negotiations defined by the NLD with other political parties, ethnic groups and civil groups. Even if at first sight these arrangements will not yet be able to fulfil the basic requirements of consolidated democracies, this has also happened in the democratization process of many new democracies in the world. Let us not refuse to acknowledge progress because the changes do not fulfil a maximalist scenario.

54. On the other hand, it is time to leave behind the illusion that after the political transition the apparatus and agents of the State will magically disappear. As in any democratic transition in the twentieth century, even after authoritarian regimes, many of the bureaucrats running the country such as judges, public prosecutors and army officials will stay in place. There were many political dialogues in other South-East Asian countries that were completed before they faced the demands for participatory democracy, namely elections, labour standards and human rights. Accordingly, the Special Rapporteur is of the view that the sooner the international community is ready to assist, the better and smoother the change will be in Myanmar. He therefore continues to urge the international community to engage with Myanmar even before the SPDC introduces democratic reforms. He believes that the peoples of the country should not be held hostage to political transition. Every political transition in the world is a process, sometimes a tortuous and slow one, and it would be unrealistic and naive to expect an instant regime change in Myanmar.

55. The policy option now should be engagement, not isolation. By principled engagement - as he has indicated many times before - the Special Rapporteur understands, among other elements, a dialogue, support for change, empowerment of community, strengthening of autonomous civil society elements, and the enlargement of the presence and the capacity of United Nations agencies. By insisting on the need for greater engagement of the international community, he is not urging it to step up financial support to the SPDC or to consider the suspension of economic or political sanctions; it is not part of his mandate to advise Member States on this matter.

56. With regard to allegations of the rape of women in Shan State and of other human rights violations against civilians living in ethnic minority areas affected by armed conflict, if the SPDC sincerely wants to promote the cause of peace, development and justice there, it must look seriously into these allegations. The Special Rapporteur believes it is urgent that the SPDC establish efficient mechanisms for holding army personnel accountable for the alleged human rights violations with a view to ensuring the protection of the civilian population in ethnic areas. It is time to finish the war of words. Denial is the worst path for national reconciliation: allegations must be investigated, prosecuted and judged and those responsible for the violations convicted and sentenced. The Special Rapporteur believes that the SPDC could turn this opportunity into momentum for a peaceful solution and dialogue with ethnic minorities and bring them into the national reconciliation dialogue, thus ensuring national ownership of the process and demonstrating that Myanmar is serious about finding out the truth, protecting its people against abuse of power, and bringing the perpetrators to justice. To support this initiative, it is important

that the United Nations and the international community be consistent in dealing with human rights violations: there cannot be one set of standards or requirements for the SPDC and another for armed groups.

57. **The Special Rapporteur acknowledges as an important development the opening of an ILO Office in Yangon and the appointment in October 2002 of the ILO Liaison Officer to cover all activities relevant to ensuring the prompt and effective elimination of forced labour in the country. It would now be a very positive move for the SPDC to confirm its commitment to end forced labour by strengthening its cooperation with the ILO and allowing it free access throughout the country.**

58. **It is past time for the apparent stalemate that has so far characterized the contacts between the SPDC and the NLD to end. The Special Rapporteur is convinced that greater progress in the promotion and protection of human rights will be conducive to the creation of an atmosphere that will break the impasse. As he has said in his previous reports, there can be no credible political transition in Myanmar without starting to implement concrete measures. Some are connected to the exercise of civil and political rights such as the immediate and unconditional release of all political prisoners, including through a general amnesty. This also includes the lifting of restrictions on the ability of political parties and groups having concluded ceasefires with the Government to conduct peaceful political activities openly without any risk of retaliation or punishment. The Special Rapporteur thinks that this measure is of significant importance because, in the absence of substantive political settlements and economic growth, the ceasefires have not in themselves been able to change the situation on the ground for most of the victims of previous conflicts. There is a pressing need to embark on a process of structured dialogue on substantive policy issues with the involvement of other actors (representatives of ethnic nationalities and other political parties) in the national reconciliation dialogue. This process must be accompanied by the launching of reform of the State apparatus, which could contribute progressively towards making the rule of law prevail in the “un-rule of law” which presently affects most of the population in Myanmar. With the cooperation of the international community and multilateral organizations, it is necessary to continue to take bolder steps to reform the system of administration of justice and to build mechanisms of public accountability for abuses committed by State officials. Of course, the transition process will not be complete without free elections. With respect to economic and social rights, it is imperative to establish some form of “humanitarian aid” vehicle involving the United Nations and national actors, the SPDC and the NLD, as well as other relevant actors as appropriate.**

Annex

**LIST OF PERSONS INTERVIEWED BY THE SPECIAL RAPPORTEUR
DURING HIS VISITS TO INSEIN AND THAYARWADDY PRISONS**

Interviews with the following persons were conducted confidentially (i.e. without the presence of a prison guard or official):

Detainees in Insein prison (interviewed on 20 October 2002)

Recent cases [since February 2002 visit]

1. Aung Thein
2. Kyaw Naing Oo
3. Thet Naung Soe
4. Khin Maung Win
5. Ko Hla Htut Soe
6. Maung Maung Aye aka Ko Baydar
7. U Aye Zaw Win
8. Aye Ne Win
9. Kyaw Ne Win
10. Zwe Ne Win

Interviewed during February 2002 visit

11. Dr. Salai Tun Than
12. U Win Tin
13. Daw May Win Myint

Other political prisoners

14. U Naing Naing
15. Ma Khin Khin Leh
16. U Aung Myint

Detainees in Thayarwaddy prison (interviewed on 27 October 2002)

1. Iqbal
2. Zaw Thet Tun
3. Kyaw San (aka Cho Sein)
4. Jimmy (Kyaw Nain Min Yu)
5. Pyinnyar Zaw Ta (Myint Maung Maung)
6. Soe Moe Maung
7. Htay Kywe
8. Soe Moe Hlaing
9. Ma Nilar Thein
10. U Win Myint
11. Lay Mon Mon
