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HUMAN RIGHTS SITUATIONS THAT REQUIRE THE COUNCIL'S ATTENTION

**Note verbale dated 9 December 2007 from the Permanent Mission of Myanmar
to the United Nations Office and other international organizations in Geneva
addressed to the secretariat of the Human Rights Council**

The Permanent Mission of the Union of Myanmar to the United Nations Office and other international organizations in Geneva presents its compliments to the secretariat of the Human Rights Council and has the honour to enclose herewith its comments* on the report of the Special Rapporteur on the situation of human rights in Myanmar (A/HRC/6/14).

The Permanent Mission further requests the secretariat to circulate the above-mentioned document as a document of the resumed sixth session of the Human Rights Council.

* Reproduced in the annex, as received and in the language of submission only.

Annex

Comments on report of the Special Rapporteur on the situation of human rights in Myanmar contained in UN document A/HRC/6/14 dated 7 December 2007

Brief background of the recent event in Myanmar

1. Myanmar regained its independence in 1948. However, Myanmar had faced insurgency over 40 years and it affected the country's stability and economy. It was only under the present Government that the insurgency problem was resolved as the Government conducted constructive dialogue with national armed groups. As a result, 17 national armed groups returned to legal fold except KNU. However, the Government of Myanmar still makes all efforts to hold constructive dialogue with the remaining KNU. The Government of Myanmar is able to bring a better situation to livelihood of the people, including the ethnic nationals living in the border areas by bringing these national armed groups to legal fold. This constitutes an unprecedented political achievement in the process of national reconciliation.

2. Myanmar is a multi-ethnic sovereign country which is in the transition towards the democratic society. Therefore, the Government of Myanmar adopted a seven-step road map for smooth transition to democracy. As the first crucial step of the road map, the National Convention has successfully concluded on 3 September 2007. All ethnic nationals as well as representatives from all armed groups who had returned to legal fold actively participated in the National Convention process. The National Convention also adopted basic principles and detailed basic principles for all chapters of the new Constitution. The Government of Myanmar is now embarking the third step of roadmap as the Commission for Drafting the State Constitution has been formed with 54 members, and convened its first meeting on 3 December 2007.

3. Myanmar is therefore moving ahead to draft a new Constitution which will be followed by national referendum. Thereafter, fair and free election will be held in which people of Myanmar will elect leaders of their choice.

4. However, internal and external destructive elements who do not wish to see the completion of this whole process of seven-step road map took advantage of the increase of fuel price to exploit politically, initiated the protest in Yangon, Mandalay and Pakoku and persuaded the Buddhist monks to join their protest in August 2007.

5. According to the rules and teaching of Buddha, Buddhist monks are not allowed to get involve in that kind of activity. However, on 5 September 2007 some monks in Pakoku went out on road and some destructionists accompanied with them tried to enter government buildings. Therefore, the responsible senior monks and persons tried to control the situation. The authorities concerned also visited the monasteries and explained the situation in Pakoku. However, three of the vehicles used by the officials were set on fire and officials themselves were taken as captives by about 50 monks.

6. As a matter of fact, protests became gradually more violent, defiant and even provocative with the encouragement of anti-government elements. The Government cannot allow the

situation getting out of control and affecting the general population unnecessarily. The Government exercised utmost restraint and was very careful in dealing with the situation. Curfew was issued in locations to maintain law and order. However, the protesters provoked the security details, to create riots. The law enforcement officials reacted in the most restrained manner. The restraint was taken advantage by the protesters.

7. The Government determined to bring the situation back to normal as soon as possible and in the most peaceful and unharmful manner, exercising utmost restraint. The interest of the Myanmar people is the genuine concern of the Government of Myanmar and therefore to bring an end to these violent protests became the priority of any course of action. The Government has taken measures cautiously according to the rules and procedures permitted by the existing law to regain peace and stability.

8. The international media and certain western countries used the situation as pretexts to paint the Government in the image of a callous and repressive government, unwittingly inciting more violence inside the country, at the same time pushing the protests in the direction of large-scale social uprising which will constitute a strong justification for intervention. This event gained the attention of the international community especially the United Nations and the Human Rights Council.

9. Cooperation with the United Nations is a cornerstone of Myanmar's Foreign Policy and Myanmar therefore invited Ambassador Gambari twice under the good offices mandate of the General Assembly and Professor Paulo Sergio Pinheiro, the Special Rapporteur on the situation of Human Rights in Myanmar in order to facilitate his mandate.

Observation on the report of the Special Rapporteur on the situation of human rights in Myanmar

10. The Special Rapporteur submits his report to the resumed sixth session of the Human Rights Council. The Government of the Union of Myanmar find that the report is replete with unfounded allegations based on unreliable sources and hearsay provided by dissidents and oppositions. In this connection, the Government of Myanmar would like to make following observations.

11. The report explains the Government of the Union of Myanmar's cooperation with the Special Rapporteur during his visit in **paragraphs 5 to 13**.

12. Myanmar can not accept the allegations mentioned in **paragraphs 14 to 15**. In fact, the protest was initiated by internal and external anti-government elements with a view to destabilizing the country. The protests are the long-awaited chance for the external and internal oppositions to initiate an action to intervene in the country.

13. Regarding **paragraph 16**, the government officials concerned explained the Special Rapporteur in front of the monks of the monastery the reason behind the protest with the firm evidence of explosive devices to perform the terrorist acts. He failed to include these explanations in his report.

14. Regarding **paragraph 18**, the Government of Myanmar exercised restraint and did not intervene for nearly a month. The security forces were called in to restore law and order only when the situation got out of hand and posed a challenge to peace and stability. It was the premeditated and coordinated plot organized by internal and external opposition groups. It is also mentioned “Rumors circulated that one of the monks had subsequently died, but this was never confirmed, though widely believed.” That is totally untrue. The report should not be based on rumours.

15. The Government of Myanmar totally rejects the assertion made in **paragraph 21** which is sweeping accusations based on unreliable sources.

16. **Paragraphs 22, 23, 24 and 25** also ignored the reality. The objective of the protests apparently is to create a situation which will eventually escalate to a civil unrest on a scale of 1988 so that there will be valid justification for outside intervention without incurring the wrath of the international community. The government has firm evidence that these protests were being masterminded by internal and external elements which provided financial and material assistance.

17. Myanmar totally rejects **paragraphs 27 and 28**. As explained in the preceding paragraph, the government exercised utmost restraint. Therefore, there are only 10 deaths during the event and 5 persons were later died as a result of their illness prior to their custody.

18. The allegation contained in **paragraphs 31 and 32** are unfounded assertion. Almost all those detained to be questioned in connection with the September event have been released. Among 2927 people who have been detained in the September event, only 80 persons remained in the custody for investigation. Those in the custody have been found for violation of the existing laws in Myanmar.

19. Regarding **paragraph 35**, the Special Rapporteur was allowed to visit Hteinbin Cemetery. Yeway Cemetery was not relevant to the event and it was impossible to organize during a short period. The authorities concerned had arranged to meet with medical superintendent of the Yangon General Hospital who shared the post mortem records with the Special Rapporteur and the Special Rapporteur was able to check the list of people who had been cremated in Hteinbin Cemetery. Therefore, such accusation would only serve to damage the image and cooperation of the Government of Myanmar.

20. **Paragraph 37** is not acceptable as the measures taken by the authorities concerned are in accordance with the existing laws of Myanmar including the Criminal Procedure Code and Riot Manual.

21. The allegations contained in **paragraph 38** are also sweeping accusations. It is the responsibility of the government not only to protect the life of its people but also to ensure the prevalence of the law and order, peace and stability in the country.

22. Myanmar strongly condemns and rejects **paragraph 51** as it really tarnishes the dignity of the Prime Minister. In fact, the Prime Minister had never made such commitment during his conversation with Mr. Gambari, the Special Representative of the Secretary General of the

United Nations. Myanmar believes that it is an infringement to the sovereignty of the nation. Persons who have been arrested for violation of the law should not be considered as arrest relating to the September event. The authorities have discovered that some terrorists were involved in a bombing attempt and high explosive cartridges were seized from the perpetrators. As a sovereign State, the Government of Myanmar has the right to take necessary action to ensure peace and stability in the country.

23. **Paragraphs 53 and 54** alleged 74 cases of disappearances. As a matter of fact, the government had never received the complaints on missing of these people. The people in the list might have disappeared as a result of fleeing to the border areas or neighbouring countries.

24. Myanmar totally rejects **para. 63** and the same explanation has been given for **paragraph 37**.

25. Myanmar rejects **paragraph 64**, the government had to take necessary measures to protect the life and property of innocent people. As the protest became violent and the police force was not able to control the situation, Aid to Civil Power had to be transferred to the military authority on 26 September 2007.

26. With regard to **paragraph 65**, the Investigation Body chaired by the Minister for Home Affairs has been established on 31 October 2007 with a view to investigating offences against fundamental human rights during the event in September 2007. It is not necessary to invite an international commission of inquiry or fact-finding mission to Myanmar as it is solely within the domestic jurisdiction of Myanmar.

27. With respect to **paragraph 66**, the inclusion of the name of the military commanders in the report is neither appropriate nor acceptable. The Special Rapporteur should not use the names based on unreliable sources which could only damage their personal image and dignity.

28. Regarding **paragraph 67**, the Special Rapporteur met with Yangon Division Commissioner of General Administration and Police Commander of Yangon Division Police Force on 12 November 2007 who were in charge for the security of Yangon during September 2007.

29. Myanmar rejects **paragraph 68**. The Special Rapporteur should respect the sovereign right of the State in exercising judicial power as it is within the domestic jurisdiction.

30. Regarding the list mentioned in **paragraph 69**, the authorities concerned will investigate and reply to the Special Rapporteur in due course.

31. The Special Rapporteur has made 17 recommendations as immediate and transitional measures in **paragraph 76**.

For immediate measures

For i, ii, iii, v, vi, vii, ix: Myanmar has been taking appropriate measures;

For iv, x, xi: Myanmar has been engaging as appropriate;

For viii: Myanmar will take appropriate measures in accordance with the existing law of Myanmar;

For xii: the Investigation Body has been established in Myanmar and it has been conducting necessary investigations.

For transitional measures

For xiii: Myanmar has been facilitating as appropriate;

For xiv: Myanmar has been implementing in accordance with the domestic procedures;

For xv: The Government of Myanmar has been engaging;

For xvi, xvii: The Government of Myanmar has been doing as may be necessary.

Visit of the Special Rapporteur on the situation of human rights in Myanmar

32. The Special Session on the situation of human rights in Myanmar was convened on 2 October 2007 and adopted the resolution which mandated the Special Rapporteur on the situation of human rights in Myanmar to visit Myanmar and to report to the resumed sixth session of the Human Rights Council.

33. In a spirit of the cooperation with the United Nations and the Human Rights Council, the Government of Myanmar extended its invitation to Professor Pinheiro, the Special Rapporteur on the situation of human rights in Myanmar to visit Myanmar from 11 to 15 November 2007.

34. Prior to his visit, Professor Pinheiro proposed a programme in which he indicated the persons he would like to meet and the places he wished to go during his visit.

35. The Government of Myanmar kindly accommodated his request and arranged for him to visit many places and also organized to meet persons whom he wished to meet.

36. On 11 November 2007, first day of his visit, he visited Shwedagon pagoda where he met with the members of the pagoda board of trustees. On the same day, he visited Kyakhatwaing Monastery in Bago and paid homage to Senior Monk of the Monastery and asked questions to senior monk and also viewed the properties that were damaged by protesters in August and September 2007.

37. On 12 November 2007, he met with Yangon Division Commissioner U Hla Soe of General Administration, Police Col Win Naing of Yangon Division Police Force, Divisional Law Officer, Divisional Judge, Pro-rector (Admin) Dr. Myint Kyi of International Theravada Buddhist Missionary University, Medical Superintendent of Yangon General Hospital and officials from the Ministry of Home Affairs. He then viewed the photos taken during the September event.

38. He also paid homage to the State Sangha Maha Nayaka Committee on 12 November 2007. Then he visited Nan U Monastery and Ngwekyaryan Pariyatti Sarthintaik. He then visited

Hteinbin Cemetery, Insein Jail, Government Technical Institute in Insein and No. 7 Police Battalion of Myanmar Police Force. He also had a chance to view the photos taken as record in the event and listen to the explanation given by Yangon Division Commissioner and Yangon Division Police Force.

39. On 13 November 2007, he visited Nay Pyi Taw where he had a chance to share the views with Chairman of Myanmar Human Rights Body, the Minister for Home Affairs who explained him the measures being taken for human rights issues in Myanmar. He also met with the Minister for National Planning and Economic Development and the Minister for Religious Affairs respectively on the same day. Then he met with officials from Union Solidarity and Development Association and NGOs.

40. On 14 November 2007, the Special Rapporteur held separate meetings with officials from the UN Agencies and representatives of the Diplomatic Corps in Myanmar. (*List of representatives attended the meeting is attached as annex.*)

41. In the afternoon of 14 November 2007, he met with the Minister for Foreign Affairs, the Minister for Labour and the Minister for Information who is also Secretary of the National Convention Convening Commission.

42. On 15 November 2007, he met with the national race leaders of Kayin State and representatives from Thabyaynyunt village in Kayin State. He also met with representatives of Women's Affairs Organizations and Maternal and Child Welfare Associations from Kachin, Chin and Shan States. He then went back to Yangon and visited Insein Prison second time and met officials. In the prison, he met with the inmates including Su Su Nway, U Win Tin, U Min Zeya, U Kyi Than and U Maung Kan.

43. He paid homage to 10 members of the Sangha led by presiding Sayadaw of Ngwe Kyar Yan Pariyatti Monastery on Kaba Aye Hill Lock in the afternoon.

44. At the end of his visit, he held a press conference regarding his visit to Myanmar at Yangon Airport.

45. Professor Pinheiro received the full cooperation of the Government of Myanmar during his visit. He mentioned in his press conference "in many countries cooperation with the police is very difficult, but I had a very open discussion and they cooperated in many details that I was not expecting them to share with me. And that gives me the chance to compare with the information that I have".

46. At the end of his visit the United Nations issued a press release in which he expressed his gratitude to the Government for its hospitality and for having accommodated his proposed agenda.

47. At the invitation of the Government of Myanmar, the Special Rapporteur Professor Paulo Sergio Pinheiro had visited Myanmar on six occasions as follows:

- (a) 3 to 5 April 2001;
- (b) 12 to 14 October 2001;

- (c) 12 to 19 February 2002;
- (d) 17 to 28 October 2002;
- (e) 19 to 24 March 2003;
- (f) 3 to 8 November 2003.

48. The Government of Myanmar accorded full facilities and cooperation to the Special Rapporteur in his previous six visits. He also received the same facilities and cooperation during his recent visit. The Government of Myanmar has shown its sincerity, transparency and readiness to cooperate with the Human Rights Council by providing information, photographs, evidence and records relating to the event and access to visit the places he requested. However, it is found that the report is replete with unfounded allegations against the Government of Myanmar rather than assessing the human rights situation.

Conclusion

49. The Government of Myanmar has fully cooperated with the Special Rapporteur in good faith and provided the information regarding the real situation in Myanmar. However the Special Rapporteur prepared his report based on the distorted information received from unreliable sources. In this regard, the Government of Myanmar believes that using such information lacks the credibility and authenticity of his report.

Annex

Representatives of the United Nations agencies and others

(i)	Mr. Charles James Petrie	UNRC
(ii)	Mr. Sanaka Samarasinha	UNDP
(iii)	Mr. Khristopher Kaye	WFP
(iv)	Mr. Osamu Kunil	UNICEF
(v)	Mr. Nicolus Winmyint, Project Coordinator	UNAP
(vi)	Mr. Tang Zhengping	FAO
(vii)	Ms. Margareta Skold	WHO
(viii)	Ms. Piyamal Pichaiwonges	ILO
(ix)	Ms. Isabelle Bouan	IOM

Representatives of the Diplomatic Missions

(i)	H.E. Mr. Robert Joseph Davis	Australia
(ii)	H.E. Mr. Pehin Datu Brig-Gen (B) Dato Paduka Haji Mohd Yusof binn Abu Bakar	Brunei
(iii)	H.E. Mr. Robert Chua Hlan Kong	Singapore
(iv)	Ms. Yamessa Chan, Third Secretary	Singapore
(v)	H.E. Mr. Turki bin Abdul Katdir Al Ali	Saudi Arabia
(vi)	H.E. Mr. P.A.D. Samarasekera	Sri Lanka
(vii)	H.E. Dr. Giuseppe Cinti	Italy
(viii)	H.E. Mr. Noel C. Cabrera	Philippines
(ix)	H.E. Mr. Jean-Pierre Lafosse	France
(x)	H.E. Mr. Yasuaki Nogawa	Japan
(xi)	Mr. Sanmugan Subramaniam	Malaysia
(xii)	Mr. Habib ur. Rehman	Pakistan
(xiii)	Mr. Thon Gkhoun Sengphachan	Laos

(xiv)	Mr. Philemon Arobaya	Indonesia
(xv)	Mr. Ralph Timmermann, Deputy Head of Mission	Germany
(xvi)	Mr. Chung In-Gyun, Deputy Head of Mission	Korea
(xvii)	Mr. Masashi Ogawa, Counsellor	Japan
(xviii)	Mr. Hideyuki Yazama, First Secretary	Japan
(xix)	Mr. Mau Van, Counsellor	Cambodia
(xx)	Mr. Nikolay A. Barabanov, First Secretary	Russia
(xxi)	Mr. Pengiran Husaini Alauddin, First Secretary	Brunei
(xxii)	Ms. Leslie M. Hayden, Second Secretary	U.S.A.
(xxiii)	Mr. Jaselito Chad N. Jacinto Jr., Third Secretary	Philippines
(xxiv)	Ms. Somjai Taphaopong, First Secretary	Thailand
(xxv)	Mr. Ruth Bradley Jones, Second Secretary	U.K.
(xxvi)	Mr. Suresh Kumar Basnet, Attache	Nepal
(xxvii)	Mr. Deng Saiying, Attache	China
(xxviii)	Mr. Raik Srivastava	India
(xxix)	Mr. Bakheet Al Harb, Administrative Officer	Saudi Arabia
(xxx)	Mr. Bernard Y. Delpueh, Head of Office	ECHO
