

Check against delivery



**Statement by Mr. Paulo Sérgio Pinheiro
Special Rapporteur on the situation of human rights in Myanmar**

Resumed sixth session of the Human Rights Council
Item 4

11 December 2007, Geneva



Mr. President,
Distinguished Members of the Human Rights Council,
Excellencies,
Representatives of civil society organizations,
Ladies and gentlemen,
Colleagues and friends,

As mandated by its resolution S-5/1, I am pleased to present my report to the Human Rights Council [A/HRC/6/14] and would like to express my gratitude to the Government of Myanmar for its hospitality and for having accommodated my proposed agenda during my 5 days visit to Yangon and Nay Pyi Taw, from 11 to 15 November 2007. I would like to take this opportunity to welcome the new Permanent Representative of Myanmar to Geneva, H.E. Ambassador U Wunna Maung Lwin, and thank him for the detailed comments provided as well as the dialogue initiated with him in line with his predecessors.

During my visit I was able to meet with the Minister of Home Affairs; Minister of Foreign Affairs; Minister of Labour and Liaison Minister with the General Secretary of the National League for Democracy (NLD); Minister for National Planning and Economic Development; Minister of Religious Affairs and Joint Secretary General of the Union Solidarity and Development Association (USDA). I also held consultations with senior officials in Yangon.

I further held meetings, in the presence of government officials, with the United Nations resident coordinator and the country team, over 20 ambassadors and representatives of the diplomatic corps, as well as representatives of international non-governmental organizations (NGOs). I also met with representatives from national ethnic groups and women's development associations.

I was authorized by the government to hold one to one meetings in Insein prison with 5 detainees: Win Tin, the oldest political prisoner who has spent 18 years in prison and for whom I re-iterate my call for his immediate release; Su Su Nway, a prominent activist arrested during my visit who is currently undergoing medical treatment at the Muslim Free Clinic and who should immediately be released; Min Zeya and Than Tin, both "88 Generation" students and Maung Kan, NLD member. I had, by letter to the authorities, requested to meet with 21 detainees, including U Gambira, seeking clarification regarding the charges against them.

I regret not having been able to meet with the General Secretary of the NLD, Daw Aung San Suu Kyi, but was reassured by the Minister of Home Affairs, Major General Maung Oo, that this option will remain on the agenda of my follow-up missions. I call on the authorities to pursue the dialogue with her through the Minister of Labour and Liaison Minister, U Aung Kyi, whom I had the pleasure to interact with.

My report contains my preliminary findings gathered prior to and during my official mission. While focusing on the current human rights situation, I have divided my finding in sections covering the fuel price increases in August 2007, with small sporadic and peaceful demonstrations by social and political activist (including the "88 Generation" and NLD leaders), the 18 to 25 September peaceful protests of monks and civilians which grew in numbers and spread out across the country and finally the period from 26 to 29 September, when the State and its agents cracked down on peaceful demonstrators, until the end of the curfew on 20 October.

My visit can however not be considered as a full-fledged fact-finding mission, which would require independent access to all places and people enabling me to verify the information collected. My visit is the initial part of a process and I stand ready to conduct a follow-up mission at earliest convenience, with the support of the Office of the United Nations High Commissioner for Human Rights. The authorities have expressed willingness for my return and I am confident that the Government will seize this opportunity to collaborate with me on the terms of reference, dates and length of my next visit to the country.

Mr. President,

The security forces (comprising the police, the army, riot police (Lone Htein), members of the Union Solidarity and Development Association (USDA) and the Swan Ah Shin (SAS) militia used in my opinion excessive force against civilians, including unnecessary and disproportionate lethal force, in spite of several international appeals calling upon the Government to show restraint in policing the demonstrations. The crackdowns were not a policing but a military response and it is difficult to clearly identify the chain of command that led to the tragic events. I regret that the State and its agents did not sought to open dialogue with the protesters and to identify and address the underlying causes of the peaceful demonstrations before using force to disperse the protesters, which should have not exceeded the limits defined by internationally agreed standards for policing demonstrations. As noted by the United Nations High Commissioner for Human Rights, Louise Arbour, "the use of excessive force and all forms of arbitrary detention of peaceful protesters are strictly prohibited under international law." The serious abuses being perpetrated by the security forces "may constitute international crimes and could invoke individual criminal responsibility."

People were arrested on a daily basis from 18 September to the lifting of the curfew, on 20 October, with massive arrests between 26 and 29 September, mostly during night raids committed during the curfew hours by the security forces and non-law enforcement officials. I continue receiving reports alleging the arrests and release of people. It is estimated that between 3,000 and 4,000 people were arrested in September and October, and probably between 500 and 1,000 are still detained at the time of writing. In addition, 1,150 political prisoners held prior to the protests have not been released.

The Minister of Home Affairs informed me that 2,927 persons have been arrested for investigation since the start of the crackdown in September 2007, with 2,836 having been released, and 91 remaining in detention. Most of them are charged under the criminal code for terrorism while others are still under investigation. The Government provided me with a number of detailed records that responded partially to my requests, though I was not been able verify the figures collected. The numbers provided by the authorities and different sources may underestimate the reality, as not all family members reported missing persons, fearing reprisals and severe punishment.

I have endeavoured to include the Government's comments in my report and have liaised with the authorities to receive further clarifications on the whereabouts of 653 persons detained, 74 persons disappeared and 16 additional persons killed as a result of the crackdown on the demonstrations in September and October, in addition to the 15 individuals included in the information provided by the Government.

A week after my visit and call for the release of all political prisoners, 58 prisoners were released on humanitarian grounds (over the age of 65 or pregnant of with children), according to the Government. I further welcome the amnesty granted by the Government, on 3 December, to

8,552 prisoners, including 33 foreigners and only 10 political prisoners. I deplore, however, the ongoing arrests of political activists. I am therefore urgently calling on the Government to release unconditionally all persons detained or imprisoned merely for the peaceful exercise of their right to freedom of expression, assembly and association, including both long-term and recent prisoners of conscience, and to stop making further arrests.

Increasing reports from people who have been released, gave me the general impression that the detainees had been or continue undergoing harsh conditions during the interrogation phase, lasting from four to eight days, undertaken at separate locations from the places of detention. Political activists and human rights defenders have been particularly targeted during their arrest, interrogation and detention. Reports have confirmed appalling detention conditions which fail to meet international standards on the treatment of prisoners and in fact may constitute cruel, inhuman and degrading treatment prohibited under international law.

The level of violence and insult against monks and monasteries is particularly shocking, considering the essential grievances expressed by the monks were non-political and widely shared. The authorities announced that, as of 5 October, it had detained 533 monks, of whom 398 were released after sorting out what they called real monks from bogus ones. Reliable sources believe, however, that many more were detained or disappeared. The monasteries are still under surveillance by the authorities. From 26 September to 6 October, the security forces reportedly raided 52 monasteries across the country, looting the possessions of monks and beating and arresting them in large numbers. Allegations of killings were also received. I was able to engage in a closed meeting with 10 of the 92 remaining monks, out of the 180 previously located in the Ngwe Kyar Yan monastery.

Mr. President,

I did not find significant signs that the Government of Myanmar is implementing the operative paragraphs 2, 3 and 4 of Human Rights Council resolution S-5/1, urging the Government inter alia to investigate and bring to justice perpetrators of human rights violations, release without delay those arrested and detained as well as to lift all restraints on peaceful political activity of all persons.

The persecution of members of political parties in the opposition and human rights defenders shows that nowadays the seven step road map for democracy faces many obstacles to bring a genuine transition. The starting point for a national reconciliation requires meaningful and inclusive dialogue from the Government with and between political representatives and ethnic groups. The Minister for Information and Secretary of the National Convention Convening Commission, Brigadier General Kyaw Hsan, briefed me about developments regarding the road map noting that while the first and second steps have completed the fundamental and detailed principles adopted by the National Convention in drafting the Constitution, the third step is being implemented by the establishment of the Constitution Drafting Commission. It was noted that the NLD and other ethnically based parties will only be included in the step four, when the draft Constitution is to be endorsed by the majority through national referendum. This was reconfirmed in a press statement early December.

The incidents reported demonstrate the vulnerability of the economic and social foundations of Myanmar's society. It shows that the right to freedom of expression and the right to peaceful assembly have yet to be fully guaranteed and the tremendous challenges faced by Myanmar in ensuring the rule of law by holding accountable the perpetrators of serious criminal

acts documented in this report. I urge the Government to repeal or amend old laws and regulations in accordance with international human rights standards in relation to the right to peaceful assembly, the right to freedom of expression, the right to freedom of movement and all matters related to criminal and penal procedures and prison regulations. The authorities should also reconsider the participation of the army and non law enforcement officials in policing demonstrations.

I have endeavored to maintain a constructive and forward looking dialogue through my recommendations which are addressed to the Government, suggesting a number of immediate and transitional measures. My obligation to go to the public regarding allegations of human rights violations does not exclude a constructive and continuous dialogue with the Government. The challenge is not 'to report and finger point', what is becoming everyday more obsolete in the international community, but 'to report and dialogue', working together with the authorities to reach compliance to international standards.

I encourage Myanmar's engagement with its international and regional counterparts, in particular through the Association of Southeast Asian Nations (ASEAN) Charter, signed by Myanmar, which includes a firm commitment to international human rights and humanitarian principles in setting up a dedicated ASEAN human rights body. I would further like to re-emphasize a strong call for the Government to re-engage with the International Committee of the Red Cross (ICRC) in ensuring immediate access to all detainees for the benefit of all.

I welcome the access provided by the authorities of Myanmar to the Secretary-General's Special Advisor, Mr. Ibrahim Gambari, and most welcome the recent appointment of Mr. Piero Fassino as the European Union's Special Envoy on Myanmar.

By allowing me to conduct an official visit to the country, the Government has re-engaged in a constructive dialogue with this Council and the United Nations human rights mechanisms. The decision by the Government to authorize me to visit Myanmar should be praised and I sincerely hope that this dialogue will continue.

Thank you.